



Study on paving the way for future policy initiatives in the field of fight against organised crime: the effectiveness of specific criminal law measures targeting organised crime

Final report, February 2015

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**Study on paving the way for
future policy initiatives in the
field of fight against organised
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targeting organised crime**

Final report

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Preface

This document sets out findings from a study led by RAND Europe and Professor Michael Levi, and conducted in partnership with the Centre for the Study of Democracy and the eCrime group at the University of Trento.

RAND Europe is an independent not-for-profit research institution whose mission is to improve policy and decisionmaking through research and analysis. RAND Europe's clients include European governments, institutions, non-government organisations and firms with a need for rigorous, independent, multidisciplinary analysis.

Professor Michael Levi has been Professor of Criminology at the School of Social Sciences, Cardiff University since 1991. He has been conducting international research on the control of white-collar and organised crime, corruption and money laundering/financing of terrorism since 1972, and has published widely on these subjects as well as editing major journals. He has served as Scientific Expert on Organised Crime to the Council of Europe.

The Center for the Study of Democracy is a Bulgarian multidisciplinary think tank combining a broad range of capacities: legal and regulatory analysis, policy monitoring and advocacy, European integration, institution building, security sector reform, and anti-crime and anti-corruption strategies and practices.

eCrime is the research group on eCriminology of the Faculty of Law of the University of Trento UNITN. eCrime is involved in international research projects on transnational organised crime, corruption and the evaluation of policies against organised and non-organised crime.

The study was directed and coordinated by Andrea Di Nicola (eCrime, University of Trento), Philip Gounev (Center for the Study of Democracy), Michael Levi (Cardiff University), Jennifer Rubin (RAND Europe) and Barbara Vettori (Catholic University of Milan).

William Hughes, QPM CBE (Director of Probimus Marylebone Associates Cambridge), Filippo Spiezia (Deputy National Anti-Mafia Prosecutor at the Italian Anti-Mafia Directorate in Rome) and Barbara Vettori (Assistant Professor in Sociology of Deviance, Faculty of Political and Social Sciences – Catholic University of Milan) acted as Advisory Board to the study.

This report is divided into six parts and 11 Chapters. Authorship of this report is as follows:

- Part one (RAND Europe and Professor Levi): An introduction and background to the study and the methodological approach.

- Part two (eCrime, University of Trento): Mapping of the national legislation on organised crime, based on the contents of Framework Decision 2008/841/JHA; assessment of the transposition of Framework Decision 2008/841/JHA into MS national legislation; analysis of further/alternative criminal law tools to fight organised crime; implementation of laws relating to participation in a criminal organisation.
- Part three (Center for the Study of Democracy): Analysis of the investigatory tools used in the fight against organised crime (legislation and practices).
- Part four (RAND Europe and Professor Levi): Examples of specialist national agencies involved in the fight against organised crime.
- Part five: Italian case study (eCrime, University of Trento) and UK case study (RAND Europe and Professor Levi).
- Part six (all partners): Summary and conclusions.

Parts one and four and the UK case study only have been subject to RAND Europe Quality Assurance review processes.

Executive summary

Organised crime poses a threat to the security and freedom of European citizens and impacts the lives of people worldwide. Recognising the severity of the problem and the need for coordinated action, the EU has initiated a number of measures to encourage closer cooperation between Member States and the adoption of common legal, judicial and investigative frameworks to address organised crime.

Study objectives

This study is an evaluation of the practical application of legal and investigative tools stemming from Framework Decision 2008/841/JHA on the fight against organised crime, other EU and international regulations and national legislation. The aim of this study is twofold:

- To assess the impact of Framework Decision 2008/841/JHA and other relevant EU and national legislation on the fight against organised crime through comparative legal analysis.
- To provide a comparative analysis of investigative tools and other measures used at the national and EU level for the purpose of fighting organised crime, with a focus on the operational results of these tools.

Elements of the study

This study, conducted for the European Commission DG Home, involved the following elements:

- Reviewing the law in 28 Member States:
 - Mapping Member States' legislation and assessing the transposition of Framework Decision 2008/841/JHA.
 - Identifying other national criminal law tools (other than those transposing the Framework Decision) used in the fight against organised crime.
- Examining how the identified legislation, relevant to the fight against organised crime, was used in practice in each Member State.
- Reviewing eight special legal and investigative tools and techniques used in the fight against organised crime: surveillance; interception of communications; covert investigations; controlled deliveries; informants; hot pursuit of suspects; witness protection; and joint investigation teams.
 - The study looked at if and how these legal and investigative tools were permitted, by law, in Member States.

- The study looked at how these legal and investigative tools and techniques were used in practice.
- Providing an overview of selected national specialist law enforcement and prosecution agencies involved in the fight against organised crime.

Cutting across these three main elements of the study was the objective of identifying potential good practice – in relation to law, investigatory tools and specialist agencies – which could be potentially helpful and transferrable to other Member States who are looking to improve national practices.

Study methodology

This study involved four main research activities/data collection methods:

- Data collection by 28 Member State experts: experts in criminal law in each Member State completed a detailed questionnaire to provide the research team with information relevant to each of the elements of the study, outlined above. In completing the questionnaire experts drew on their own knowledge, as well as interviews with individuals within the Member State (including prosecutors and judges, police officers from specialised units fighting organised crime, academics and policymakers). Members of the research team liaised extensively with the Member State experts to ensure the information provided was as comprehensive and accurate as possible.
- Assessment of compliance and transposition: this looked at the compliance of national legislation in all 28 MS with the Framework Decision 2008/841/JHA. The research team assessed compliance with Articles 1–8 of the Framework Decision.
- Desk research of national legislation, law and other information, to supplement information provided by Member State experts.
- Case studies on aspects of the fight against organised crime in Italy and the United Kingdom.

Study limitations

- An approach based on the use of information provided by national experts was selected as the only practical way of collecting data across the 28 Member States within the time and resources available for this study. National experts were predominantly academic lawyers, knowledgeable in their field and also about the control of organised crime. The research team supplemented the information provided by national experts with information from desk research, but largely this study is based on information provided by national experts.
- Given the scale of the task, experts were not required or expected to be comprehensive. National experts were asked to describe the *main* specialist national agencies. In the time available, some experts were unable to access all the information requested in the questionnaire. Therefore, as anticipated in the planned methodology for this study, the report provides an overview, to the extent feasible, of investigative tools and national

agencies, highlighting the main issues, agencies, etc.

- The study aimed to collect objective data regarding the use and impacts of national law, investigative techniques and national specialist agencies used in the fight against organised crime. The research team primarily relied on national experts' perceptions of effectiveness (and the perceptions of the stakeholders they interviewed). For this reason the term 'promising practices' is used to describe elements perceived to be working well within a country, which other Member States might be interested in learning about but which require more detailed assessments regarding impacts.
- Availability of national statistics: Recognising the importance of policy being informed by the best-available comparative data and statistics (and in the hope of validating the views reported by Member State experts), the research team attempted to collect statistics compiled at national level regarding the use of legal and investigatory tools in order to assess the effects of policies via objective indicators. As expected, data were very limited and this means that the study had to rely primarily on more subjective views reported by experts.

Key findings regarding transposition of the Framework Decision 2008/841/JHA on the fight against organised crime

Chapter 4 of this report presents the detailed mapping and transposition assessment of Framework Decision 2008/841/JHA, article by article.

With the exception of Denmark and Sweden, all Member States have transposed the key elements of the Framework Decision and introduced a self-standing offence of participation in a criminal organisation and/or conspiracy to commit offences. The majority of Member States only have the offence of participation in a criminal organisation. A minority (two Member States) only have the offence of conspiracy, and four Member States have both offences.

Denmark and Sweden do not have a self-standing offence in relation to Article 2 of the Framework Decision. All other provisions (apart from potentially Article 3.2) of the Framework Decision are based on Article 2, which means that it is not possible for Denmark and Sweden to transpose any of the other Articles. These countries do, however, have other alternative legal instruments to tackle criminal organisations and have national specialist agencies for the fight against organised crime.

Findings from the mapping of national legislation and assessment of compliance lead the research team to make a number of observations and conclusions regarding the added-value of the Framework Decision, as follows:

The Framework Decision differs considerably from the original proposal by the Commission and the most important provisions are optional.

During the process of approving the Framework Decision, Member States made the main obligations optional (e.g. offences in relation to participation in a criminal organisation – Article 2), relatively vague (e.g. definitions – Article 1) or of modest impact (e.g. penalties – Article 3). For this reason, the content of

the Framework Decision adds little value in relation to the international UNTOC standards and the previous EU Joint Action.

Motivations for creating organised crime legislation are primarily national, rather than stemming from a need or desire to comply with the Framework Decision.

Comments from national experts suggest that Member States tend to develop legislation on organised crime issues for their own domestic reasons, taking account of the threat they believe organised crime poses nationally.

Most Member States were compliant with the minimum standards before the Framework Decision was issued.

Twenty Member States were fully or partially compliant with the terms of Article 2 before the Framework Decision was introduced, and eight changed their national legislation following the introduction of Framework Decision.

The Framework Decision should be seen in the context of the range of other measures in the fight against organised crime.

Within Member States, there are a range of measures and processes used in the fight against organised crime, which are independent of the Framework Decision (for example evidential law and asset recovery powers), as well as preventative measures against organised crime implemented by businesses, citizens and the public authorities. These can have a large impact on crime threats and public security.

Member State law often goes beyond the minimum standards set out in the Framework Decision.

For example, in relation to Article 3 (penalties), most Member States impose penalties that are higher than the required minimum. Others extend the scope of predicate offences (Article 1(1)) to all criminal offences.

Transposition of the Framework Decision may, in some instances, be too broad.

Some national experts were concerned that legislation aimed at serious organised crime could be used to target activities that were not sufficiently serious or not of a cross-border nature. This raised concerns about over-criminalisation.

Legal reasons and non-legal reasons were identified to explain why national legislation relating to participation in a criminal organisation may not be used in practice.

Legal reasons included difficulties in meeting the standard of proof and proving all the elements of the offence. The non-legal reasons included practitioners' preferences for conspiracy over participation and a preference for predicate offences and using participation in a criminal organisation as an aggravating factor. Factors which were said to facilitate the use of participation offences were related to procedures such as exchange of information and coordinating agencies, rather than to legislation as such.

Compliance with the Framework Decision through case law or jurisprudence may increase uncertainty.

Some Member States comply through jurisprudence or case law, and while this is permitted, this could create a problem because the status of these types of law may vary between Member States.

It is not clear that future, additional legislation would address the limitations of the Framework Decision.

This study has indicated that that the legal implementation of a Framework Decision or other instrument is no guarantee that Member States will use it to the extent intended. The shape of any possible future revised legal instrument would largely depend on the willingness of Member States to enhance the current legislation.¹

Key findings regarding further and alternative criminal law tools

Chapter 5 of this report describes whether Member States have further criminal law tools to tackle organised crime (in addition to offences under the Framework Decision). Key findings are as follows:

Eleven Member States had further offences.

In several cases these further tools aimed to tackle the most serious or large organised crime groups, or set out laws on specific topics, such as organised crime groups involved in drug trafficking. In five Member States the further laws included offences which were broader (less specific) than required in the Framework Decision.

Denmark and Sweden have alternative criminal law tools to fight organised crime.

In Denmark there are provisions related to complicity, aggravating circumstances based on organised crime and criminalisation of organisations that use violence to achieve their ends. In Sweden national legislation states that it is an aggravating circumstance when an offence is committed as part of organised criminal activity. Sweden also criminalises offences that involve several persons or involve organisation.

Key findings regarding the use in practice of offences related to participation in a criminal organisation and perceived usefulness.

Chapter 6 of this report describes practices in the use of criminal law offences relating to participation in a criminal organisation, based on interviews with national stakeholders conducted by the Member State experts, as well as the views of the Member State experts themselves.

There was variation between Member States in reported frequency of use of these offences. Overall these offences were considered to be useful, and were reported to be

¹ This is so despite the fact that under the Lisbon Treaty, the approximation of criminal legislation is dealt with under co-decision involving both the Council and the European Parliament as equal partners.

used most in relation to organisations involved in drug trafficking, human trafficking and people smuggling.

Inhibitors to the use of participation offences were reported. These included:

- The wording of national legislation.
- Standards of proof.
- Staffing and resources.
- Low penalties for participation in a criminal organisation (especially compared with those for predicate offences in that jurisdiction).
- Conflicts over the use of the self-standing offence of participation in a criminal organisation and using participation in a criminal organisation as an aggravating circumstance.
- How the legislation tends to be used in MS, due to the knowledge and experience of practitioners and for cultural reasons.

Key findings regarding special legal and investigative tools used in the fight against organised crime.

Chapter 7 of this report reviews the use of eight investigative techniques:

- Surveillance
- Interception of communication
- Covert investigations
- Controlled deliveries
- Informants
- Hot pursuit
- Witness protection
- Joint investigation teams.

Any discussion of the use of special investigatory techniques must clearly recognise that they have the potential to infringe individual rights and privacy. Most jurisdictions have installed a system of legal procedural constraints on the use of these tools.

For each tool, Chapter 7 outlines barriers to its use within Member States and in cross-border investigations. Readers are directed to the summary tables at the start and end of Sections 7.6–7.14 for details of each tool.

Special investigative tools were reported to be rarely used on their own, and were more usually used as part of a multifaceted approach to gathering evidence.

This is primarily due to the complex nature of organised crime cases, which require the use of several tools to gather necessary evidence and intelligence. This makes it difficult to assess their utility in isolation.

The regulation of cross-border use of investigative techniques is highly complex.

The regulatory landscape includes Member States' legal frameworks, plus a large number of regional and national bilateral agreements and arrangements. The advantage of having these many different options when conducting cross-border

investigations is that law enforcement officers can select an approach and regulatory framework which best suits the needs of the case. On the other hand, variability in the approach could hinder effective collaboration, since it means each case is different and approaches are not standardised.

Interception of communications, surveillance and informants were reported by Member State experts to be most useful techniques and were reported to be used most often.

The techniques reported to be least used were hot pursuit, joint investigative teams and witness protection.

Common barriers to the use of special legal and investigative tools, as highlighted by Member State experts, included the following:

- Differences in Member States' legislation regarding when the use of investigative techniques is permitted.
- Differences in processes for authorisation.
- Differences in the admissibility of evidence.
- Administrative and bureaucratic requirements.
- Different criminal justice processes and rules, for example, regarding admissibility of evidence and disclosure of material pre-trial.
- Limited resources, when the use of these tools could be very costly.
- Skills, recruitment and training of law enforcement professionals.

There were a range of recommendations and suggestions to overcome these barriers. Some were suggested by Member State experts and others were suggested by the research team based on their evidence.

EU-wide harmonisation is extremely limited in this area (Article 72 of the Treaty of Lisbon). However, not all the recommendations suggest EU-level legislation. Many look to Member States themselves to act to harmonise their approaches, and/or suggest measures such as training and relationship-building between law enforcement officers from different Member States:

- Some of the recommendations included calls for Member States to take steps to harmonise their legislation, to ensure greater similarities in what legal and investigative tools are permitted, when they can be authorised, restrictions on their use, and so on.
- Ensuring all Member States have access to technology and equipment could enhance investigations into organised crime. Some Member State experts suggested that EU-level funding might be made available to purchase equipment.
- Training staff, and facilitating contact between law enforcement professionals in different Member States was recommended to enhance technical skills and knowledge and to build and expand personal contacts and trust between law enforcement officers.
- Exchange best practice and good ideas between Member States.
- The adoption of common models and approaches by Member States (for example the Dedicated Informant Management model) could constitute a

first step to enhanced cooperation.

Key findings regarding national specialist agencies

Chapter 8 of this report it describes the main agencies and aims to highlight those that were considered by national experts and the stakeholders they interviewed to be examples of promising practices.

The majority of Member States were reported to have more than one specialist agency tasked with fighting organised crime in their country.

There is a great deal of variability in the structure, remit and approach taken by national specialist agencies, as well as how they are controlled and held accountable. Exceptions were Belgium and to some extent Austria and Sweden, where work against organised crime groups was integrated within their enforcement agencies.

Key findings regarding national specialist agencies are as follows:

- Reforms to specialist national agencies were reported in many Member States, which could be disruptive.
- National specialist agencies were said to face challenges in recruiting and retaining staff with appropriate skills.
- Cooperation between different law enforcement agencies within Member States remains a challenging issue for several Member States.
- Lack of access by law enforcement officials to information systems (such as those of other law enforcement agencies, as well as tax authorities and land registers) can hinder the work of specialist agencies.
- A minority of Member States reported having units dedicated to international cooperation. In most cases specialist agencies have international cooperation as part of their mandate, and some have units or divisions specialising in international matters and mutual legal assistance.
- The study highlights several potentially promising practices. These are highlighted throughout Chapter 8, and in Box 11.2.

Innovative practices highlighted by the Italian case study

As well as reviewing the legal tools in the fight against organised crime in Italy, the Italian case study looked in detail at the work of the Italian National Anti-Mafia Directorate (DNA).

The DNA coordinates and supports the 26 Anti-Mafia District Directorates (DDAs) and the law enforcement bodies dedicated to the investigation of serious organised crime, and is managed by the Anti-Mafia National Prosecutor.

Features of the DNA which are potentially promising practices, transferable to other Member States, include:

- The DNA is an organisation whose role is to coordinate prosecution and investigations all over the country carried out by the 26 DDAs. The DNA has no direct investigative or prosecution tasks, which means it can focus entirely on coordinating other actors and gathering and sharing information.

- The DNA can take a strategic view of organised crime across the country, set medium- and long-term targets and identify future trends.
- The DNA specialises in serious forms of organised crime and organised criminal activities, and recruits specialist staff.
- The DNA has special databases – SIDNA (Anti-Mafia Directorate Information System) and SIDDA (District Level Anti-Mafia Directorates Information System) – where all data on investigations and prosecutions and criminal organisations are stored. All public prosecutors put information into the system.
- The DNA is the contact point for cross-border cooperation, in charge of developing and expanding relationships with political/judicial/prosecutorial institutions engaged in the fight against organised crime in other states, as well as of information and data exchange in relation to transnational organised crime.

Key findings from the UK case study

The UK case study looked at the UK approach to fighting serious and organised crime in order to highlight approaches and practices which could potentially be transferrable to other Member States.

The agency that coordinates the fight against organised crime in the UK is the National Crime Agency (NCA). This was introduced in 2013 and replaced the previous national agency, the Serious Organised Crime Agency. The creation of the NCA was intended to harmonise and strengthen cooperation in against serious and organised crime.

While it is too early to say whether the NCA approach can be recommended as a model to be adopted elsewhere in the EU, based on interviews with practitioners working in the NCA, the following were identified as areas of potentially promising practice:

- The NCA has single system for tasking and coordination with all UK police forces. The tasking system was seen by interviewees from NCA as an essential element in improved collaboration and better prioritisation of threats.
- Although the NCA has the power to direct Chief Constables in local police forces, it prefers to work with police forces by consent, and senior staff at the NCA were said to spend much time relationship-building.
- The NCA uses a 'lifetime offender management' approach. This creates a structure through which all serious offenders of interest are individually monitored, and measures are put in place to disrupt their criminal activities in prison and prevent criminal activity upon release. Lifetime offender management also ensures that details of all offenders released from prison are shared with probation services and police forces.
- The NCA can issue *Serious Crime Prevention Orders* (SCPOs) to support lifetime offender management. These place restrictions on individuals after their release from custody. Enforcement of SCPOs can be a challenge, however, since good collaboration between law enforcement and other agencies is required in order to successfully monitor the orders. They are

also resource intensive.

- The NCA employs innovative behavioural approaches to crime disruption and prevention.
- The NCA approach to cybercrime involves cooperation with the private sector, NGOs, academics and individual experts. The NCA operates a 'NCA Special Constables' programme for experts with technical skills who volunteer to support the NCA part-time.

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PART 1: INTRODUCTION AND BACKGROUND²

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1. Introduction to the study

This study is an evaluation of the practical application of legal and investigative tools stemming from Framework Decision 2008/841/JHA on the fight against organised crime, other EU and international regulations and national legislation. The aim of this study is twofold:

- To assess the impact of Framework Decision 2008/841/JHA and other relevant EU and national legislation on the fight against organised crime through comparative legal analysis.
- To provide a comparative analysis of investigative tools and other measures used at the national and EU level for the purpose of fighting organised crime and with a focus on operational results.

The study focuses on the following specific objectives, with reference to the EU and national levels for the 28 Member States (MS):

- Identify and compare the main substantive criminal law tools and procedural criminal law tools (including special investigative techniques) used in the fight against organised crime, stemming both from Framework Decision 2008/841/JHA, other regulations and national legislation.
- Assess the compliance of MS' national legislation in the fight against organised crime with Framework Decision 2008/841/JHA, through evaluation of the transposition of the Framework Decision and the practical application of substantive and procedural criminal law tools.
- Conduct an assessment of (a) the practical application of and (b) the impact of substantive criminal law tools and procedural criminal law tools, including special investigative techniques in the fight against organised crime, stemming from Framework Decision 2008/841/JHA, other regulations and national legislation.
- Identify good practices in EU/national legal and investigative tools for the fight against organised crime, as well as limits on their application.
- Identify good practices in the role/added value of national specialised law enforcement agencies and international law enforcement agencies (such as Europol) in implementing criminal law and investigative tools.

The following chapter provides the policy background to the study.

2. Background to the study – European and international legal frameworks in the fight against organised crime

In recent decades a number of European and international legal instruments have sought to contribute to the fight against organised crime. Both the European Union (EU) and the United Nations (UN) have been active in developing the legal framework in this area. The Council of Europe and the Financial Action Task Force/MoneyVal³ have also made contributions.

2.1. EU Action Plan to Combat Organised Crime – 1997

The 1997 EU Action Plan to Combat Organised Crime⁴ requested the Council of the European Union, in its recommendation n. 17, to:

rapidly adopt a joint action aiming at making it an offence under the laws of each Member State for a person, present in its territory, to participate in a criminal organization, irrespective of the location in the Union where the organization is concentrated or is carrying out its criminal activity [...].

Aware of the different legal traditions, the same recommendation added that it would have been regarded as acceptable 'for a limited period of time, that not all MS will be able to sign up immediately to the agreed definition'.

2.2. Joint Action – 1998

Following from the above recommendation, the first international legal instrument aiming to harmonise national legislation was the EU Joint Action on making it a criminal offence to participate in a criminal organisation in the MS of the European Union, adopted on 21 December 1998.⁵ The Joint Action provided an EU-wide definition of 'criminal organisation':

[Any] 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

³ The Financial Action Task Force is 'an inter-governmental body established in 1989 by the Ministers of its Member jurisdiction' (FATF 2015). The MoneyVal or Committee of Experts on the Evaluation of Anti-Money Laundering Measures was created by the Council of Europe in 1997 (MoneyVal 2015).

⁴ Council of the European Union (1997).

⁵ Council of the European Union (1998).

liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities. (Article 1, Joint Action)

The Joint Action invited MS to envisage criminal penalties to punish various forms of offences in relation to participation in a criminal organisation (Article 2),⁶ committed either by individuals or legal persons. The intention of the Joint Action was to provide a fairly low threshold to meet the definition of a criminal organisation, so as to empower cross-border cooperation without undue burdens.

2.3. The United Nations Convention – 2000

The Joint Action was followed by the United Nations Convention Against Transnational Organised Crime (UNTOC), signed in Palermo in December 2000 (the Palermo Convention). The European Community participated in the negotiations of the Convention, signed it and is a Party to the Convention.⁷ The Palermo Convention introduced a global legal definition of an organised criminal group⁸ and has worldwide reach. It remains today one of the key international legal references in relation to organised crime.

2.4. Commission proposals for a Framework Decision – 2005

On 19 January 2005, the European Commission put forward a proposal for a Framework Decision on the fight against organised crime.⁹ The aim was to build on the

⁶ Article 2 of the 1998 Joint Action reads as follows:

1. To assist the fight against criminal organisations, each Member State shall undertake, in accordance with the procedure laid down in Article 6, to ensure that one or both of the types of conduct described below are punishable by effective, proportionate and dissuasive criminal penalties:

(a) conduct by any person who, with intent and with knowledge of either the aim and general criminal activity of the organisation or the intention of the organisation to commit the offences in question, actively takes part in:

- the organisation's criminal activities falling within Article 1, even where that person does not take part in the actual execution of the offences concerned and, subject to the general principles of the criminal law of the Member State concerned, even where the offences concerned are not actually committed;

- the organisation's other activities in the further knowledge that his participation will contribute to the achievement of the organisation's criminal activities falling within Article 1;

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

2. Irrespective of whether they have elected to make the type of conduct referred to in paragraph 1(a) or (b) a criminal offence, Member States will afford one another the most comprehensive assistance possible in respect of the offences covered by this Article, as well as those offences covered by Article 3(4) of the Convention relating to extradition between the Member States of the European Union, drawn up by the Council on 27 September 1996' (Council of the European Union 1998).

⁷ Council of the European Union (2004).

⁸ The Palermo Convention defines organised criminal group as follows: 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit' (United Nations Office on Drugs and Crime 2004).

⁹ European Commission (2005a).

Joint Action as well as UNTOC. In 2004,¹⁰ the Commission stated that the Joint Action should be revised in order to:

actually harmonise the definition of offences and penalties as regards individuals and bodies corporate;

provide for a specific offence of 'directing a criminal organisation';

determine specific aggravating circumstances (commission of an offence in conjunction with a criminal organisation) and mitigating circumstances (reduced penalties for those who assist the police with their inquiries);

include provisions to facilitate cooperation between judicial authorities and coordinate their action.¹¹

The Commission proposal for a Framework Decision also referenced the objective of the Hague Programme,¹² which highlights the importance of approximation of substantive criminal law to facilitate mutual recognition of judgments and police and judicial cooperation in cross-border criminal cases.¹³

2.5. Council Framework Decision – 2008

The Council Framework Decision (2008/841/JHA) was subsequently introduced (with the repeal of the 1998 EU Joint Action).

The outcome of the negotiations over the Framework Decision resulted in an instrument that was not as ambitious as the initial proposal from the Commission: MS are given an option whether to either criminalise participation in a criminal organisation or conspiracy in organised crime (i.e., 'agreement with one or more persons that an activity should be pursued'). It was because the Framework Decision maintains this 'dual approach' that the Commission issued (with support of FR and IT) a declaration questioning the added value of the instrument from the point of view of achieving necessary minimum approximation of national legislation.¹⁴

¹⁰ European Commission (2004).

¹¹ European Commission (2004), para 3(17).

¹² Council of the European Union (2005).

¹³ Council of the European Union (2005), para 3.3.2.

¹⁴ 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.

2.6. Issues related to the current regime

While the rationale behind the Framework Decision was to provide higher standards in the EU regarding offences linked to a criminal organisation, the provisions of all three instruments (the 1998 EU Joint Action, the Palermo Convention and the Framework Decision) are very similar.¹⁵

A 2011 report prepared for the European Parliament noted that the Framework Decision could be further improved in terms of its legal certainty, its scope and the level of harmonisation it has achieved.¹⁶ This report also pointed out that the definition of a criminal organisation in the Framework Decision may lead to over-criminalisation, as 'the elements of a criminal organisation are defined very broadly and with flexible, ambiguous criteria'.¹⁷ As a result, there may be substantial differences across MS, which could jeopardise an effective approximation of national legislation, and reduce the domestic and international cooperation added-value of the Framework Decision. Similar criticism has been made in relation to the definition of an organised criminal group in the Palermo Convention, which has been described both as 'overly broad' and 'under-inclusive' because it includes valid elements while not specifying others such as violence and corruption, which are seen as important features of organised criminal groups' activities by some authors.¹⁸

While these are important considerations, there is a need for further research into the implementation of these elements in national organised crime legislation and to understand the extent to which this 'functional equivalence' is a problem in practice, and whether the criticisms of the Framework Decision are justified in practice as well as on more conceptual grounds. This gap in understanding formed part of the impetus behind the European Commission commissioning the present study.

2.7. How is organised crime defined in the literature?

The definition of organised crime has been the subject of much discussion by scholars in this field,¹⁹ and there is ongoing disagreement between sociologists, criminologists and lawyers about what its proper definition should be. While some highlight the structure of the criminal organisation, others have focused on the set of criminal activities developed by that criminal organisation and/or 'actor networks'.

2.7.1. Organised crime as a set of actors

The set of actors involved in organised crime may include a wide range of individuals and social networks that may not themselves be straightforwardly defined as criminals. Thus, academics have conceptualised 'organised crime' in terms of groups, networks, and 'enterprise crime'.²⁰ The picture is also complicated by adaptability; the

¹⁵ Please see comparisons between the three instruments under each relevant section (i.e., Sections 2.2-2.5).

¹⁶ Mitsilegas (2001).

¹⁷ Mitsilegas (2001), 6); Joutsen (2002), 423.

¹⁸ Orlova & Moore (2005); Calderoni, F. (2010).

¹⁹ For example, see Von Lampe (2015).

²⁰ Levi (1998).

organisation, structure and activities encompassed within organised crime have changed over the years in response to developments in the wider context in which organised crime occurs.²¹ For example, counter-measures against organised crime may have affected its structure and organisation (although there is very little robust evaluation of the effectiveness of counter-measures).²²

2.7.2. Organised crime as a set of criminal activities

The term 'organised crime' does not just define a set of actors and how they are organised, but also a set of criminal activities.²³ These activities include, but may not be limited to: drug-trafficking; trafficking in people; extortion; kidnapping for profit; illegal toxic waste dumping (environmental crime); identity frauds (including sophisticated credit and debit card fraud and social security/tax credit frauds); frauds against the European Union; smuggling to evade excise tax on alcohol and tobacco; intellectual property theft (video and audio piracy and product counterfeiting); Value-Added Tax (VAT) frauds; and corruption of public officials to facilitate these offences and/or evade sanctions.²⁴ The lack of clear criteria defining organised crime allows the scope of the term to be broadened by adding new criminal activities.

2.7.3. Organised crime as profit-driven crime

Other scholars have suggested replacing and/or complementing the concept of organised crime with different concepts such as criminal enterprise and profit-driven crime. For example, van Duyne²⁵ suggests that in order to overcome the conceptually unclear construct of organised crime, the 'criminal enterprise' notion should instead be employed, whereby the activities of organised crime are considered from an economic point of view. Finckenaer argues that there is a 'danger, generally, in the promiscuous use of the label organised crime with reference to perpetrators of "crimes that are organised", and also with criminal networks that lack what we regard as the essential defining elements of being criminal organisations'.²⁶ Naylor offers a typology of 'profit-driven crimes' and suggests a refocus of scientific analysis on criminal activities ('what' and 'how') rather than on offenders ('who').²⁷

2.8. The need for further research into organised crime legislation and the approximation of national legislation

Some comparative research with a focus on organised crime legislation in the EU already exists. The UN Centre for International Crime Prevention collected legislation in 1999 relating to participation in a criminal organisation from 38 countries, including 15 EU countries.²⁸ However, given the speed of change and the growth of money

²¹ Rubin, Pardal, McGee & Culley (2013).

²² Levi & Maguire (2012).

²³ Levi & Maguire (2012); Cohen (1977).

²⁴ Levi & Maguire (2012), 600–601.

²⁵ Van Duyne, Jager, Von Lampe & Newell (2004).

²⁶ Finckenaer (2005).

²⁷ Naylor (2002, 2003); Savona, Calderoni & Remmerswaal (2011).

²⁸ Centre for International Crime Prevention (1999).

laundering and proceeds of crime legislation in the intervening period, this is of limited use today.

There are also academic and other studies that provide an in-depth comparative analysis of national legislation.²⁹ Further studies have compared national systems in relation to international cooperation.³⁰

Academic research into the level of approximation of legislation on organised crime and related offences among MS is scant. A review of the literature reveals that current applications of the legal approximation methodology are still limited.³¹ Hence, further research into how legal provisions are applied in the 28 MS, especially after the introduction of the Framework Decision, will be important in improving policies, law and practice.

²⁹ Levi & Smith (2002); Cornils & Greve (2004); Council of Europe (2004a); Centre for the Study of Democracy (2012). Levi & Smith (2002) studied aspects of the Racketeer Influenced and Corrupt Organisations (RICO) legislation in the US and European legislation at that time dealing with incrimination and proof of organised crime activity and their applicability to England and Wales. The Centre for the Study of Democracy (2012) studied the national legislation on organised crime in Bulgaria including the criminal procedure law and related laws, and the problems posed by their implementation. This study provides sufficient detail and can be used in comparative analysis of organised crime legislations in the EU Member States.

³⁰ Den Boer (2002); Bartone (2003); Fijnaut & Paoli (2004); Hauck & Peterke (2010); Joutsen (2002); Brady (2007).

³¹ Calderoni (2010). One of the main goals of Calderoni (2010, 48) is to assess the level of approximation of national organised crime pieces of law to the EU standards set by the Framework Decision 2008/841/JHA, i.e. 'the EU Member States' rate of compliance (positive assessments) with the indicators of approximation EU requirements as set by Framework Decision (2008/841/JHA) for each'. The author created 17 indicators of approximation in order to evaluate whether domestic legal measures against organised crime comply or not with the standards of the above-mentioned Framework Decision.

3. Methodology

To achieve the research objectives set out in Section 1.1 the research team carried out a number of activities, explained below.

3.1. Data collection in MS by country experts

In this study a pivotal aspect of the approach to collecting information about each MS was a network of 28 national experts (one in each MS), all of whom have substantial experience in criminal law and organised crime. A questionnaire was prepared by the research team, and completed by national experts.

In order to complete the questionnaire national experts were asked to:

- Draw on their own judgement and expertise.
- Gather further information through interviews with at least eight national stakeholders in their country from the following groups: prosecutors and judges, police officers from specialised units fighting organised crime, academics, policymakers and NGOs.

The questionnaire was divided into five sections, as follows:

Section 1: National criminal law tools used in the fight against organised crime

This section aimed to gather information about the criminal law tools used in the fight against organised crime in each country, including national legislation transposing Framework Decision 2008/841/JHA and other relevant national laws. It aimed to acquire information about perceived barriers and facilitators to the implementation of criminal law tools, and solicited experts' and interviewees' views about the frequency of the use of national legislative provisions, their use in practice, and their impact.

Section 2: National specialist judicial and law enforcement agencies involved in the fight against organised crime

Given the large number of agencies, units and organisations possibly playing a role in the fight against organised crime, it was beyond the scope of this study to conduct a comprehensive review of each agency in every MS (it is not the objective of this study to compare specialist national agencies – either within or between countries). Instead, this section of the questionnaire asked MS experts to identify specific examples of good practice and ways in which specialist agencies added value (as perceived by the

MS expert or national interviewees). It also aimed to capture some of the variation in the way in which specialised national agencies operate.

Section 3: National specialist legal and investigative tools

This section aimed to acquire information about the implementation of legal and investigative tools used in the fight against organised crime. The same questions were asked about each of the following legal and investigative tools:

- Interception of communications
- Controlled delivery
- Covert investigation (undercover officers)
- Informants
- Surveillance (including cross-border surveillance)
- Hot pursuit
- Joint Investigation Teams
- Witness protection.

Additionally, experts were asked to name other legal and investigative tools, procedures or techniques used in the fight against organised crime in their country, different to those listed above. For each of the legal and investigative tools, experts were invited to share their views as to ease of use, clarity, financial resources made available, groups against which tools are most useful, as well as the issues and challenges that may undermine their impact. There were also questions about possible ways to improve each tool in order to achieve greater impact.

Section 4: Statistics on the use of legal and investigative tools

This section aimed to gather information about the actual use of legal and investigative tools in each country.

Experts were asked to complete this section based on available national statistics from official sources in each country. However, it was recognised in advance that such official data may be limited or not be available at all. National experts were therefore asked to request additional data from interviewees, including regarding investigations or prosecutions in which interviewees had been involved (if appropriate). While these data would not be representative or generalisable, they might provide useful illustrations or examples. National experts were asked to comment on data unavailability and data quality where appropriate.

Section 5: Indicators of the use of national criminal law measures

This section aimed to acquire data about the use of criminal law measures in the fight against organised crime, such as:

- The number of reported/arrested/convicted natural/legal persons under the specific anti-organised crime legislation.
- Estimates of the number of organised crime groups.

National experts were instructed that this section should be primarily based on the collection of available statistics from official sources. However, as with Section 4,

national experts also asked interviewees whether they could provide information that they had collected as individual practitioners or which had been collected by institutions in which they have worked.

3.3. Assessment of transposition and practical application

A central part of this study was to assess the compliance of national legislation in all 28 MS with Framework Decision 2008/841/JHA. The aim was to understand whether the introduction of the Framework Decision in 2008 had a real influence on the adoption of the legal definitions of, and standards in, the field of the fight against organised crime in MS. The research team assessed compliance with Articles 1 to 8 of the Framework Decision, which relate to:

- Definition
- Offences with regard to Article 2 of the Framework Decision
- Penalties
- Special circumstances
- Liability of legal persons
- Penalties for legal persons
- Jurisdiction and coordination of prosecution
- Absence of requirement of a report or accusation by victims.

Country experts were asked to provide 'detailed descriptions' of how Articles 1 to 8 were transposed in national legislation. In relation to some Articles,³² national experts were asked to provide 'official or unofficial translation in English', however few official translations were available. The assessment of transposition relied to a great extent, therefore, on the descriptions of national legislation provided by MS experts. The research team took steps to ensure that the information provided by national experts, on which the mapping and assessment was based, was as accurate as possible. MS experts were lawyers or otherwise knowledgeable in their field and national law. Where information provided was not complete, members of the research team requested more information and asked for clarifications; the research team also undertook some supplemental desk-based research. Findings from the assessment were fed back to national experts for validation.

3.4. Case studies

Two case studies were conducted to provide an in-depth analysis of aspects of the fight against organised crime in Italy and the UK. Each case study had a different focus:

- The Italian case study explored the role of the Italian Anti-Mafia Directorate in the fight against organised crime and the offence of mafia-type association (Article 416 bis). It focused on investigative techniques of interception of communications in the context of cross-border cooperation

³² The questionnaire completed by MS experts asked for official or unofficial translations in English for: offences relating to participation in a criminal organisation; aggravating factors; absence of requirement of a report or accusation by victims; and liability of legal persons.

and the special prison regime for people convicted of organised crimes.

- The UK case study looked at the role of the National Crime Agency in the UK, and in particular, multi-agency cooperation in the fight against organised crime (including cooperation with the private sector and cooperation between different enforcement agencies).

Focusing on these two countries with different legal systems and traditions provided an opportunity to explore how the existing tools to fight organised crime actually operate in different contexts. The case studies focused on the use of selected tools, agencies and practices in these countries in order to understand:

- Why they are effective and under what conditions.
- If they are exportable to other MS and under what conditions.
- How the selected tools agencies and practices are used nationally and in cross-border cooperation.

The case studies were based on desk research as well as some primary data collection:

- In Italy: Focus group with five Deputy National Anti-Mafia Prosecutors at the National Anti-Mafia Directorate.
- In the UK: Interviews with 20 individuals working in various roles primarily in law enforcement and the judiciary (12 of them at the National Crime Agency).

3.5. Limitations of the study

This study has an ambitious scope and objectives, looking at law and practice across all MS. The study design has a number of limitations, which are explained below.

Reliance on information provided by MS experts

In order to gather the necessary information within the time and resources available for the study, the research team relied mainly on MS experts to provide (through the questionnaire) the information on which this report is based. MS experts were instructed to complete the questionnaires using their own expertise as well as information from interviewees and stakeholders. The questionnaires had to be completed to a sufficient level of detail within a constrained time period and within resources available.

The mapping and assessment of compliance (see Chapter 4 of this report) is mainly based upon information provided by MS experts about how the articles of the Framework Decision have been transposed (or not) into national law. It is also based on desk-research that was conducted in parallel to check information provided and ensure consistency.

The research team took care to check the responses of MS experts and to ensure information gaps were filled. Few official translations of the many pieces of national legislation (of interest regarding the Framework Decision) were available. Where official translations were not available, the research team relied on MS experts'

unofficial translations of national legislative text, or parts of texts, as well as on available literature. The same applies to the information presented in this report regarding the use of investigatory techniques.

Experts encountered different challenges in completing the questionnaire, both practical (for example, in securing interviews with members of the judiciary or law enforcement community) and more fundamental (related to the particularities of each legal system and criminal justice procedure). As a result, the completed questionnaires varied somewhat in the amount of information and the level of detail provided. The research team attempted to fill gaps by returning to national experts for further information, and by conducting desk research, but it is inevitable in a study of this nature that the level of detail varies between MS.

It is for this reason that the information provided in this report in Chapters 5, 7 and 8 should not be viewed as comprehensive. These chapters aim to cover the main alternative legal tools, investigative tools and specialist agencies, as highlighted by national experts and the desk research undertaken by the research team.

Promising practices in relation to national specialist agencies

As mentioned above, it is not the objective of this study to conduct a comprehensive review of national agencies involved in the fight against organised crime. Instead we asked national experts (and the people they interviewed) to highlight agencies and practices perceived as demonstrating good practices.

It was not possible for the research team to validate these perceptions of good practices, and for this reason the term 'promising practice' is used in this report, indicating that further research would be needed to evaluate effectiveness.

Limited availability of national statistics

In Sections 4 and 5 of the questionnaire, national experts were asked what statistics were currently compiled at national level and about the availability of data from official and administrative sources. These questions covered a range of possible indicators of the use and effectiveness of measures against organised. These data were of interest to the study because it is important to ensure that policy initiatives are grounded in solid evidence and, as far as possible, reliable and comparable statistics.

Overall, and as expected, there were many indicators for which data were either not publicly available, or for which data were not collected. For example:

- In some MS, there are data only on prosecutions for organised crime offences but not on convictions (for example BE).
- In other MS statistics are not available at all or are only partially available (CY, DK, EE, FR, DE, LV, LU, MT etc.).
- In many MS statistical data on the use of investigative tools are not publicly available, are available only for a single year, or the use of tools is recorded but no differentiation can be made between organised crime and other crime categories.
- The latter also applies to information about prosecutions and sentencing, where it is usually not possible to distinguish organised crime cases.

- The majority of MS did not hold good statistical data in relation to cross-border investigations of organised crime cases.

Comprehensiveness of and evidence base for the case studies

The case studies in the UK and Italy are not intended as comprehensive accounts of the fight against organised crime in these countries. They cover selected tools, agencies and approaches which are specific to each country. The aim is to explore the practical operation of these tools and approaches, and to highlight selected potentially promising practices, barriers and facilitators. The case studies are based on interviews (UK) and focus groups (IT) with national experts working in the fight against organised crime, supplemented by desk research conducted by the research team. However, it was not the intention of the research team to validate experts' views on the effectiveness of and challenges related to different tools and approaches.

PART 2: NATIONAL CRIMINAL LAW TOOLS USED IN THE FIGHT AGAINST ORGANISED CRIME³³

³³ This part, under the supervision of Andrea Di Nicola (scientific coordinator of eCrime, University of Trento) and Barbara Vettori (Catholic University of Milan, member of the Advisory Board), was written by them with Andrea Cauduro (Senior researcher at eCrime) and Gabriele Baratto (Junior researcher at eCrime). Authorship is attributed below, under each Chapter. Francesca Pesce (Junior researcher at eCrime and research fellow at the Faculty of Law of the University of Trento) acted as research assistant.

4. Mapping and transposition assessment of MS legislation with reference to Framework Decision 2008/841/JHA³⁴

This chapter addresses objective 2 of the study, since it:

- Maps the national legislation on organised crime, based on the contents of Framework Decision 2008/841/JHA.
- Assesses the transposition of Framework Decision 2008/841/JHA into MS national legislation.

It is organised as follows: Section 4.1 provides some background to the Framework Decision; Section 4.2 discusses how it is to be transposed into national law; Section 4.3 provides working definitions to explain the terms used in the section; Section 4.4 sets out the method of assessment; and Sections 4.5–4.11 set out the results from the extensive mapping and transposition assessment.

4.1. Transposition of the Framework Decision

Under Article 10 of Framework Decision 2008/841/JHA:

Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 11 May 2010 [...and] transmit to [...] the Council and to the Commission, before 11 May 2010, the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

Before proceeding further, some preliminary remarks on the term ‘transposition’ are necessary. Transposition is the process by which the provisions of EU laws are incorporated into MS domestic law. As far as Framework Decisions are concerned, their provisions should not be slavishly copied by a MS. Rather they have to be ‘embodied’ in the national legal system in order to effectively enforce them and reach (at least) the legal minimum standards required by the Framework Decisions’ text, thus guaranteeing approximation of the various EU MS laws and regulations (as stated in Article 34(2)(b) TEU).

³⁴ With a joint research effort under the supervision of Andrea Di Nicola (scientific coordinator of eCrime, University of Trento) and Barbara Vettori (Catholic University of Milan, member of the Advisory Board), authorship is as follows: Andrea Di Nicola 4.4, 4.11; Barbara Vettori Introduction, 4.1, 4.2, 4.3, 4.7.2 (only Findings), 4.7.3, 4.8.1, 4.8.2 (*Presence in the national legal system of criminal and non-criminal fines*), 4.9, 4.10; Andrea Cauduro 4.5, 4.6; Gabriele Baratto 4.7.1, 4.7.2 (except Findings), 4.8.2 (*Presence in the national legal system of other penalties*).

In this regard, and considering the different legal cultures and traditions (e.g. civil and common law), the Court of Justice has set some rules on the way this shall take place:

- The Court stressed that transposition shall be achieved via 'legally binding instruments'.³⁵ This conclusion flows from Article 34 TEU, which refers to approximation of 'laws and regulation' as the final goal of Framework Decision, as well as longstanding jurisprudence of the Court of Justice in respect of Directives, which is applicable *mutatis mutandis* in this regard.
- Also for Framework Decisions, as it is for Directives, the requirement of 'legal certainty' is essential according to the Court of Justice. In its decisions, the Court of Justice maintains that 'each Member State must implement Directives in a manner which fully meets the requirement of legal certainty and must consequently transpose their terms into national law as binding provisions'.³⁶ Several authorities point out that legally binding instruments are needed to guarantee a uniform and stable implementation of the provisions of Framework Decisions into a given MS. This means that jurisprudence and 'soft law' such as guidelines or other tools (e.g. administrative provisions) that do not possess these features are excluded.³⁷

4.2. Terminology

The terminology used in this section is herein clarified.

4.2.1. Criminal organisation

The term 'criminal organisation' refers to a structured association³⁸ of more than two persons who act in concert and for a period of time with the aim of obtaining directly or indirectly a financial or other material benefit. Such a concept is stated in Article 1(1) of the Framework Decision, which draws its formulation (with slight changes) from Article 2(a)³⁹ of the Palermo Convention under the name of 'organised criminal group'. So 'criminal organisation' and 'organised criminal group' can be used as synonyms.

This concept is referred to in some MS legislation with a different terminology, such as 'criminal association' (e.g. Croatia, Italy), 'organised criminal group' (e.g. Bulgaria), or 'organised criminal association' (e.g. Czech Republic).

Within this report the authors will always use, in line with the Framework Decision, the term '**criminal organisation**' with an exception when direct reference is made to the legislative text of those MS where the concept is expressed with a different terminology.

Some MS also envisage under criminal law criminal structures other than the ones necessary for Framework Decision transposition, often influenced by the specific situation of the MS. This is the case for instance in Italian criminal law, which adopts a

³⁵ CJEC case 239/85, *Commission v. Belgium*, ECR 1986, 3645; Note from the Article 36 Committee to Coreper/Council on the Draft Report on the implementation of the Framework Decision of 15 March 2001, 15 December 2004, number 14830/2/04, 4–5.

³⁶ CJEC case 239/85, *Commission v. Belgium*, ECR 1986, 3645.

³⁷ See Calderoni (2010); Borgers (2007); Kurcz & Lazowski (2006).

³⁸ As specified at Article 1(2) of the Framework Decision: "'structured association" means 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'.

³⁹ 'Organised criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

particular definition of 'mafia-type association' as a criminal structure.⁴⁰ Other MS also present alternative definitions of criminal structures that, compared to the one of the Framework Decision, narrow the scope of application to specific crimes.⁴¹

In this report the term '**criminal group**' will be used to refer to these alternative criminal structures, as opposed to 'criminal organisations' in the sense adopted by the Framework Decision. They will be examined in more detail in Chapter 5.

4.2.2. Offences relating to participation in a criminal organisation

The phrase 'offences relating to participation in a criminal organisation', according to the Framework Decision, refers to:

- Participation in a criminal organisation and/or
- Conspiracy to commit offences punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty.⁴²

In this regard, the Framework Decision imposes the obligation to introduce a self-standing offence in relation to Article 2. Although one may argue that this request can also be met by introducing different and alternative provisions that, cumulatively, may contribute to fight the criminal phenomena described in the Framework Decision, the fact that the Framework Decision clearly asks for a self-standing offence makes that the only possible option, taking into consideration the following reasons:

- *Historical reasons.* Previous international normative tools clearly show the need for a self-standing offence. Such is the case in particular for the Joint Action 98/733/JHA in which the EU envisaged the commitment 'on making it a criminal offence to participate in a criminal organisation in the European Union'. Calderoni⁴³ in this sense reminds us that 'Article 2 [...] requires Member States to ensure the criminalization of the participation in a criminal organization through the introduction of a "criminal organization offence" (COO)'. Such an approach is also followed by other international tools such as the United Nations Convention against Transnational Organized Crime that, in

⁴⁰ This type of organisation is characterised by a particular *modus operandi* based on intimidation and 'omertà' (code of silence). Compared to that of the Framework Decision, this definition introduces stricter elements tailored to the Italian situation. In particular, Article 416 bis of the Italian criminal code states that the members of the 'mafia-type' association shall 'take advantage of the intimidating power of the association and of the resulting conditions of submission and silence to commit criminal offences, to manage or in any way control, either directly or indirectly, economic activities, concessions, authorizations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for any other persons, or with a view to prevent or limit the freedom to vote, or to get votes for themselves or for other persons on the occasion of an election'. See Chapter 5 for more details.

⁴¹ This is the case, for example of the Italian legal framework (Article 74 Decree of the President of the Republic 309/1990) that introduces a specific definition of criminal association aimed at the commission of drug related crimes: 'When three or more persons join together with the aim of committing crimes under Article 73 [...]'. Similarly in Portugal, Article 28 of Decree-Law n. 15/93, of 22 January 1993 envisages a specific definition of criminal association devoted to drug related crimes: '[...] a group, an organization or an association comprising two or more persons for the purpose of concertedly committing any of the offenses described in Articles 21 or 22 [...]'. See Chapter 5 for more details.

⁴² This does not exclude that: MS having such offences might not have further criminal tools to fight the organised crime phenomenon; MS not having such offences (such as Denmark and Sweden that do not possess either a definition of criminal organisation - and therefore do not have the related crime of 'participation in a criminal organisation' - or an offence of 'conspiracy to commit serious offences') might not have alternative criminal tools to fight the organised crime phenomenon. These further/alternative criminal tools will not be dealt in this section, for the analysis of alternative criminal law tools and practices please see Chapters 5 and 6 of this report.

⁴³ Calderoni (2010), 29.

Article 5, clearly states:

- Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally
 - (a) *Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:*
 - (i) *Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;*
 - (ii) *Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*
 - a. *Criminal activities of the organized criminal group;*
 - b. *Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;*
 - (b) *Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.'*
- Textual reasons. This historical background is reflected also in the text of the Framework Decision that indicates how MS shall introduce a self-standing offence choosing between the crime of participation in a criminal organisation and/or conspiracy, as remarked also, for example, by Mitsilegas: '[t]he Framework Decision attempts to [...] introduce a specific offence of participation in a criminal organisation, which is distinct from other association/membership offences in domestic criminal justice systems'.⁴⁴ Similarly, Calderoni states '[t]he Framework Decision (2008/841/JHA) maintains the double model offence approach. [...] Consequently, the two possible model offences are once again a continental/civil law model and an Anglo-Saxon/common law model respectively'.⁴⁵
- Policy context reasons. Policy context underlines how the absence of a self-standing offence in EU MS would create severe difficulties in transnational investigative and judicial cooperation and coordination in fighting organised crime. Not having the same self-standing offence for punishing the same phenomenon would result in the hampering of cooperation in the field.
- Structural reasons within the Framework Decision. From the structure of the Framework Decision, it is clear how it would be troublesome, if not impossible, for MS to transpose the remaining Articles – e.g. the aggravation of penalties

⁴⁴ Mitsilegas (2011), 5.

⁴⁵ Calderoni (2010), 37–38. In this regard, one can notice how the Council rejected the proposal of the EU Commission that aimed at introducing only the 'participation in a criminal organisation' offence, preferring the dual approach (participation in a criminal organisation and/or conspiracy). Nonetheless, this choice does not change the clear intent of introducing a self-standing offence (see also Mitsilegas (2011), 11–13).

committed in the framework of a criminal organisation (Art. 3), the mitigation/exemption of such penalties (Art. 4), or the punishment of legal persons involved in the commission of crimes in the framework of a criminal organisation (Art. 5) – without a self-standing offence.

Participation in a criminal organisation

The term 'participation in a criminal organisation' refers to the offence committed by whoever takes active part in the activities of a criminal organisation, knowing that such participation will contribute to the achievement of the criminal organisation itself. Such a concept is stated in Article 2(a) of the Framework Decision,⁴⁶ that requires that the offender 'actively takes part in the organisation's criminal activities' [...] 'knowing that such participation will contribute to the association's criminal activities'. Such an 'active participation' can consist of a wide range of activities, such as giving financial support, aiding and abetting members of the organisation or playing any role in the possible structure of the organisation.

The idea is to link the conduct of participation in a criminal organisation with certain criminal activities of the group that will be, at least potentially, committed. **Therefore, it is crucial for the prosecution of the offence to prove the link with the criminal activity that would be carried out in practice.** This concept is referred to in some MS legislation using a different terminology (e.g. 'criminal association' in Italy and France).⁴⁷

'Participation in a criminal organisation' is an offence typically used in civil law countries and was introduced in the Framework Decision as a self-standing offence to facilitate harmonisation of key concepts transposition in MS belonging to this legal tradition, lacking it or having it in such a manner that needed revisions.

Within this report the authors will always use, in line with the Framework Decision, the term '**participation in a criminal organisation**' with an exception when direct reference is made to legislative text of those MS where the concept is expressed with a different terminology.⁴⁸

⁴⁶ '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.'

⁴⁷ For more details, see Chapter 5 on alternative criminalisation of criminal organisations.

⁴⁸ This section does not cover other forms of associative offences. Some MS, besides the general offence of participation in a criminal organisation, also have more specific associative crimes (criminal association finalised to the commission of peculiar offences and/or using a peculiar *modus operandi*): e.g. Finland for drug trafficking (Chapter 50, section 2 c.c.), Italy both for the mafia-type association (section 416 bis c.c.) and for specific offences related to human trafficking (sections 600 to 602 c.c.) or drug trafficking (section 74 Decree of the President of the Republic 309/1990), Portugal for drug trafficking (section 28 Law decree 15/1993) or tax crimes (section 89 Law 15/2001). For more details, please see Chapter 5 of this report.

Conspiracy to commit criminal offences⁴⁹

The term conspiracy refers to an offence which punishes the mere agreement between two or more persons to commit a crime even if no actual execution of the criminal activity has taken place. **The idea is to punish not the fact of active participation but mere belonging to an organisation, no matter what the role or contribution of the person in question.**

For the purpose of prosecution, 'belonging' to the organisation does not have to be linked to any additional criminal activity. The conviction takes place for 'being' a part of a criminal organisation and not for committing (or being evidentially connectable to) any specific criminal activity.

Article 2(b) of the Framework Decision⁵⁰ aims to punish specifically the agreement to commit offences punishable by deprivation of liberty or a detention order of at least four years.

Conspiracy is a widely used offence in common law countries and was introduced as an option in the Framework Decision, with specific reference to offences punishable by deprivation of liberty or a detention order of at least four years, as a self-standing offence to facilitate the transposition in MS belonging to this legal tradition. According to this very broad offence, it suffices that two or more persons merely agree to commit any crime at some time in the future independently from the actual execution of such an activity.

4.3. Mapping and assessment method

Based upon the above-mentioned terminology and building upon relevant literature,⁵¹ the following sections (4.4–4.10) map MS legislation on organised crime (based on the contents of Framework Decision 2008/841/JHA) and assess the transposition of Framework Decision 2008/841/JHA by MS.

The mapping and the transposition assessment of the MS criminal law on organised crime is based on the seven 'legal minimum standards' stated in the Articles of the Framework Decision:

- Offences relating to participation in a criminal organisation (Article 2 based on definitions from Article 1).
- Penalties (Article 3).
- Special circumstances (Article 4).
- Liability of legal persons (Article 5).
- Penalties for legal persons (Article 6).

⁴⁹ The expression 'conspiracy to commit criminal offences' shall have preference over 'conspiracy in organised crime/s' and was used throughout the text. Legal literature, also by the European Parliament (<http://www.europarl.europa.eu/document/activities/cont/201206/20120627ATT47779/20120627ATT47779EN.pdf>) for instance, in this case uses only the word 'conspiracy', without any further specification, as an alternative to 'participation in a criminal organisation'. Conspiracy, in fact, under Article 2b, is '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'. The offences under Article 1 are not 'organised crimes' per se. They are just offences punished with a maximum over a certain threshold (4 years).

⁵⁰ '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.'

⁵¹ Bressan (2012); Calderoni (2010).

- Jurisdiction and coordination of prosecution (Article 7).
- Absence of requirement of a report or accusation by victims (Article 8).

Each standard is broken up into simpler 'elements' within each section. This makes it possible to understand, MS by MS, if and how a country transposes these legal minimum standards. The following seven sections (4.5–4.11) deal with each of the seven selected legal minimum standards (one per section). Each is divided into three parts:

- A description of the legal minimum standard and elements.
- The mapping of MS legislation.
- The transposition assessment.

The second part on mapping gives a detailed overview of MS criminal legislation with reference to the contents of the Framework Decision, standard by standard, element by element. The third and last part of each section assesses if such MS criminal legislation transposes (fully or partially) the contents of the Framework Decision or not.

Note regarding Denmark and Sweden

Denmark and Sweden do not have a self-standing offence in relation to Article 2 of the Framework Decision (neither participation in a criminal organisation nor conspiracy to commit criminal offences); therefore these MS have not as yet transposed this Framework Decision provision.⁵² As all other provisions (apart from potentially Article 3.2) are based on Article 2, those provisions also have not been transposed in these two countries.

For this reason, Denmark and Sweden have been excluded from the presentation of results, including all tables of findings, for ease of reading. Nonetheless, both MS have alternative legal instruments to tackle criminal organisations, even though they do not match the Framework Decision standards. These will be discussed in Chapter 5.⁵³

Note regarding the UK

Due to the fact that there are significant differences in the criminal legislation between England, Wales, and Northern Ireland on the one side and Scotland on the other, the mapping and assessment of Framework Decision transposition will be carried out separately for:

- England (*Eng*), Wales (*Wal*) and Northern Ireland (*NI*).
- Scotland (*Sco*).

The UK Parliament is also currently discussing the 'Serious Crime Bill' (introduced in the House of Lords on 5 June 2014), which aims to introduce (in England and Wales) the new offence of participation in an organised crime group, thus transposing the content of Article 2a of the Framework Decision.⁵⁴

⁵² See above, para. 4.2.2.

⁵³ See Chapter 5, Section 5.2

⁵⁴ For further details, see UK Home Office (2014a).

4.4. Definitions of criminal organisation and offences relating to participation in a criminal organisation (Article 2, based on definitions from Article 1)

4.4.1. Standard and elements – ‘Criminal organisation’: definition and offences

The first standard corresponds to Article 2 of the Framework Decision, based on definitions from Article 1.

Article 2 of the Framework Decision reads as follows:

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

Article 2 shall be read in conjunction with Article 1 of the Framework Decision, which reads as follows:

‘For the purposes of this Framework Decision:

1. “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 four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit;
2. “structured association” means 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.’

It should be stressed that both provisions are substantially in line with previous legislation, namely UNTOC⁵⁵ and the Joint Action.⁵⁶

⁵⁵ Article 5 of the United Nations Convention Against Transnational Organized Crime (UNTOC):
1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

Article 2 therefore requires MS to introduce in their legal system a specific offence, in the form either of participation in a criminal organisation or conspiracy to commit criminal offences (or both). This provision is therefore met only when a MS has introduced such a self-standing offence in its criminal law system (see Section 4.2.2 above). The rationale behind this provision is to go beyond the punishment of individual, predicate, offences committed by members of a criminal organisation and to grasp the organisational element behind them. This is done by envisaging two conducts, one of which should at least be regarded as an offence by MS, i.e. a) active participation in the illicit activities of a criminal organisation, knowing the aim of the organisation or its intention to commit crimes; and b) an agreement of at least two persons to perpetrate crimes without necessarily taking part in their commission.

In order to map MS criminal law with reference to the legal minimum standard set in Article 2a of the Framework Decision and to assess transposition of this standard, one has to consider how this provision relates back to the definition of criminal organisation under Article 1. The following elements are thus to be taken into account:

- **Structure of the criminal organisation** (i.e. an association that is not randomly formed for the immediate commission of an offence; and that does

(a) *Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:*

(i) *Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;*

(ii) *Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*

a. *Criminal activities of the organized criminal group;*

b. *Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;*

(b) *Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.*

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

⁵⁶ Article 2 of the Joint Action 98/733/JHA, OJ L351, 29 December 1998:

1. To assist the fight against criminal organisations, each Member State shall undertake, in accordance with the procedure laid down in Article 6, to ensure that one or both of the types of conduct described below are punishable by effective, proportionate and dissuasive criminal penalties:

(a) *conduct by any person who, with intent and with knowledge of either the aim and general criminal activity of the organisation or the intention of the organisation to commit the offences in question, actively takes part in:*

- *the organisation's criminal activities falling within Article 1, even where that person does not take part in the actual execution of the offences concerned and, subject to the general principles of the criminal law of the Member State concerned, even where the offences concerned are not actually committed,*

- *the organisation's other activities in the further knowledge that his participation will contribute to the achievement of the organisation's criminal activities falling within Article 1;*

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

2. Irrespective of whether they have elected to make the type of conduct referred to in paragraph 1(a) or (b) a criminal offence, Member States will afford one another the most comprehensive assistance possible in respect of the offences covered by this Article, as well as those offences covered by Article 3(4) of the Convention relating to extradition between the Member States of the European Union, drawn up by the Council on 27 September 1996.

not need to have formally defined roles for its members, continuity of its membership or a developed structure).

- **Continuity of the criminal organisation** (i.e. a criminal organisation shall be established over a period of time).
- **Number of members** of the criminal organisation (i.e. at least 3 persons).
- **Intent** (i.e. the specific intent to commit an offence, which refers to the person's state of mind and willingness to break the law).
- **Scope of predicate offences** (i.e. offences punishable by the deprivation of liberty or detention order of at least four years or more serious penalties).
- **Benefit** (i.e. to obtain, directly or indirectly, a financial or other material benefit).
- **Material contribution**, namely an active participation in an organisation's criminal activities through concrete actions that add a necessary or useful contribution in order to commit a crime (participation in a criminal organisation).

In order to map MS criminal law with reference to the legal minimum standard set in Article 2b of the Framework Decision and to assess transposition of this standard, the following element has to be taken into account:

- **Punishment of the mere agreement**, namely an agreement between two or more persons to commit offences punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty at some time in the future, without the need for committing the planned crime and proving any potential criminal activity.

In the text of Article 2b the Framework Decision does not make any reference to the definition of criminal organisation given under Article 1: it only makes reference to the *offences* under Article 1 (i.e. MS have to punish conspiracy that 'would amount to the commission of offences referred to in Article 1'). The only offences mentioned under Article 1 are those 'punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty'. In other words, from the text of the Framework Decision, it is clear that the criminal conduct of 'conspiracy', differently from the criminal conduct 'participation in a criminal organisation', does not bring as a necessary part of its constituent elements the features of a 'criminal organisation' (structure, continuity, number of members, intent, scope of predicate offences, benefit or material contribution).

This is also evident, for instance, from the fact that, according to the Framework Decision, conspiracy, in line with common law tradition, needs the involvement of at least two persons (agreement with one or more persons), while for the offence of participation in a criminal organisation such an organisation has to be made up of at least three persons.

Furthermore, one can conspire for only a specific crime and asking for continuity of the conspiracy offence, for instance, would conflict with the legal tradition of this common law offence (as explained, this offence was included in the Framework Decision exactly to take into account the common law legacy).

What is asked by the Framework Decision is that conspiracy should be punished if committed 'within the framework of a criminal organisation'. But this is superfluous since the offence of conspiracy is so broad that it well encompasses all the conspiring acts

carried out by members of a criminal organisation with the characteristics described in the Framework Decision.

Nonetheless, the UK's rationale for introducing the new provisions of the Serious Crime Bill 2014 is to get to parts of organised crime activity that conspiracy cannot reach, as well as to make cross-border cooperation easier.

4.4.2. Mapping of MS legislation: 'criminal organisation' – definition and offences

Definitions of criminal organisation

Structure of the criminal organisation

The Framework Decision, in Article 1 par. 2, defines a criminal organisation as a 'structured association', i.e. 'an association that is not randomly formed for the immediate commission of an offence; and that does not need to have formally defined roles for its members, continuity of its membership, or a developed structure'. The idea is to ensure that the scope of the offence from Article 2 covers only organisations that are sufficiently structured. At the same time the Framework Decision does not give any specific guidance on this matter apart from indicating what should not be regarded as a structured association.

Table 4.1 shows how MS deal with the 'structure of the criminal organisation' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.1: Structure of the criminal organisation

Member State	Definition of criminal organisation in national legislation: structure
 Austria	No mention of the notion of 'structured organisation' in the legislation <i>source: section 278 c.c.</i>
 Belgium	Only a mention that the association is to be structured (not further elaborated) <i>source: section 324 bis c.c.</i>
 Bulgaria	Only a mention that the association is to be structured (not further elaborated) <i>source: section 321 c.c.</i>
 Croatia	The concept is further elaborated (shall not include an association randomly formed for the immediate commission of one criminal offence) <i>source: section 328 c.c.</i>
 Cyprus	Only a mention that the association is to be structured (not further elaborated) <i>source: section 63b c.c.</i>
 Czech Republic	The concept is further elaborated (internal organisational structure, a division of functions and division of activities) <i>source: section 129 c.c.</i>
 Estonia	The concept is further elaborated (persons who share a distribution of tasks) <i>source: section 255 c.c.</i>
 Finland	Only a mention that the association is to be structured (not further elaborated) <i>source: chapter 17, section 1(a) c.c.</i>
 France	No mention of the notion of 'structured organisation' in the legislation <i>source: section 450-1 c.c.</i>
 Germany	No mention of the notion of 'structured organisation' in the legislation <i>source: section 129 c.c.</i>
 Greece	Only a mention that the association is to be structured (not further elaborated) <i>source: section 187 c.c.</i>
 Hungary	No mention of the notion of the 'structured organisation' in the legislation <i>source: section 459 c.c.</i>
 Ireland	Only a mention that the association is to be structured (not further elaborated) <i>source: Criminal Justice Act of 2006 as amended by section 3(l)(a) of Criminal Justice Act of 2009, section 70</i>
 Italy	No mention of the notion of 'structured organisation' in the legislation <i>source: section 416 c.c.</i>
 Latvia	The concept is further elaborated (<i>the participants of which in accordance with previous agreement have divided responsibilities</i>) <i>source: section 21 c.c.</i>
 Lithuania	The concept is further elaborated (<i>persons linked by permanent mutual relations and division of roles or tasks</i>) <i>source: section 25 c.c.</i>
 Luxembourg	Only a mention that the association is to be structured (not further elaborated) <i>source: section 324 bis c.c.</i>
 Malta	No mention of the notion of 'structured organisation' in the legislation <i>source: section 83A c.c.</i>
 Netherlands	No mention of the notion of 'structured organisation' in the legislation <i>source: section 140 c.c.</i>
 Poland	No mention of the notion of 'structured organisation' in the legislation <i>source: section 258 c.c.</i>
 Portugal	No mention of the notion of 'structured organisation' in the legislation <i>source: section 299 c.c.</i>

 Romania	Only a mention that the association is to be structured (not further elaborated)	
	<i>source: section 367 c.c.</i>	
 Slovakia	Only a mention that the association is to be structured (not further elaborated)	
	<i>source: section 129 c.c.</i>	
 Slovenia	No mention of the notion of 'structured organisation' in the legislation	
	<i>source: section 294 c.c.</i>	
 Spain	The concept is further elaborated (persons... who act in concert to coordinate various tasks or functions)	
	<i>source: section 570 bis c.c.</i>	
 United Kingdom	England, Wales, Northern Ireland	No definition of criminal organisation
	<i>source: n.a.</i>	
	Scotland	No mention of the notion of 'structured organisation' in the legislation
	<i>source: Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>	

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.1, it is possible to conclude that only the United Kingdom (England, Wales and Northern Ireland) and Sweden and Denmark (who have failed to transpose any of the Framework Decision – see Section 4.4), currently do not provide a definition of criminal organisation in their national legislation.

Within the remaining 25 MS, the following approaches exist in reference to the 'structure of the criminal organisation' element:

- The 'only a mention' approach, in which it is just mentioned that the association is to be structured, with no further elaboration. This is adopted by: Belgium, Bulgaria, Cyprus, Finland, Greece, Ireland, Luxembourg, Romania and Slovakia. This approach copies the wording of the Framework Decision.
- The 'further elaborated concept' approach, in which details are given regarding the concept of structure. This is adopted by: Croatia, the Czech Republic, Estonia, Latvia, Lithuania and Spain. Such an approach gives further guidance to the national judge in the way this notion should be interpreted.
- The 'no mention approach', which does not make any explicit reference to the structure of the criminal organisation. It is followed by: Austria, France, Germany, Hungary, Italy, Malta, the Netherlands, Poland, Portugal, Slovenia and Scotland. Such an approach means that this notion does not have to be proven before the court, and therefore opens the field of application of this provision in a potentially 'less structured' manner. In practice the lack of need to prove structure means that the case may be easier to prove before the court.

Continuity of the criminal organisation over time

The Framework Decision, in Article 1 par. 1, indicates that a criminal organisation is one that is 'established over a period of time'.

The goal of identifying this criterion in the Framework Decision is distinguishing criminal organisations from less serious criminal activities which are usually also characterised by shorter-lasting criminal links. This element makes it possible to distinguish the existence

of a criminal organisation from a situation where more than one offence is committed by a group of offenders.⁵⁷

Table 4.2 shows how MS deal with the 'continuity of the criminal organisation over time' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.2: Continuity of the criminal organisation

Member State	Definition of criminal organisation in national legislation: continuity
 Austria	Mention of duration in the legislation (set up for the longer term) <i>source: section 278 c.c.</i>
 Belgium	Mention of duration in the legislation (established over a period of time) <i>source: section 324 bis c.c.</i>
 Bulgaria	Mention of duration in the legislation (stable) <i>source: section 93 c.c.</i>
 Croatia	No mention of duration in the legislation <i>source: section 328 c.c.</i>
 Cyprus	No mention of duration in the legislation <i>source: section 63b c.c.</i>
 Czech Republic	No mention of duration in the legislation <i>source: section 129 c.c.</i>
 Estonia	Mention of a 'permanent' duration <i>source: section 255 c.c.</i>
 Finland	Mention of duration in the legislation (established over a period of time) <i>source: chapter 17, section 1(a) c.c.</i>
 France	No mention of duration in the legislation <i>source: section 450-1 c.c.</i>
 Germany	No mention of duration in the legislation <i>source: section 129 c.c.</i>
 Greece	Mention of duration in the legislation (for a period of time) <i>source: section 187 c.c.</i>
 Hungary	Mention of duration in the legislation (in the long term) <i>source: section 459 c.c.</i>
 Ireland	No mention of duration in the legislation <i>source: Criminal Justice Act of 2006 as amended by section 3(l)(a) of Criminal Justice Act of 2009, section 70</i>
 Italy	No mention of duration in the legislation <i>source: section 416 c.c.</i>
 Latvia	No mention of duration in the legislation <i>source: section 21 c.c.</i>

⁵⁷ This element concerns the continuity through time of the criminal organisation, as requested by the Framework Decision. Scientific research stresses the importance of the continuity requirement in defining organised crime: we do not have organised crime without 'continuity'. The goal is distinguishing criminal organisations from less serious criminal activities. This element makes it possible to distinguish criminal organisations from the commission of more than one offence by a group of offenders. Calderoni (2010).

 Lithuania	Mention of a 'permanent' duration	
	<i>source: section 25 c.c.</i>	
 Luxembourg	Mention of duration in the legislation (established over a period of time)	
	<i>source: section 324 bis c.c.</i>	
 Malta	No mention of duration in the legislation	
	<i>source: section 83A c.c. and 48A c.c.</i>	
 Netherlands	No mention of duration in the legislation	
	<i>source: section 140 c.c.</i>	
 Poland	No mention of duration in the legislation	
	<i>source: section 258 c.c.</i>	
 Portugal	No mention of duration in the legislation	
	<i>source: section 299 c.c.</i>	
 Romania	Mention of duration in the legislation (for a period of time)	
	<i>source: section 367 c.c.</i>	
 Slovakia	Mention of duration in the legislation (for a certain period of time)	
	<i>source: section 129 c.c.</i>	
 Slovenia	No mention of duration in the legislation	
	<i>source: section 294 c.c.</i>	
 Spain	Mention of duration in the legislation (a stable basis; for an indefinite period of time)	
	<i>source: section 570 bis c.c</i>	
 United Kingdom	England, Wales, Northern Ireland	No definition of criminal organisation
	<i>source: n.a.</i>	
	Scotland	No mention of duration in the legislation
	<i>source: Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>	

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.2, one may conclude that, within the national legal systems of the 25 MS (plus Scotland) that offer a definition of criminal organisation, the following approaches exist in reference to the 'continuity of the criminal organisation' element:

- The 'mention' approach, which makes mention of continuous duration in the legislation. This is adopted by: Austria, Belgium, Bulgaria, Finland, Greece, Hungary, Luxembourg, Romania, Slovakia and Spain. Such an approach copies the Framework Decision wording.
- The 'no mention' approach, used by: Croatia, Cyprus, the Czech Republic, France, Germany, Ireland, Italy, Latvia, Malta, the Netherlands, Poland, Portugal, Slovenia and Scotland. The absence of specific continuity and time requirements mean that the offence, other things being equal, should be easier to prove.
- The 'permanent basis' approach, which refers to criminal organisations operating permanently. This is adopted by Estonia and Lithuania. Such an approach means that while some indication of time is given, this concept may be difficult to prove in practice, as the 'permanence' criterion is difficult to prove operationally. It also potentially excludes any 'non-permanent' criminal organisations which nevertheless exist over some period of time. It can create an important obstacle to the application of the offence of organised crime in practice. This is especially so for more fluid criminal networks, which the Europol SOCTAs and academic research show are the dominant mode.

Number of members of the criminal organisation

The Framework Decision, in Article 1 par. 1, indicates that a criminal organisation is one that is composed 'of more than two persons acting in concert'.

Table 4.3 shows how MS deal with the 'number of members of the criminal organisation' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.3: Number of members of the criminal organisation

Member State	Definition of criminal organisation in national legislation: number of members
 Austria	Three members or more (more than two persons) <i>source: section 278 c.c.</i>
 Belgium	Three members or more (plus de deux personnes) <i>source: section 324 bis c.c.</i>
 Bulgaria	Three members or more (three or more persons) <i>source: section 93 c.c.</i>
 Croatia	Three members or more (three or more persons) <i>source: section 328 c.c.</i>
 Cyprus	Three members or more (three or more persons) <i>source: section 63b c.c.</i>
 Czech Republic	Two members or more (two or more persons) <i>source: section 129 c.c.</i>

 Estonia	Three members or more (three or more persons) <i>source: section 255 c.c.</i>	
 Finland	Three members or more (at least three persons) <i>source: chapter 17, section 1(a) c.c.</i>	
 France	No mention of the minimum number of members in the legislation <i>source: section 450-1 c.c.</i>	
 Germany	No mention of the minimum number of members in the legislation <i>source: section 129 c.c.</i>	
 Greece	Three members or more (three or more persons) <i>source: section 187 c.c.</i>	
 Hungary	Three members or more (three or more persons) <i>source: section 459 c.c.</i>	
 Ireland	Three members or more (three or more persons) <i>source: Criminal Justice Act of 2006 as amended by section 3(l)(a) of Criminal Justice Act of 2009, section 70</i>	
 Italy	Three members or more (three or more persons) <i>source: section 416 c.c.</i>	
 Latvia	Three members or more (more than two persons) <i>source: section 21 c.c.</i>	
 Lithuania	Three members or more (three or more persons) <i>source: section 25 c.c.</i>	
 Luxembourg	Three members or more (plus de deux personnes) <i>source: section 324 bis c.c.</i>	
 Malta	Two members or more (two or more persons) <i>source: section 83A c.c.</i>	
 Netherlands	No mention of the minimum number of members in the legislation <i>source: section 140 c.c.</i>	
 Poland	No mention of the minimum number of members in the legislation <i>source: section 258 c.c.</i>	
 Portugal	No mention of the minimum number of members in the legislation <i>source: section 299 c.c.</i>	
 Romania	Three members or more (three or more people) <i>source: section 367 c.c.</i>	
 Slovakia	Three members or more (at least three persons) <i>source: section 129 c.c.</i>	
 Slovenia	No mention of the minimum number of members in the legislation <i>source: section 294 c.c.</i>	
 Spain	Three members or more (more than two persons) <i>source: section 570 bis c.c.</i>	
 United Kingdom	England, Wales, Northern Ireland	No definition of criminal organisation <i>source: n.a.</i>
	Scotland	Two members or more (a person who agrees with at least one other person) <i>source: Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.3, it is possible to conclude that, within the national legal systems of the 25 MS (plus Scotland) providing for a definition of criminal organisation, the following approaches exist in reference to the 'number of members of the criminal organisation' element:

- The 'three members or more' approach is adopted by the majority of EU MS and requires at least three members for a criminal organisation. It is followed by: Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Spain. Such an approach is a direct transposition of the terms of the Framework Decision.
- The 'two members or more' approach, which is followed by: Malta, the Czech Republic and Scotland. Lowering the minimum number to two opens the application of the provision to smaller organisations but plainly complies with the Framework Decision requirement.
- The 'no mention' approach, which does not explicitly require a minimum number of members for a criminal organisation. It is followed by: France, Germany, Poland, Portugal, Slovenia and the Netherlands. Except where jurisprudence and/or accepted scholarly commentary holds otherwise, this implies two or more persons and complies with the Framework Decision threshold.

Intent to commit an offence

The Framework Decision, in Article 1 par. 1, indicates that a criminal organisation is one that is established 'with a view to committing offences'. The specific intent of criminal associates to commit an offence is essential and refers to the person's state of mind and willingness to break the law.

Table 4.4 shows how MS deal with the 'intent' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.4: Intent

Member State	Definition of criminal organisation in national legislation: intent
 Austria	for the purpose of <i>source: section 278 c.c.</i>
 Belgium	en vue de commettre <i>source: section 324 bis c.c.</i>
 Bulgaria	for the purpose of <i>source: section 93 c.c.</i>
 Croatia	with the aim of <i>source: section 328 c.c.</i>
 Cyprus	for the purpose of committing <i>source: section 63b c.c.</i>
 Czech Republic	Intentional <i>source: section 129 c.c.</i>

 Estonia	for the purpose of <i>source: section 255 c.c.</i>	
 Finland	acting in concert to commit <i>source: chapter 17, section 1(a) c.c.</i>	
 France	with the view to <i>source: section 450-1 c.c.</i>	
 Germany	the objectives or activity of which are directed towards the <i>source: section 129 c.c.</i>	
 Greece	with the aim of committing <i>source: section 187 c.c.</i>	
 Hungary	to deliberately engage <i>source: section 459 c.c.</i>	
 Ireland	with a view to <i>source: Criminal Justice Act of 2006 as amended by section 3(1)(a) of Criminal Justice Act of 2009, section 70</i>	
 Italy	with a view to <i>source: section 416 c.c.</i>	
 Latvia	for purpose of <i>source: section 21 c.c.</i>	
 Lithuania	for the commission <i>source: section 25 c.c.</i>	
 Luxembourg	en vue de commettre <i>source: section 324 bis c.c.</i>	
 Malta	with a view to <i>source: section 83A c.c.</i>	
 Netherlands	which has as its purpose <i>source: section 140 c.c.</i>	
 Poland	aimed at committing <i>source: section 258 c.c.</i>	
 Portugal	whose purpose or activity is directed to <i>source: section 299 c.c.</i>	
 Romania	in order to <i>source: section 367 c.c.</i>	
 Slovakia	with a view to <i>source: section 129 c.c.</i>	
 Slovenia	which has the purpose of <i>source: section 294 c.c.</i>	
 Spain	for the purpose of <i>source: section 570 bis c.c.</i>	
 United Kingdom	England, Wales, Northern Ireland	No definition of criminal organisation <i>source: n.a.</i>
	Scotland	for the principal purpose of committing or conspiring to commit <i>source: Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.4 it is possible to conclude that, within the national legal systems of all the 25 MS (plus Scotland) providing for a definition of criminal organisation, the element of 'intent' is transposed similarly. All MS cover only intentional offences.

Scope of predicate offences

The Framework Decision, in Article 1 par. 1, indicates that a criminal organisation is one that is established 'with a view to committing 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 idea is to ensure that the scope of the offence from Article 2 covers criminal organisations that commit in practice serious offences (as judged by sentence maxima), though they may also commit offences that carry a less than four-year prison sentence.

Table 4.5 shows how MS deal with the 'scope of predicate offences' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.5: Scope of predicate offences committed by a criminal organisation

Member State	Definition of criminal organisation in national legislation: scope of predicate offences
 Austria	Offences punishable with 3 years of imprisonment or a more serious penalty ('criminal organisation' is an association, set up for the longer term, of more than two persons for the purpose of one or more members of the organisation committing one or more crimes. 'Crimes are intentional acts that are punishable by lifelong or with more than three years imprisonment'.) <i>source: sections 278 and 17 c.c.</i>
 Belgium	Offences punishable with at least 3 years of imprisonment or a more serious penalty (des crimes et délits punissables d'un emprisonnement de trois ans ou d'une peine plus grave) <i>source: section 324 ter c.c.</i>
 Bulgaria	Offences punishable with at least 3 years of imprisonment or a more serious penalty (criminal offences punishable by more than three years' imprisonment) <i>source: section 93 c.c.</i>
 Croatia	Offences punishable with at least 3 years of imprisonment or a more serious penalty (criminal offences that are punishable with imprisonment for a term longer than three years) <i>source: section 328 c.c.</i>
 Cyprus	Offences punishable with at least 3 years of imprisonment or a more serious penalty (criminal offences punishable by a maximum sentence of at least three years) <i>source: section 63b c.c.</i>
 Czech Republic	No restriction of the scope of the predicate offences in the legislation <i>source: section 129 c.c.</i>
 Estonia	Offences punishable with at least 3 years of imprisonment or a more serious penalty (criminal offences in the second degree for which the maximum term of imprisonment of at least three years is prescribed, or criminal offences in the first degree, is punishable by 3 to 12 years' imprisonment) <i>source: section 255 and 256 c.c.</i>
 Finland	Offences punishable with at least 4 years of imprisonment in the maximum or a more serious penalty (offences for which the maximum statutory sentence is imprisonment for at least four years) <i>source: chapter 17, section 1(a) c.c.</i>

 France	<p>Offences punishable with at least 5 years of imprisonment or a more serious penalty (felonies, or [...] misdemeanours punished by at least five years' imprisonment)</p> <p><i>source: section 450-1 c.c.</i></p>
 Germany	<p>No restriction of the scope of the predicate offences in the legislation</p> <p><i>source: section 129 c.c.</i></p>
 Greece	<p>A list of offences to be regarded as predicate offences is provided for in the legislation (crimes provided for in Articles 207 (counterfeiting), 208 (circulation of counterfeit money), 216 (forgery), 218 (forgery and use of forged stamps), 242 (false declaration, falsification), 264 (arson), 265 (arson in forests), 268 (flood), 270 (explosion), 272 (offences involving the use of explosives), 277 (deliberate shipwreck), 279 (poisoning water sources and food), 291 (undermining the safety of railways, ships and aircraft), 299 (murder), 310 (grievous bodily harm), 322 (kidnapping), 323 (slave-trading), 323A (human trafficking), 324 (abduction of minors), 327 (forced abduction), 336 (rape), 338 (sexual abuse of incompetents), 339 (corruption of minors), 348A (child pornography), 351 (pimping), 351A (sexual abuse of minors for payment), 374 (certain types of theft), 375 (embezzlement), 380 (robbery), 385 (blackmail), 366 (fraud), 386A (computer fraud), or 404 (usury), or in Article 87(5), last sentence, or Article 88 of Law 3386/2005 (Government Gazette 212A) where such crimes (facilitating the illegal entry or exit or smuggling of third country nationals) are committed for gain, or one or more offences provided for under legislation on narcotics, firearms, explosives and protection from materials that emit harmful radiation, or one or more offences provided for and punished under legislation for the protection of antiquities and the cultural heritage in general)</p> <p><i>source: section 187 c.c.</i></p>
 Hungary	<p>Offences punishable with at least 5 years of imprisonment or a more serious penalty (criminal acts, which are punishable with five years of imprisonment or more)</p> <p><i>source: section 459 c.c.</i></p>
 Ireland	<p>Offences punishable with at least 4 years of imprisonment or a more serious penalty (offence for which a person may be punished by imprisonment for a term of 4 years or more)</p> <p><i>source: Criminal Justice Act of 2006 as amended by section 3(l)(a) of Criminal Justice Act of 2009, section 70</i></p>
 Italy	<p>No restriction of the scope of the predicate offences in the legislation</p> <p><i>source: section 416 c.c.</i></p>
 Latvia	<p>No restriction of the scope of the predicate offences in the legislation</p> <p><i>source: section 21 c.c.</i></p>
 Lithuania	<p>Offences punishable with at least 3 years of imprisonment or a more serious penalty (crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years of imprisonment and crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years)</p> <p><i>source: section 25 c.c.</i></p>
 Luxembourg	<p>Offences punishable with at least 4 years of imprisonment or a more serious penalty (crimes et délits punissables d'un emprisonnement d'un maximum d'au moins quatre ans ou d'une peine plus grave)</p> <p><i>source: section 324 bis c.c.</i></p>
 Malta	<p>Offences punishable with at least 4 years of imprisonment or a more serious penalty (offences liable to the punishment of imprisonment for a term of four years or more)</p> <p><i>source: section 83A c.c.</i></p>
 Netherlands	<p>No restriction of the scope of the predicate offences in the legislation</p> <p><i>source: section 140 c.c.</i></p>
 Poland	<p>No restriction of the scope of the predicate offences in the legislation</p> <p><i>source: section 258 c.c.</i></p>

 Portugal	No restriction of the scope of the predicate offences in the legislation <i>source: section 299 c.c.</i>	
 Romania	No restriction of the scope of the predicate offences in the legislation <i>source: section 367 c.c.</i>	
 Slovakia	Offences punishable with at least 5 years of imprisonment in the maximum or a more serious penalty (intentional offence in respect of which the special part of this Act specifies a penalty of imprisonment with a maximum length exceeding five years) <i>source: section 11 c.c.</i>	
 Slovenia	Offences punishable with at least 3 years of imprisonment or a more serious penalty (offences for which a punishment by imprisonment of more than three years, or a life sentence may be imposed). <i>source: section 294 c.c.</i>	
 Spain	No restriction of the scope of the predicate offences in the legislation <i>source: section 570 bis c.c</i>	
 United Kingdom	England, Wales, Northern Ireland	No definition of criminal organisation <i>source: n.a.</i>
	Scotland	No restriction of the scope of the predicate offences in the legislation <i>source: Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.5, it is possible to conclude that, within the national legal systems of the 25 MS (plus Scotland) providing for a definition of criminal organisation, the following approaches exist in reference to the 'scope of predicate offences' element:

- The 'offences punishable with at least 3 years of imprisonment or a more serious penalty' approach. This is the position taken by: Belgium, Bulgaria, Croatia, Cyprus, Estonia, Lithuania and Slovenia. Such an approach goes beyond the minimum scope set by the Framework Decision.
- The 'offences punishable with at least 4 years of imprisonment or a more serious penalty' approach. It is followed by: Finland, Ireland, Luxembourg and Malta. Such an approach is a direct transposition from the Framework Decision.
- The 'offences punishable with at least 5 years imprisonment' approach. This is the approach taken by France, Hungary and Slovakia. Such an approach restricts the application of the provision to only some serious offences, creating a gap between the 4 years required by the Framework Decision and the requirement applied by those MS.
- The 'no restriction to the scope' approach which covers any possible criminal offence, irrespective of punishment. The MS following this approach are: the Czech Republic, Germany, Italy, Latvia, Portugal, the Netherlands, Poland, Romania, Spain and Scotland. Such an approach goes beyond the minimum scope set by the Framework Decision by opening the scope of application of the provision to all criminal offences (not only serious ones).
- The 'selection of offences approach', where the legislation provides a list of predicate offences which do not include all the offences punishable by deprivation of liberty or a detention order of a maximum of at least four years. The MS following this approach is Greece. Such an approach covers most of the serious criminal offences typically committed by a criminal organisation, but the list is not fully in line with the Framework Decision requirement as it does not cover all required offences.

Benefit

The Framework Decision, in Article 1 par. 1, indicates that a criminal organisation is one that is established with the aim 'to obtain, directly or indirectly, a financial or other material benefit'.

Table 4.6 shows how MS deal with the 'benefit' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.6: Benefit

Member State	Definition of criminal organisation in national legislation: benefit
 Austria	No mention of benefit in the legislation <i>source: section 278 c.c.</i>
 Belgium	Mention of benefit in the legislation (pour obtenir, directement ou indirectement, des avantages patrimoniaux) <i>source: section 324 bis c.c.</i>
 Bulgaria	No mention of benefit in the legislation <i>source: section 93 c.c.</i>
 Croatia	No mention of benefit in the legislation <i>source: section 328 c.c.</i>
 Cyprus	No mention of benefit in the legislation <i>source: section 63b c.c.</i>
 Czech Republic	No mention of benefit in the legislation <i>source: section 129 c.c.</i>
 Estonia	Mention of benefit in the legislation (created for the purpose of proprietary gain) <i>source: section 255 c.c.</i>
 Finland	No mention of benefit in the legislation <i>source: chapter 17, section 1(a) c.c.</i>
 France	No mention of benefit in the legislation <i>source: section 450-1 c.c.</i>
 Germany	No mention of benefit in the legislation <i>source: section 129 c.c.</i>
 Greece	Mention of benefit in the legislation (for the purpose of achieving financial or other material gain or of attacking a person's life, physical integrity or reproductive freedom) <i>source: section 187 c.c.</i>
 Hungary	No mention of benefit in the legislation <i>source: section 459 c.c.</i>
 Ireland	No mention of benefit in the legislation <i>source: Criminal Justice Act of 2006 as amended by section 3(1)(a) of Criminal Justice Act of 2009, section 70</i>
 Italy	No mention of benefit in the legislation <i>source: section 416 c.c.</i>
 Latvia	No mention of benefit in the legislation <i>source: section 21 c.c.</i>
 Lithuania	No mention of benefit in the legislation <i>source: section 25 c.c.</i>
 Luxembourg	Mention of benefit in the legislation (pour obtenir, directement ou indirectement, des avantages patrimoniaux) <i>source: section 324 bis c.c.</i>
 Malta	No mention of benefit in the legislation <i>source: section 83A c.c.</i>
 Netherlands	No mention of benefit in the legislation <i>source: section 140 c.c.</i>
 Poland	No mention of benefit in the legislation <i>source: section 258 c.c.</i>
 Portugal	No mention of benefit in the legislation <i>source: section 299 c.c.</i>

 Romania	No mention of benefit in the legislation <i>source: section 367 c.c.</i>	
	Mention of benefit in the legislation (with a view to direct or indirect financial gain or other benefits) <i>source: section 129 c.c.</i>	
 Slovakia	No mention of benefit in the legislation <i>source: section 294 c.c.</i>	
	No mention of benefit in the legislation <i>source: section 570 bis c.c</i>	
 Spain	No definition of criminal organisation <i>source: n.a.</i>	
	England, Wales, Northern Ireland	Mention of benefit in the legislation (obtaining a material benefit) <i>Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>
 United Kingdom	Scotland	Mention of benefit in the legislation (obtaining a material benefit) <i>Section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</i>

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.6, it is possible to conclude that, within the national legal systems of the 25 MS (plus Scotland) providing for a definition of criminal organisation, there are the following approaches with reference to the 'benefit' element:

- The 'mention' approach, which explicitly requires the final goal of achieving benefit. It is followed by: Belgium, Estonia, Greece, Ireland, Italy, Luxembourg, Slovakia and Scotland. Such an approach is in line with the aim of the Framework Decision linking profit to the nature of the criminal organisation.
- The 'no mention' approach, adopted by: Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia and Spain. Such an approach goes beyond the minimum standards and extends the definition to situations where the obtaining of benefit does not have to be proven.

Offences relating to participation in a criminal organisation

Regarding the offences relating to participation in a criminal organisation (as shown in Table 4.7), according to Articles 1 and 2 of the Framework Decision MS should criminalise:

- a) Participation in a criminal organisation,
- b) Conspiracy to commit offences punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, OR
- c) Both.

Table 4.7: Offences relating to participation in a criminal organisation and MS

Offences relating to participation in a criminal organisation	Member States
Participation in a criminal organisation	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain
Conspiracy to commit criminal offences	United Kingdom (England, Wales, Northern Ireland)
Both	Bulgaria, Croatia, Greece, Ireland, Malta and Scotland
None	Denmark, Sweden

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Table 4.7 shows that 19 MS make it a criminal offence to participate in a criminal organisation, while only the UK (England, Wales, Northern Ireland) opts for conspiracy to commit criminal offences. Some 6 MS (plus Scotland) envisage both offences, while 2 have none of them.

Type of criminalised conducts for offences relating to participation in a criminal organisation

Table 4.8 lists the type of criminalised conducts for offences related to a criminal organisation, with details of the source for each MS.

Table 4.8: Offences related to a criminal organisation – punishable conducts

Member State	Punishable conducts
 Austria	Founding
	Participation <i>Who founds a criminal organisation or participates in it as a member, shall be punished with imprisonment up to three years.</i> <i>source: section 278 c.c.</i>
 Belgium	Participation to a criminal organisation if this one uses intimidation, threat, violence, fraud, corruption, or commercial structures or Participation to the legal activities of a criminal organisation
	Decisionmaking
	Leadership
	<p><i>(1). Lorsque l'organisation criminelle utilise l'intimidation, la menace, la violence, des manœuvres frauduleuses ou la corruption ou recourt à des structures commerciales ou autres pour dissimuler ou faciliter la réalisation des infractions, toute personne qui, sciemment et volontairement, en fait partie, est punie d'un emprisonnement d'un an à trois ans et d'une amende de cent euros à cinq mille euros ou d'une de ces peines seulement, même si elle n'a pas l'intention de commettre une infraction dans le cadre de cette organisation ni de s'y associer d'une des manières prévues par les articles 66 à 69.</i></p> <p><i>§ (2). Toute personne qui participe à la préparation ou à la réalisation de toute activité licite de cette organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article 324bis, est punie d'un emprisonnement de un an à trois ans et d'une amende de cent [euros] à cinq mille [euros] ou d'une de ces peines seulement.</i></p> <p><i>§ (3). Toute personne qui participe à toute prise de décision dans le cadre des activités de l'organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article 324bis, est punie de la réclusion de cinq ans à dix ans et d'une amende de cinq cent euros à cent mille euros ou d'une de ces peines seulement.</i></p> <p><i>(4). Tout dirigeant de l'organisation criminelle est puni de la réclusion de dix ans à quinze ans et d'une amende de mille euros à deux cent mille euros ou d'une de ces peines seulement.</i> <i>source: section 324 ter c.c.</i></p>
 Bulgaria	Founding/leadership
	Participation
	Conspiring (i.e. conspire to commit crimes punishable with more than 3 years' imprisonment for gain and/or to influence state/local bodies) <i>(1) Forming or leading an organised criminal group shall be punishable by three to ten years' imprisonment.</i> <i>Taking part in such groups shall be punishable by one to six years' imprisonment.</i> [...] <i>(6) Conspiring with one or more persons to commit, in Bulgaria or abroad, offences punishable by more than three years' imprisonment in pursuit of material gain or for the purpose of gaining illicit influence over bodies of state or local government shall be punishable by up to six years' imprisonment.</i> <i>source: section 321 c.c.</i>

 Croatia	<p>Participation in a criminal organisation framework without committing any crime or Support (i.e. financial, other kind) or Commission of legal acts to further the goals of a criminal organisation</p> <p>Leadership (organisation/direction) Conspiring to commit offences</p> <p><i>(1) Whoever organises or directs a criminal association shall be punished by imprisonment from six months to five years.</i> <i>(2) Whoever participates in the association referred to in paragraph 1 of this Article but has not as yet committed any criminal offence for this association, or whoever carries out an act which in itself does not constitute a criminal offence but which he/she knows furthers the goal of a criminal association, or whoever financially or otherwise supports a criminal association shall be punished by imprisonment not exceeding three years.</i> [...] source: section 328 c.c.</p> <p><i>(1) Whoever conspires with another to commit a criminal offence for which a punishment of imprisonment exceeding three years may be imposed under the law shall be punished by imprisonment not exceeding three years.</i> [...] source: section 327 c.c.</p>
 Cyprus	<p>Participation in a criminal organisation Participation in any action of the criminal organisation</p> <p><i>(1) Whoever, having knowledge of the unlawful purpose or activities of a criminal organisation:</i> <i>(a) participates in any operation involved in any illegal act or criminal organisation;</i> <i>(b) engages in any act of a criminal organisation, of which it should reasonably have been known that it is in any way connected with the commission of a criminal offence</i> <i>shall be guilty of a felony punishable by imprisonment for up to ten years or a fine of up to fifty thousand pounds, or to both such penalties.</i> source: section 63b c.c.</p>
 Czech Republic	<p>Founding Participation Support</p> <p><i>(1) Any person who establishes an organised criminal association, who participates in the activities of an organised criminal association, or who supports an organised criminal association shall be punished by the deprivation of liberty for two to ten years or with the forfeiture of property.</i> <i>(2) The perpetrator shall be punished by the deprivation of liberty for three to twelve years or the forfeiture of property if he commits the act specified in paragraph 1 in relation to an organised criminal association designed for or focused on the commission of treason (Sec. 309), terrorist attack (Sec. 311) or terror (Sec. 312).</i> <i>(3) The perpetrator shall be punished by the deprivation of liberty for five to fifteen years or the forfeiture of property if he is a leader or representative of an organised criminal association designed for or focused on the commission of treason (Sec. 309), terrorist attack (Sec. 311) or terror (Sec. 312).</i> <i>(4) The provisions of Sec. 107 and 108 shall not apply with respect to a perpetrator referred to in paragraphs 1 to 3.</i> source: section 361 c.c.</p>

 Estonia	Founding/leadership/recruitment
	<p style="text-align: center;">Participation</p> <p><i>(1) Membership in a permanent organisation consisting of three or more persons who share a distribution of tasks, created for the purpose of proprietary gain and whose activities are directed at the commission of criminal offences in the second degree for which the maximum term of imprisonment of at least three years is prescribed, or criminal offences in the first degree, is punishable by 3 to 12 years' imprisonment.</i> [...] <i>source: section 255 c.c.</i></p> <p><i>(1) Forming or leading of or recruiting members to a criminal organisation is punishable by 5 to 15 years' imprisonment.</i> [...] <i>source: section 256 c.c.</i></p>
 Finland	Founding/organising
	<p>Participation/support (recruiting/attempting to recruit; equipping/attempting to equip; arranging/attempting to arrange/providing training; obtaining/attempting to obtain/providing premises, other facilities, means of transport, other equipment; financing; managing financial affairs; giving financial or legal advice; otherwise actively promoting accomplishment of the aim of the organisation)</p> <p><i>(1) A person who</i> <i>by establishing or organising a criminal organisation or by recruiting or attempting to recruit persons for it,</i> <i>by equipping or attempting to equip a criminal organisation with explosives, weapons, ammunition or with materials or equipment intended for their production or with other dangerous supplies or materials,</i> <i>by arranging, attempting to arrange or providing a criminal organisation training for criminal activity,</i> <i>by obtaining, attempting to obtain or providing a criminal organisation premises or other facilities needed by it or means of transport or other equipment that is particularly important for the organisation,</i> <i>by directly or indirectly giving or collecting funds to finance the criminal activity of a criminal organisation,</i> <i>by managing financial affairs that are important for the criminal organisation or by giving financial or legal advice that is particularly important for the organisation or</i> <i>by actively promoting the accomplishment of the aims of a criminal organisation in another substantial manner</i> <i>participates in the activities of a criminal organisation with the aim of committing one or more offences for which the maximum statutory sentence is imprisonment for at least four years or one or more of the offences referred to in chapter 11, section 10 or chapter 15, section 9, and if such an offence or its punishable attempt is committed, shall be sentenced for participating in the activity of a criminal organisation to a fine or imprisonment for at most two years.</i> <i>source: chapter 17, section 1(a) c.c.</i></p>

 France	Participation in a criminal organisation to perpetrate one or more felonies/misdemeanours punished by 10 years imprisonment
	Participation in a criminal organisation to perpetrate one or more misdemeanours punished by at least 5 years imprisonment
	<p><i>A criminal association consists of any group formed or any conspiracy established with a view to the preparation, marked by one or more material actions, of one or more felonies, or of one or more misdemeanours punished by at least five years' imprisonment.</i></p> <p><i>Where the offences contemplated are felonies or misdemeanours punished by ten years' imprisonment, the participation in a criminal association is punished by ten years' imprisonment and a fine of €150,000.</i></p> <p><i>Where the offences contemplated are misdemeanours punished by at least five years' imprisonment, the participation in a criminal association is punished by five years' imprisonment and a fine of €75,000.</i></p> <p><i>source: section 450-1 c.c.</i></p>
 Germany	Founding
	Participation
	Recruitment
	Support
	<p><i>(1) Whoever forms an organisation, the objectives or activity of which are directed towards the commission of crimes, or whoever participates in such an organisation as members, recruits for it or supports it, shall be punished with imprisonment for not more than five years or a fine.</i></p> <p><i>source: section 129 c.c.</i></p>

 Greece	Founding/participation/support (with material information, means)
	Leadership
	Conspiring
	<p>(1) Anyone who forms or joins a structured group of three or more persons, operating for a period of time (organisation), with the aim of committing one or more crimes provided for in Articles 207 (counterfeiting), 208 (circulation of counterfeit money), 216 (forgery), 218 (forgery and use of forged stamps), 242 (false declaration, falsification), 264 (arson), 265 (arson in forests), 268 (flood), 270 (explosion), 272 (offences involving the use of explosives), 277 (deliberate shipwreck), 279 (poisoning water sources and food), 291 (undermining the safety of railways, ships and aircraft), 299 (murder), 310 (grievous bodily harm), 322 (kidnapping), 323 (slave-trading), 323A (human trafficking), 324 (abduction of minors), 327 (forced abduction), 336 (rape), 338 (sexual abuse of incompetents), 339 (corruption of minors), 348A (child pornography), 351 (pimping), 351A (sexual abuse of minors for payment), 374 (certain types of theft), 375 (embezzlement), 380 (robbery), 385 (blackmail), 366 (fraud), 386A (computer fraud), or 404 (usury), or in Article 87(5), last sentence, or Article 88 of Law 3386/2005 (Government Gazette 212A) where such crimes (facilitating the illegal entry or exit or smuggling of third country nationals) are committed for gain, or one or more offences provided for under legislation on narcotics, firearms, explosives and protection from materials that emit harmful radiation, or one or more offences provided for and punished under legislation for the protection of antiquities and the cultural heritage in general, shall be punished by incarceration for up to ten years.</p> <p>(2) Anyone who provides material information or means with a view to facilitating or assisting an organisation referred to in the previous paragraph to commit the offences referred to therein shall be punished by incarceration for up to ten years.</p> <p>(3) Anyone who leads an organisation referred to in the first paragraph shall be punished by incarceration for at least ten years.</p> <p>[...]</p> <p>(5) Anyone who conspires with another person in order to commit a crime outside the scope of paragraph 1 shall be punished by imprisonment for at least six months. Offenders shall be punished by imprisonment for at least three months if the conspiracy referred to in the previous sentence was entered into in order to commit a misdemeanour punishable by at least one year's imprisonment for the purpose of achieving financial or other material gain or of attacking a person's life, physical integrity or reproductive freedom.</p> <p>[...]</p> <p>source: section 187 c.c.</p>
 Hungary	Instigation/suggestion/offer to engage in criminal activities
	Joining/collaboration
	Support (means, etc.)
	<p>(1) Any person who instigates, suggests or offers, or joins or collaborates to engage in criminal activities in the framework of a criminal organisation, or who provides the means intended to be used for such activities, or supports the activities of the criminal organisation in any other manner is guilty of felony punishable by imprisonment between one to five years.</p> <p>[...]</p> <p>source: section 321 c.c.</p>

 Ireland	Participation/contributing to any (legal or illegal) activity
	Leadership
	Conspiring
	<p>(1) A person is guilty of an offence if, with knowledge of the existence of the organisation referred to in this subsection, the person participates in or contributes to any activity (whether constituting an offence or not)</p> <p>(a) intending either to</p> <p>(i) enhance the ability of a criminal organisation or any of its members to commit, or</p> <p>(ii) facilitate the commission by a criminal organisation or any of its members of,</p> <p>a serious offence, or</p> <p>(b) being reckless as to whether such participation or contribution could either</p> <p>(i) enhance the ability of a criminal organisation or any of its members to commit, or</p> <p>(ii) facilitate the commission by a criminal organisation or any of its members of,</p> <p>a serious offence.</p> <p>(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 15 years or both.</p> <p>source: Criminal Justice Act of 2006 (as amended by section 3(1)(a) of Criminal Justice Act of 2009, section 72)</p>
 Italy	Founding/Leadership
	Participation
	<p>When three or more persons conspire with a view to committing offences, those who initiate or form or organise the association will be punishable, on that account alone, by imprisonment for a term of three to seven years. Those who participate in the association will be punishable, on that account alone, by imprisonment for a term of one to five years. The leaders will be liable to the same penalty as that established for the promoters.</p> <p>Where the members bear weapons in the countryside or on the public highway, they will be liable to imprisonment for a term of five to fifteen years.</p> <p>The penalty will be increased if the members number ten or more. If the association is for the purpose of committing any of the offences referred to in articles 600, 601 and 602, or in article 12.3-bis, of the consolidated text of the provisions on the regulation of immigration and the rules on the status of foreign nationals laid down in Legislative Decree 286, 25 July 1998, a term of five to fifteen years' imprisonment will be applied in those cases referred to in the first paragraph and from four to nine years in the cases referred to in the second paragraph.</p> <p>source: section 416 c.c.</p>

 Latvia	Founding/Leadership
	Participation
	<p>(1) <i>An organised group is an association formed by more than two persons, which has been created for purpose of jointly committing one or several criminal offences and the participants of which in accordance with previous agreement have divided responsibilities.</i></p> <p>(2) <i>Liability of a person for the commission of an offence within an organised group shall apply in the cases set forth in this Law for formation and leadership of a group, and for participation in preparation for a serious or especially serious crime or in commission of a crime, irrespective of the role of the person in the jointly committed offence.</i> <i>source: section 21 c.c.</i></p> <p>(1) <i>For a person who commits the establishment of such a criminal organisation (association), in the composition of which are at least five persons, for the purpose of committing especially serious crimes against humanity or peace, war crimes, to commit genocide or to commit especially serious crimes against the State, as well as for involvement in such an organisation or in an organised group included within such organisation or other criminal formation, the applicable punishment is deprivation of liberty for a term of not less than eight and not exceeding seventeen years, with or without confiscation of property and with or without probationary supervision for a term not exceeding three years.</i></p> <p>(2) <i>For a person who commits the leading of a criminal organisation or participates in the committing of the crimes provided for in Paragraph one of this Section by such an organisation, the applicable punishment is life imprisonment or deprivation of liberty for a term of not less than ten and not exceeding twenty years, with or without confiscation of property and with probationary supervision for a term not exceeding three years.</i> <i>source: section 89.1 c.c.</i></p>
 Lithuania	Participation
	Leadership
	<p>(1) <i>A person who participates in the activities of a criminal association shall be punished by imprisonment for a term of three up to fifteen years.</i></p> <p>(2) <i>A person who participates in the activities of a criminal association armed with firearms, explosives or explosive materials shall be punished by imprisonment for a term of six up to twenty years or by life imprisonment.</i></p> <p>(3) <i>A person who organises the criminal associations provided for in paragraph 1 or 2 of this Article or is the leader thereof shall be punished by imprisonment for a period of ten up to twenty years or by life imprisonment.</i> [...] <i>source: section 249 c.c.</i></p>

 Luxembourg	Participation
	Participation to the legal activities of a criminal organisation
	Decisionmaking
	Leadership
	<p>(1) Toute personne, qui volontairement et sciemment, fait activement partie de l'organisation criminelle visée à l'article précédent, est punie d'un emprisonnement de deux ans à cinq ans et d'une amende de 2.500 euros à 12.500 euros, ou d'une de ces peines seulement, même si elle n'a pas l'intention de commettre une infraction dans le cadre de cette organisation ni de s'y associer comme auteur ou complice.</p> <p>(2) Toute personne, qui participe à la préparation ou à la réalisation de toute activité licite de cette organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article précédent, est punie d'un emprisonnement d'un à trois ans et d'une amende de 2.500 euros à 12.500 euros, ou d'une de ces peines seulement.</p> <p>(3) Toute personne qui participe à toute prise de décision dans le cadre des activités de l'organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article précédent, est punie de la réclusion de cinq à dix ans et d'une amende de 12.500 euros à 25.000 euros ou d'une de ces peines seulement.</p> <p>(4) Tout dirigeant de l'organisation criminelle est puni de la réclusion de dix à quinze ans et d'une amende de 25.000 euros à 50.000 euros ou d'une de ces peines seulement.</p> <p>(5) Les comportements visés aux points 1 à 4 du présent article qui se sont produits sur le territoire national sont poursuivis selon le droit luxembourgeois quel que soit le lieu où l'organisation criminelle est basée ou exerce ses activités.</p> <p>source: section 324 ter c.c.</p>
 Malta	Promoting/Founding/Organisation/Financing
	Participation
	Conspiracy
	<p>(1) Any person who promotes, constitutes, organises or finances an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more shall be liable to the punishment of imprisonment for a term from three to seven years.</p> <p>(2) Any person who belongs to an organisation referred to in subarticle (1) shall for that mere fact be liable to the punishment of imprisonment for a term from one to five years.</p> <p>(3) Where the number of persons in the organisation is ten or more the punishment in the preceding subarticles shall be increased form one to two degrees.</p> <p>[...]</p> <p>source: section 83A c.c.</p>
	<p>(1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act, shall be guilty of the offence of conspiracy to commit that offence.</p> <p>(2) The conspiracy referred to in subarticle (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.</p> <p>(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of two or three degrees.</p> <p>(4) For the purposes of subarticle (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating that offence.</p> <p>source: section 48A c.c.</p>

 Netherlands	Participation/support
	Founding/Leadership/Managing
	<p>(1) Participation in an organisation which has as its purpose the commission of serious offences, shall be punishable by a term of imprisonment not exceeding six years or a fine of the fifth category.</p> <p>(2) Participation in the continuation of the activities of an organisation that has been declared prohibited by final judicial decision or is prohibited by operation of law or against which an irrevocable declaratory judgment has been pronounced as referred to in Section 10:122(1) of the Civil Code, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.</p> <p>(3) The terms of imprisonment for founders, directors or managers may be increased by one third.</p> <p>(4) Participation, as defined in subsection (1), shall also include the provision of financial or other material support as well as the raising of funds or the recruitment of persons on behalf of the organisation defined in said subsection.</p> <p>source: section 140 c.c.</p>
 Poland	Founding/ directing
	Participation
	<p>(1) Whoever takes part in an organised group or association aimed at committing a criminal offence or a tax offence, is punishable by imprisonment from 3 months to 5 years.</p> <p>(2) If a group or association referred to in (1) are armed or intended to commit a terrorist offence, the perpetrator is punishable by imprisonment from 6 months to 8 years.</p> <p>(3) Who sets up a group or association referred to in (1), including of an armed character or such a group or association directs, is punishable by imprisonment from one to 10 years.</p> <p>(4) Who sets up group or association aimed at committing a terrorist offence or such a group or compound directs, is punishable by imprisonment for not less than 3 years.</p> <p>source: section 258 c.c.</p>
 Portugal	Founding
	Participation/support
	Leadership
	<p>(1) Who promotes or establishes a group, organisation or association whose purpose or activity is directed to the crimes shall be punished with imprisonment from 1 to 5 years.</p> <p>(2) The same penalty applies to anyone who is part of such groups, organisations or associations or those who support them, including providing weapons, ammunition, instruments of crime, custody or places for meetings, or for any aid that recruit new members.</p> <p>(3) Who heads or leads groups, organisations or associations referred to in the preceding paragraphs shall be punished with imprisonment for 2-8 years.</p> <p>source: section 299 c.c.</p>

 Romania	Founding/participation/support
	<p>Founding/participation/support to an organisation aimed at committing crimes punishable with imprisonment for life or exceeding 10 years</p> <p><i>(1) The initiation or constitution of an organised criminal group, joining or supporting in any form such a group shall be punished with imprisonment of one to five years and prohibited from exercising certain rights.</i></p> <p><i>(2) If the offence which is the purpose of the organised criminal group is sanctioned by law with imprisonment for life or imprisonment exceeding 10 years punishment is imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.</i></p> <p><i>(3) If the deeds stipulated in paragraph (1) and (2) were followed for an offence, punishment is calculated according to the rules for concurrent offences.</i></p> <p style="text-align: center;">[...]</p> <p><i>(6) Organised criminal group shall mean a structured group, consisting of three or more people, constituted for a period of time in order to act in a coordinated manner towards committing one or more crimes.</i></p> <p style="text-align: center;"><i>source: section 367 c.c.</i></p> <p><i>[Until 2013 Romania also criminalised conspiracy (sections 167 and 323 c.c.). This offence was repealed by the new Criminal Code (2014)]</i></p>
 Slovakia	Founding
	<p>Participation</p> <p>Support</p> <p><i>Whoever establishes or plots a criminal group, is a member thereof, or acts for or supports a criminal group, shall be punished with a period of imprisonment of between five years and ten years.</i></p> <p style="text-align: center;"><i>source: section 296 c.c.</i></p>
 Slovenia	Founding/leadership
	<p>Participation</p> <p><i>(1) Whoever participates in a criminal association which has the purpose of committing criminal offences for which a punishment by imprisonment of more than three years, or a life sentence may be imposed, shall be punished by imprisonment of three months up to five years.</i></p> <p><i>(2) Whoever establishes or leads an association as referred to in the preceding paragraph, shall be punished by imprisonment of six months up to eight years.</i></p> <p style="text-align: center;">[...]</p> <p style="text-align: center;"><i>source: section 294 c.c.</i></p>
 Spain	Participation/support in a criminal organisation aimed at committing serious crimes
	Participation/support in a criminal organisation aimed at committing minor crimes
	Leadership/founding of a criminal organisation aimed at committing serious crimes
	Leadership/founding of a criminal organisation aimed at committing minor crimes
	<p><i>(1) Anyone promoting, organising, coordinating or directing a criminal organisation shall be liable to a penalty of four to eight years' imprisonment if the organisation's aim or purpose is to commit serious crimes, and a penalty of three to six years' imprisonment in all other cases; and anyone taking active part in the organisation, belonging to it or cooperating with it financially or in any other way, shall be liable to penalties of two to five years' imprisonment if the purpose is to commit serious crimes, and one to three years' imprisonment in all other cases.</i></p> <p><i>For the purposes of this Code, a criminal organisation means a group of more than two persons organised on a stable basis or for an indefinite period of time who act in concert to coordinate various tasks or functions for the purpose of committing offences and of repeated perpetration of misdemeanours.</i></p> <p style="text-align: center;"><i>source: section 570a c.c.</i></p>

 United Kingdom	England, Wales, Northern Ireland	Conspiracy
	<p> <i>(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either</i> </p> <p> <i>(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or</i> </p> <p> <i>(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,</i> <i>he is guilty of conspiracy to commit the offence or offences in question.</i> <i>source: section 1(1) of the Criminal Law Act 1977 (England and Wales)</i> </p> <p> <i>(1) Subject to the following provisions of this Part, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either</i> </p> <p> <i>(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or</i> </p> <p> <i>(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,</i> <i>he is guilty of conspiracy to commit the offence or offences in question.</i> <i>source: Part IV of the Criminal Attempts and Conspiracy Order 1983 (Northern Ireland)</i> </p>	



United Kingdom

Scotland	Conspiracy
	Participation in serious organised crime
	Directing serious organised crime
<p>(1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.</p> <p>(2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person</p> <p>(a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and</p> <p>(b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.</p> <p>(3) For the purposes of this section and sections 29 to 31 'serious organised crime' means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,</p> <p>'serious offence' means an indictable offence</p> <p>(a) committed with the intention of obtaining a material benefit for any person, or</p> <p>(b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and</p> <p>'material benefit' means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.</p> <p>(4) A person guilty of an offence under subsection (1) is liable</p> <p>(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.</p> <p>source: section 28 of the Criminal Justice and Licensing (Scotland) Act 2010</p> <p>1) A person commits an offence by directing another person</p> <p>(a) to commit a serious offence,</p> <p>(b) to commit an offence aggravated by a connection with serious organised crime under section 29.</p> <p>(2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).</p> <p>(3) For the purposes of subsections (1) and (2), a person directs another person to commit an offence if the person</p> <p>(a) does something, or a series of things, to direct the person to commit the offence,</p> <p>(b) intends that the thing or things done will persuade the person to commit the offence, and</p> <p>(c) intends that the thing or things done will</p> <p>(i) result in a person committing serious organised crime, or</p> <p>(ii) enable a person to commit serious organised crime.</p> <p>(4) The person directing the other person commits an offence under subsection (1) whether or not the other person in fact commits</p> <p>(a) a serious offence, or</p> <p>(b) an offence aggravated by a connection with serious organised crime under section 29.</p> <p>(5) In this section 'directing' a person to commit an offence includes inciting the person to commit the offence.</p> <p>(6) A person guilty of an offence under subsection (1) or (2) is liable</p> <p>(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both,</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.</p> <p>source: section 30 of the Criminal Justice and Licensing (Scotland) Act 2010</p>	

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

4.4.3. Transposition assessment of Articles 1 and 2 of the Framework Decision

In order to assess the transposition of the first of the seven 'legal minimum standards',⁵⁸ as outlined in Articles 2 and 1 of the Framework Decision, one must first take into account that MS can either transpose 2a or 2b, or both.

Transposition of the legal minimum standard set in Article 2a can then be assessed according to the seven elements outlined above in Section 4.5.1 (structure of the criminal organisation, continuity, number of members, intent to commit an offence, scope of predicate offences, benefit from the commission of offences, type of criminalised conduct).

With regards to the transposition of the legal minimum standard set in Article 2b, the sole element to be taken into account is that of the punishment of the mere agreement, as mentioned in Section 4.5.1.

Based on information presented in the previous sub-sections, Table 4.9 graphically illustrates MS transposition of Article 2 of Framework Decision, in a yes/no format.

Table 4.9: MS transposition of the standard set in Article 2 of Framework Decision 2008/841/JHA

Member State	Elements 2a							Element 2b Conspiracy to commit criminal offences
	7. Offence	Definition						
		1. Structure of the criminal organisation	2. Continuity of the criminal organisation	3. Number of members of the criminal organisation	4. Intent	5. Scope of predicate offences	6. Benefit	
 Austria	YES	YES	YES	YES	YES	YES	YES	NO
 Belgium	YES	YES	YES	YES	YES	YES	YES	NO
 Bulgaria	YES	YES	YES	YES	YES	YES	YES	YES
 Croatia	YES	YES	YES	YES	YES	YES	YES	YES
 Cyprus	YES	YES	YES	YES	YES	YES	YES	NO
 Czech Republic	YES	YES	YES	YES	YES	YES	YES	NO
 Estonia	YES	YES	NO	YES	YES	YES	YES	NO
 Finland	YES	YES	YES	YES	YES	YES	YES	NO
 France	YES	YES	YES	YES	YES	NO	YES	NO

⁵⁸ See Section 4.4 for a complete list of these seven standards.

 Germany	YES	YES	YES	YES	YES	YES	YES	NO	
 Greece	YES	YES	YES	YES	YES	NO	YES	YES	
 Hungary	YES	YES	YES	YES	YES	NO	YES	NO	
 Ireland	YES	YES	YES	YES	YES	YES	YES	YES	
 Italy	YES	YES	YES	YES	YES	YES	YES	NO	
 Latvia	YES	YES	YES	YES	YES	YES	YES	NO	
 Lithuania	YES	YES	NO	YES	YES	YES	YES	NO	
 Luxembourg	YES	YES	YES	YES	YES	YES	YES	NO	
 Malta	YES	YES	YES	YES	YES	YES	YES	YES	
 Netherlands	YES	YES	YES	YES	YES	YES	YES	NO	
 Poland	YES	YES	YES	YES	YES	YES	YES	NO	
 Portugal	YES	YES	YES	YES	YES	YES	YES	NO	
 Romania	YES	YES	YES	YES	YES	YES	YES	NO	
 Slovakia	YES	YES	YES	YES	YES	NO	YES	NO	
 Slovenia	YES	YES	YES	YES	YES	YES	YES	NO	
 Spain	YES	YES	YES	YES	YES	YES	YES	NO	
 UK	<i>E&W</i>	NO	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	YES
	<i>Sco</i>	YES	YES	YES	YES	YES	YES	YES	YES

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Timing of MS legislation and Articles 1 and 2 of the Framework Decision.

Table 4.10 summarises the timing of the enactment of MS legislation on the topics addressed by Articles 1 and 2 of the Framework Decision. It is noteworthy that the majority of MS possessed norms in line with the Framework Decision even before its entry into force. In some other cases, MS intervened after the entry into force of the Framework Decision with significant modifications to their criminal norms regarding the offences related to the participation in a criminal organisation (this is the case, for example, in Bulgaria, Spain and Scotland). Finally, in some other cases, MS made only non-relevant changes to their criminal provisions after the entry into force of the Framework Decision; thus one can consider such states already in line with the norms of

the Framework Decision before its entry into force (this is the case, for example, in Hungary and Lithuania).

Table 4.10: Timing of MS legislation with reference to Articles 1 and 2 of Framework Decision

In line or partially in line already before the entry into force of the Framework Decision	In line after the entry into force of the Framework Decision
Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland (conspiracy), Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, United Kingdom (conspiracy, all jurisdictions)	Bulgaria, Croatia, Czech Republic, Ireland (participation), Poland, Romania, Spain, United Kingdom (participation, in Scotland)

Findings

From the above Tables the following conclusions may be drawn:

- 21 out of 28 MS (Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, the United Kingdom) have fully transposed the standard set in Article 2 of the Framework Decision. Among these MS one can distinguish:
 - MS whose legislation includes the legal minimum standard set in Article 2a of the Framework Decision, i.e. it foresees only the offence of participation in a criminal organisation, embracing all the elements listed by Article 1 of the Framework Decision. They are: Austria, Belgium, Cyprus, the Czech Republic, Finland, Germany, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Scotland.
 - MS whose legislation includes the legal minimum standard set in Article 2b of the Framework Decision, i.e. it foresees the offence of conspiracy to serious commit offences. This is the case in Greece (that also partially transposed Article 2a)⁵⁹ and the United Kingdom (England, Wales and Northern Ireland).
 - MS whose legislation includes both the legal minimum standard set in Article 2a of the Framework Decision and the legal minimum standard set in Article 2b of the Framework Decision. They are: Bulgaria, Croatia, Ireland and Malta.
- 5 out of 28 MS (Estonia, France, Hungary, Lithuania and Slovakia) have partially transposed the standard set in Article 2 of the Framework Decision, since their legislation includes only some of the 7 elements foreseen under the legal minimum standard set in Article 2a of the Framework Decision.⁶⁰
- 20 MS were fully or partially aligned to the contents of Articles 1 and 2 of the

⁵⁹ In Greece, Article 187, paragraphs 1-3, c.c. lists a series of predicate offences for the application of the offence of participation in a criminal organisation, thus partially transposing Article 2a of the Framework Decision. In combination, Article 187, paragraph 5, c.c. states that 'anyone who conspires with another person in order to commit a crime outside the scope of paragraph 1, shall be punished by imprisonment for at least 6 months'.

⁶⁰ In greater detail, Estonia and Lithuania envisage a stricter criterion (i.e. the permanent duration of the criminal organisation) compared to the minimum standard set by the Framework Decision concerning the duration of the criminal organisation (i.e. 'a criminal organisation shall be established over a period of time'). France, Hungary and Slovakia envisage a stricter criterion (i.e. offences punishable by the deprivation of liberty or detention order of at least 5 years or more serious penalties) compared to the minimum standard set by the Framework Decision concerning the scope of the predicate offences (i.e. 'offences punishable by the deprivation of liberty or detention order of at least 4 years or more serious penalties').

Framework Decision already before its entry into force (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland (for conspiracy), Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, United Kingdom (for conspiracy in all jurisdictions)), while 8 modified their legislation afterwards (Bulgaria, Croatia, Czech Republic, Ireland (for participation), Poland, Romania, Spain, Scotland (for participation)). In some cases, MS decided to modify their legislation after the entry into force of the Framework Decision to be closer to its provisions, even though they already possessed norms in line with the requests of Articles 1 and 2 of the Framework Decision (e.g. Romania). All the MS that modified their legislation after the entry into force of the Framework Decision are 'fully' in line with it.

4.5. Penalties for offences relating to participation in a criminal organisation (Article 3)

4.5.1. Standard and elements – penalties and aggravating circumstances

The second 'legal minimum standard' stated in the Framework Decision is outlined in Article 3, which reads as follows:

'1. Each Member State shall take the necessary measures to ensure that:

- (a) the offence referred to in Article 2(a) is punishable by a maximum term of imprisonment of at least between two and five years; or
- (b) the offence referred to in Article 2(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.

2. Each Member State shall take the necessary measures to ensure that the fact that offences referred to in Article 2, as determined by this Member State, have been committed within the framework of a criminal organisation, may be regarded as an aggravating circumstance.'

The penalty requirement set by the Framework Decision under Article 3 paragraph 1 – 'maximum term of imprisonment of at least between two and five years' – has to be read as 'maximum term of imprisonment of at least two years'. The 'between two and five years' expression is misleading since it would unreasonably exclude offences whose maximum term of imprisonment is above five years, and therefore we may deduce that it was mistakenly inserted in the Framework Decision text.⁶¹

⁶¹ The 'between two and five years' expression stems from Council of the European Union (2002a), which establishes a system of penalty levels: '*where there is a need for providing the minimum level for the maximum penalty which must be provided by each Member State under its national law in respect of a specific offence, the minimum level is set at one of the levels*'. One of these levels (level 2) refers to 'penalties of a maximum of at least between 2 and 5 years of imprisonment'. The ranges set by the Council conclusions should be logically translated, while drafting a concrete legal instrument, into one single maximum penalty

It should also be stressed that the 'offences referred to in Article 2' (Article 3 paragraph 2) are not those of 'participation in a criminal organisation' (Article 2a) and 'conspiracy to commit criminal offences' (Article 2 b). Even though the text is not very clear this reference should be interpreted as concerning predicate offences, namely the offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years imprisonment or a more serious penalty. The aim of the provision is to foresee a possible aggravation due to the commission of a predicate offence in the framework of a criminal organisation.

In order to map MS criminal law with reference to the legal minimum standard set in Article 3 of the Framework Decision and assess transposition of this standard, the following elements will be taken into account:

1. Penalties (i.e. threshold of at least two years imprisonment for the maximum penalty level for offences under Article 2a; the same maximum term of imprisonment as the offence at which the agreement is aimed, or at least two years imprisonment in the maximum for offences under Article 2b);
2. Aggravating circumstances: applying to offences punishable by deprivation of liberty or detention order of at least four years, which may be aggravated if committed in the framework of a criminal organisation.

4.5.2. Mapping of MS legislation – penalties and aggravating circumstances

Penalties

Table 4.11 summarises how MS legislation deals with the 'penalties' element. It provides information on penalties for each of the punishable conducts previously examined. This provision relates back to Article 2 of the Framework Decision and is aimed at approximating MS legislation regarding punishment for offences relating to participation in a criminal organisation, by setting minimum thresholds. For each MS, excerpts from relevant legislative texts are given, with details of the source.

indication, falling within the range. In the case of the Framework Decision the indication is copied and pasted directly from the document and, therefore, misleading. This is way it should be interpreted as a 'maximum term of imprisonment of at least two years'.

Table 4.11: Penalties

Member State	Punishable conducts	Penalty
 Austria	Founding	up to 3 years imprisonment
	Participation	up to 3 years imprisonment
	<i>source: section 278 c.c.</i>	
 Belgium	Participation to a criminal organisation if this one uses intimidation, threat, violence, fraud, corruption, or commercial structures or Participation to the legal activities of a criminal organisation	From 1 to 3 years imprisonment and/or a fine from €100 to €5,000
	Decisionmaking	From 5 to 10 years imprisonment and/or a fine from €500 to €100,000
	Leadership	From 10 to 15 years imprisonment and/or a fine from €1,000 to €200,000
	<i>source: section 324 ter c.c.</i>	
 Bulgaria	Founding/leadership	From 3 to 10 years imprisonment
	Participation	From 1 to 6 years imprisonment
	Conspiring (i.e. conspire to commit crimes punishable with more than 3 years' imprisonment for gain and/or to influence state/local bodies)	up to 6 years imprisonment
	<i>source: section 321 c.c.</i>	
 Croatia	Participation in a criminal organisation framework without committing any crime or Support (i.e. financial, other kind) or Commission of legal acts to further the goals of a criminal organisation	up to 3 years imprisonment
	Leadership (organisation/direction)	From 6 months to 5 years imprisonment
	Conspiring to commit offences punishable with imprisonment exceeding three years	up to 3 years
	<i>source: sections 327, 328 c.c.</i>	
 Cyprus	Participation in a criminal organisation	up to 3 years imprisonment
	Participation in any action of a criminal organisation	up to 10 years imprisonment and/or a fine up to €85,430.07
	<i>source: section 63a and 63b c.c.</i>	
 Czech Republic	Founding	From 2 to 10 years imprisonment or forfeiture of property
	Participation	From 2 to 10 years imprisonment or forfeiture of property
	Support	From 2 to 10 years imprisonment or forfeiture of property
	<i>source: section 361 c.c.</i>	

 Estonia	Founding/leadership/recruitment	From 5 to 15 years imprisonment
	Participation	From 3 to 12 years imprisonment
	<i>source: section 255 and 256 c.c.</i>	
 Finland	Founding/organising	up to 2 years imprisonment
	Participation/support (recruiting/attempting to recruit; equipping/attempting to equip; arranging/attempting to arrange/providing training; obtaining/attempting to obtain/providing premises, other facilities, means of transport, other equipment; financing; managing financial affairs; giving financial or legal advice; otherwise actively promoting accomplishment of the aim of the organisation)	up to 2 years imprisonment
	<i>source: chapter 17, section 1(a) c.c.</i>	
 France	Participation in a criminal organisation to perpetrate one or more felonies/misdemeanours punished by 10 years imprisonment	up to 10 years imprisonment and a fine of €150,000
	Participation in a criminal organisation to perpetrate one or more misdemeanours punished by at least 5 years imprisonment	up to 5 years imprisonment and a fine of €75,000
	<i>source: section 450-1 c.c.</i>	
 Germany	Founding	up to 5 years imprisonment or a fine
	Participation	up to 5 years imprisonment or a fine
	Recruitment	up to 5 years imprisonment or a fine
	Support	up to 5 years imprisonment or a fine
	Conspiring	dependant on the crime object of the conspiracy
	<i>source: section 30 and 129 c.c.</i>	
 Greece	Founding/participation/support (with material information, means)	up to 10 years imprisonment
	Leadership	at least 10 years imprisonment
	Conspiring	at least 3 months imprisonment if the conspired crime is punishable up to 1 year imprisonment, otherwise at least 6 months imprisonment
	<i>source: section 187 c.c.</i>	
 Hungary	Instigation/suggestion/offer to engage in criminal activities	From 1 to 5 years imprisonment
	Joining/collaboration	From 1 to 5 years imprisonment
	Support (means, etc.)	From 1 to 5 years imprisonment
	<i>source: section 321 c.c.</i>	

 Ireland	Participation/contributing to any (legal or illegal) activity	up to 15 years imprisonment, a fine or both
	Leadership	up to imprisonment for life
	Conspiracy	dependant on the crime object of the conspiracy
	<i>source: Criminal Justice Act of 2006 as amended by section 3(l)(a) of Criminal Justice Act of 2009, section 72</i>	
 Italy	Founding/Leadership	From 3 to 7 years imprisonment
	Participation	From 1 to 5 years imprisonment
	<i>source: section 416 c.c.</i>	
 Latvia	Founding/Leadership	From 8 to 17 years imprisonment and/or confiscation of property and with or without probationary supervision for a term not exceeding 3 years
	Participation	From 8 to 17 years imprisonment and/or confiscation of property and with or without probationary supervision for a term not exceeding 3 years
	<i>source: section 21 c.c. and 89.1 c.c.</i>	
 Lithuania	Participation	From 3 to 15 years imprisonment
	Leadership	From 10 to 20 years imprisonment or imprisonment for life
	<i>source: section 249 c.c.</i>	
 Luxembourg	Participation	From 2 to 5 years imprisonment and/or a fine from €2,500 to €12,500
	Participation to the legal activities of a criminal organisation	From 1 to 3 years imprisonment and/or a fine from €2,500 to €12,500
	Decisionmaking	From 5 to 10 years imprisonment and/or a fine from €12,500 to €50,000
	Leadership	From 10 to 15 years imprisonment and/or a fine from €25,000 to €50,000
	<i>source: section 324 ter c.c.</i>	

 Malta	Promoting/Founding/Organisation/Financing	From 3 to 7 years imprisonment
	Participation	From 1 to 5 years imprisonment
	Conspiracy	punishment for the completed offence object of the conspiracy with a decrease of two or three degrees ⁶²
	<i>source: section 83A c.c. and 48A c.c.</i>	
 Netherlands	Participation/support	up to 6 years imprisonment or a fine
	Founding/Leadership/Managing	Participation terms may be increased by one third
	<i>source: section 140 c.c.</i>	
 Poland	Founding /directing (including an armed organisation)	From 1 to 10 years imprisonment
	Participation	From 3 months to 5 years imprisonment
	Founding/directing a terrorist organisation	No less than 3 years imprisonment
	Participation in an armed or terrorist organisation	6 months to 8 years imprisonment
	<i>source: section 258 c.c.</i>	
 Portugal	Founding	From 1 to 5 years imprisonment
	Participation/support	From 1 to 5 years imprisonment
	Leadership	From 2 to 8 years imprisonment
	<i>source: section 299 c.c.</i>	
 Romania	Founding/participation/support	From 1 to 5 years imprisonment
	Founding/participation/support to an organisation aimed at committing crimes punishable with imprisonment for life or exceeding 10 years	From 3 to 10 years imprisonment
	<i>source: section 367 c.c.</i>	
 Slovakia	Founding	From 5 to 10 years imprisonment
	Participation	From 5 to 10 years imprisonment
	Support	From 5 to 10 years imprisonment
	<i>source: section 296 c.c.</i>	
 Slovenia	Founding/leadership	From 6 months to 8 years imprisonment
	Participation	From 3 months to 5 years imprisonment
	<i>source: section 294 c.c.</i>	

⁶² For further information about the determination of penalty degrees, please see Article 31 of the Malta Criminal Code.

 Spain	Participation/support in a criminal organisation aimed at committing serious crimes	From 2 to 5 years imprisonment
	Participation/support in a criminal organisation aimed at committing minor crimes	From 1 to 3 years imprisonment
	Leadership/founding of a criminal organisation aimed at committing serious crimes	From 4 to 8 years imprisonment
	Leadership/founding of a criminal organisation aimed at committing minor crimes	From 3 to 6 years imprisonment
	<i>source: section 570 bis c.c.</i>	
 United Kingdom	Conspiracy	<p>Dependant on the crime object of the conspiracy (England, Wales, Northern Ireland), i.e.:</p> <ul style="list-style-type: none"> - imprisonment for life for: (a) murder, or any other offence the sentence for which is fixed by law; (b) an offence for which a sentence extending to imprisonment for life is provided; or (c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided; - imprisonment for a term not exceeding the maximum term provided for the offence to which the conspiracy relates, for the remaining offences punishable with imprisonment; - a fine, in any other case. <p>For Scotland:</p> <ul style="list-style-type: none"> - up to 10 years imprisonment and/or a fine for conviction on indictment; - up to 12 months and/or a fine for a summary conviction.
	<p><i>Source:</i></p> <ul style="list-style-type: none"> - <i>Criminal Law Act 1977, Section 3 (England and Wales)</i> - <i>Criminal Attempts and Conspiracy Order 1983, Section 11 (Northern Ireland)</i> - <i>Criminal Justice and Licensing Act 2010, Section 28 (Scotland)</i> 	

	Involvement (only in Scotland)	- up to 10 years imprisonment and/or a fine for conviction on indictment; - up to 12 months and/or a fine for a summary conviction.
	Directing (only in Scotland)	- up to 14 years imprisonment and/or a fine for conviction on indictment; - up to 12 months and/or a fine for a summary conviction.
	<i>Source:</i> <i>- Criminal Justice and Licensing Act 2010, Section 30</i>	

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Table 4.11 indicates that all MS provided at least 2 years of imprisonment for the upper threshold of imprisonment.

The table also highlights that the national legislation of MS shows a considerable imbalance both in terms of conduct differentiation and in the level of the penalties foreseen.

Focusing on penalties related to the conduct of 'participation', MS may be grouped into the following categories:

1. MS with low penalties, corresponding to a minimum level of the maximum from 2 to 5 years of imprisonment (Austria, Belgium, Croatia, Cyprus, Finland, Germany, Hungary, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Spain).
2. MS with medium penalties, corresponding to a maximum from 5 to 10 years of imprisonment (Bulgaria, the Czech Republic, France, Greece, Italy, the Netherlands, Slovakia and Scotland).
3. MS with high penalties, corresponding to a maximum penalty over 10 years of imprisonment (Estonia, Ireland, Latvia, Lithuania).

Organised crime as an aggravating circumstance for predicate offences

Table 4.12 summarises how MS legislation deals with the 'aggravating circumstances' element. For each MS, excerpts from relevant legislative texts are given, with details of the source. This provision relates back to Article 2 (and therefore to Article 1) of the Framework Decision and is aimed at aggravating the penalties for predicate offences punished by deprivation of liberty of a maximum term of at least four years when committed in the framework of a criminal organisation.

It does not indicate clearly what is meant by aggravation, which gives a certain freedom for the national legislator in determining the specific conditions of the aggravation. For this reason MS are obliged to ensure that judges are able to apply in a concrete case some kind of aggravation referred to generally (e.g. the penalty should be aggravated) or specifically (i.e. increasing the imprisonment penalty up to a certain threshold or imposing any other additional penalty). The MS must therefore ensure that judges have discretion in considering whether to apply the aggravating circumstance stemming from the commission of the offence in the framework of a criminal organisation.

The obligation imposed by Article 3.2 is not exclusively in connection to the offences related to participation in a criminal organisation, since the latter could also be aggravated due to other factors, such as a high number of persons, using weapons, using intimidation, etc. Such a solution is not covered at all by the Framework Decision, though it is used by a number of MS (see Chapter 5 below).

Table 4.12: Presence of aggravating circumstances for crimes committed in the framework of a criminal organisation

Member State	Presence of aggravating circumstances for crimes committed in the framework of a criminal organisation
 Austria	Yes for a list of crimes (e.g. human trafficking, theft, robbery, child pornography), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum <i>source: section 104a, 130, 143, 207a, c.c.</i>
 Belgium	Yes for a list of crimes (human trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum <i>sources: section 433 octies and 433 duodecies c.c.</i>
 Bulgaria	Yes, for a list of crimes (e.g. abduction, arson, drug dealing), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum <i>source: Articles 156, 235, 253, 256, 330, 354a, 354 c.c.</i>
 Croatia	Yes, for all crimes <i>source: section 329 c.c.</i>
 Cyprus	Yes, for a list of crimes (human trafficking and drug dealing), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum <i>source: law 87(I)/2007; law 29/1977</i>
 Czech Republic	Yes, for all crimes <i>source: sections 108 c.c.</i>
 Estonia	Yes, for all crimes (general aggravating circumstance) Yes, for a list of crimes (e.g. incitement of hatred, drug dealing, larceny, robbery, fraud, extortion, money laundering) which includes some but not all those punished with imprisonment for a maximum term of at least 4 years (specific aggravating circumstance) <i>source: section 58 c.c.</i> <i>source: sections 151, 184, 199, 200, 209, 214, 349 c.c.</i>
 Finland	Yes, for all crimes <i>source: chapter 6, section 5(2) c.c.</i>
 France	Not in the context of Article 2 offences. (See findings below and Chapter 5 for more details) <i>source: not applicable</i>

 Germany	<p>Yes, for a list of crimes (e.g. counterfeiting of money, child pornography, human trafficking, robbery), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p> <p><i>source: section 146, 152a, 152b, 184b, 184c, 232, 233, 233a, 236, 244, 244a, 250, 253, 260, 260a, 261, 263, 263a, 267, 268, 269, 275, 276, 276a, 284, 300, 303b, 335 c.c. and section 30 BtMG</i></p>
 Greece	<p>No</p> <p><i>source: not applicable</i></p>
 Hungary	<p>Yes, for all crimes</p> <p><i>source: section 91 c.c.</i></p>
 Ireland	<p>Yes, for all crimes for which a person may be punished by imprisonment for a maximum term of at least 4 years</p> <p><i>source: Criminal Justice Act of 2006 as amended by section 3(l)(a) of Criminal Justice Act of 2009, section 74A</i></p>
 Italy	<p>Yes, for a list of crimes (e.g. murder, rape, theft, robbery), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p> <p><i>source: section 576, 609 ter, 625, 628 ter c.c.</i></p> <p><i>source: section 112(1)</i></p>
 Latvia	<p>Yes, for a list of crimes (e.g. murder, circulation of radioactive and chemical substances, robbery, theft, illegal deprivation of liberty, kidnapping, human trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p> <p><i>sources: section 98, 99, 109, 118, 125, 148, 152, 153, 154, 154.1, 164, 165, 165.1, 166, 175., 176, 177, 177.1, 187, 190, 190.1, 192, 193, 193.1, 195, 195.2, 206, 218, 220.1, 221, 233, 243, 250, 253.1, 255, 256, 296, 285, 314, 320, 323 c.c.</i></p>
 Lithuania	<p>Yes, for all crimes (general aggravating circumstance)</p> <p>Yes, for a list of crimes (e.g. human trafficking, purchase or sale of a child, theft, robbery, extortion, drug dealing), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p> <p><i>source: section 60 c.c.</i></p> <p><i>source: sections 147, 157, 178, 180, 181, 263 c.c.</i></p>
 Luxembourg	<p>Not in the context of Article 2 offences. (See findings below and Chapter 5 for more details)</p> <p><i>source: not applicable</i></p>
 Malta	<p>Yes, for a list of crimes (e.g. child prostitution, child pornography, human trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p> <p><i>source: sections 204A, 204B, 248E c.c.</i></p>
 Netherlands	<p>No</p> <p><i>source: not applicable</i></p>
 Poland	<p>Yes, for all crimes</p> <p><i>source: section 65 c.c.</i></p>
 Portugal	<p>Yes, for a list of crimes (larceny, theft, extortion, drug trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p> <p><i>source: 204 (2), 210 (2), 223 (3) c.c.; 24 (j) of the decree law 15/1993</i></p>
 Romania	<p>Yes, for all crimes</p> <p><i>source: sections 77, 78 c.c.</i></p>

 Slovakia	<p>Yes, for all crimes (general aggravating circumstance) Yes, for a list of crimes (e.g. killing, bodily harm, illicit removal of organs and tissues, illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them, trafficking in human beings, stealing and trading of children, deprivation of personal freedom, restriction of personal freedom, taking a hostage, kidnapping for ransom, abduction to a foreign country, robbery, extortion, gross coercion, duress, forcible entry into dwelling, kidnapping, theft), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum (specific aggravating circumstance)</p>	
 Slovenia	<p>Yes, for all crimes (general aggravating circumstance) Yes, for a list of crimes (e.g. murder), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum (specific aggravating circumstance)</p>	
 Spain	<p>Yes, for a list of crimes (e.g. human trafficking, sexual offences when the victim is below 13, prostitution and child corruption, coerced/child prostitution, child/disabled people pornography, computer crimes, intellectual property crimes, money laundering, human trafficking, drug trafficking, counterfeiting of means of payment), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum</p>	
 UK	<p>England Wales NI</p>	<p>No <i>source: n.a.</i></p>
	<p>Scotland</p>	<p>No <i>source: n.a.</i> Yes, for all crimes⁶³</p>

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Based on Table 4.12, it is possible to conclude that, within the MS national legal systems, the following approaches exist in relation to the 'aggravating circumstances' element:

- The 'aggravating circumstances for a list of crimes' approach, in which the penalty is aggravated for a selected few crimes (e.g. human trafficking, robbery, child pornography, drug dealing) when committed in the framework of a criminal organisation. This list includes some but not all offences

⁶³ The national expert pointed out that: 'In Scotland, section 29 of the Criminal Justice and Licensing (Scotland) Act 2010 provides that an offence may be aggravated by a connection with serious organised crime if the offender was motivated wholly or partially by the aim of committing or conspiring to commit serious organised crime, whether or not he in fact enabled himself or another person to commit such a crime. Where this aggravation is labelled and proved it must be taken into account by the court in determining the appropriate sentence, and the court must state on conviction that the offence was so aggravated and the difference in sentence had there been no such connection. No statutory provision exists for the rest of the UK [...]'.'

punishable by deprivation of liberty of at least four years in the maximum. This approach is followed by: Austria, Belgium, Bulgaria, Cyprus, Germany, Italy, Latvia, Malta, Portugal, Spain. National legislation on predicate offences often makes a reference to a 'group' or 'persons acting in association' and not necessarily to the definition of the criminal organisation as provided in a certain MS. It means that those cases of aggravation relate also to situations beyond the specific concept of a criminal organisation covering all other possible associations. (For further details see the tables with legislation in relation to Article 3.2).

- The 'aggravating circumstances for all crimes' approach, according to which the penalty is aggravated for all crimes committed in the framework of a criminal organisation, regardless of their seriousness and type. This approach is followed by: Croatia, the Czech Republic, Estonia, Finland, Hungary, Lithuania, Poland, Romania, Slovakia, Slovenia and Scotland. Such an approach goes beyond the minimum scope covered by the Framework Decision as it extends the application of this provision to all criminal offences and not only to those regarded as serious (deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty).
- The 'aggravating circumstances for crimes punishable with penalties above a certain threshold' approach, according to which the penalty is aggravated for all crimes punishable with penalties above a certain threshold, when committed in the framework of a criminal organisation. This approach is followed by Ireland (where the threshold is imprisonment for a maximum term of at least 4 years). In this case the national legislation copies *expressis verbis* the text of the Framework Decision.
- Cases where the national legislation does not mention *expressis verbis* the commission of an offence in the framework of the criminal organisation as aggravating circumstance. It is followed by: Greece, France, Luxembourg, the Netherlands, the United Kingdom (excluding Scotland). In the UK, due to its common law legal system, a judge, in determining the penalties and based on his/her discretionary power, can aggravate the main penalty. A similar approach probably stems also from judicial discretion (not written law) in other MS, either those that do not make any reference to such a circumstance in their national legislation or those that do so only partly. For the latter reason it is difficult to exclude that such an aggravation can take place in cases of all MS.

4.5.3. Transposition assessment of Article 3 of the Framework Decision

The assessment of the transposition of the legal minimum standard set in Article 3 of the Framework Decision⁶⁴ can be achieved by taking into account the two elements outlined in the previous section, namely the penalties imposed for offences introduced according to Article 2 of the Framework Decision, and the introduction of aggravating circumstances for crimes committed in the context of a criminal organisation.

In the table below, the transposition is assessed as follows:

⁶⁴ This 'legal minimum standard' is the second of seven standards introduced by the Framework Decision, as outlined above in Section 4.4.

- 'Yes' when a MS envisages a maximum term of imprisonment of at least 2 years for offences under Article 2a.
- 'Yes' when a MS envisages a maximum term of imprisonment of at least 2 years or the same maximum term of imprisonment as the offence at which the agreement is aimed for offences under Article 2b.
- 'Partial' when a MS envisages alternative penalties to the maximum term of imprisonment which is line with the requests of the Framework Decision.⁶⁵
- 'No' when a MS does not provide a maximum term of imprisonment of at least 2 years or provides only alternative sanctions for offences under Article 2a.
- 'No' when a MS does neither provide a maximum term of imprisonment of at least 2 years nor the same maximum term of imprisonment as the offence at which the agreement is aimed for offences under Article 2b.

Table 4.13 graphically illustrates this assessment of the MS transposition of Article 3, in a yes/partial/no format.

Table 4.13: MS transposition of the standard set in Article 3 of Framework Decision 2008/841/JHA

Member State	Penalties		Aggravating circumstances for predicate based on commission in the framework in a criminal organisation
	Penalties for offences under 2a	Penalties for offences under 2b	
 Austria	YES	Not applicable	NO
 Belgium	PARTIAL	Not applicable	NO
 Bulgaria	YES	Not applicable	NO
 Croatia	YES	YES	YES
 Cyprus	PARTIAL	Not applicable	NO
 Czech Republic	PARTIAL	Not applicable	YES
 Estonia	YES	Not applicable	YES
 Finland	YES	Not applicable	YES
 France	YES	Not applicable	NO

⁶⁵ This because the Framework Decision does not explicitly mention the possibility of applying alternative sanctions to imprisonment.

 Germany		PARTIAL	YES	NO
 Greece		YES	NO	NO
 Hungary		YES	Not applicable	YES
 Ireland		PARTIAL	Not applicable	YES
 Italy		YES	Not applicable	NO
 Latvia		PARTIAL	Not applicable	NO
 Lithuania		YES	Not applicable	YES
 Luxembourg		PARTIAL	Not applicable	NO
 Malta		YES	NO	NO
 Netherlands		YES	Not applicable	NO
 Poland		YES	Not applicable	YES
 Portugal		YES	Not applicable	NO
 Romania		YES	Not applicable	YES
 Slovakia		YES	Not applicable	YES
 Slovenia		YES	Not applicable	YES
 Spain		YES	Not applicable	NO
 UK	<i>Eng</i>	Not applicable	PARTIAL	Not applicable
	<i>Wal</i>			
	<i>NI</i>			
	<i>Sco</i>	YES	YES	YES

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

4.6. Special circumstances for exemption/reduction of penalties for offences relating to participation in a criminal organisation (Article 4)

4.6.1. Standard and elements – special circumstances

The third 'legal minimum standard' imposed by the Framework Decision relates to the existence of special circumstances for the reduction or exemption of penalties for offences relating to participation in a criminal organisation. It is outlined in Article 4 of the Framework Decision and reads as follows:

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 3 may be reduced or that the offender may be exempted from penalties if he, for example:

(a) renounces criminal activity; and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:

(i) prevent, end or mitigate the effects of the offence;

(ii) identify or bring to justice the other offenders;

(iii) find evidence;

(iv) deprive the criminal organisation of illicit resources or of the proceeds of its criminal activities; or

(v) prevent further offences referred to in Article 2 from being committed.

It should first be noted that this Article is not binding, since it is stated that MS *may* take the necessary measures. The provision indicates a number of potential circumstances in which the MS may consider the possibility of reducing penalties or exempting the offender from penalties for offences relating to participation in a criminal organisation (Article 2 Framework Decision). The transposition is nevertheless not obligatory.

The transposition of the legal minimum standard set in Article 4 will be assessed by taking into account the recognition of special circumstances reducing penalties or exempting offenders from penalties for crimes committed in the framework of a criminal organisation.

This provision relates back to Article 3, and therefore to Article 2 of the Framework Decision and suggests that MS reduce, or allow for an exemption from, the penalties for offences relating to participation in a criminal organisation if the offender, for example, abandons criminal activities and supports the authorities with hard-to-obtain information.⁶⁶

⁶⁶ In this regard, it shall be noticed how some MS envisage also the exemption from criminal liability (and not only from the application of the penalty). In detail, such an exemption can (optional) or shall (mandatory) be issued for:

a) *renouncing to criminal activity* in Italy (Section 56 c.c., mandatory), Lithuania (Section 391 c.c., optional);

b) *providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain* in Austria (Section 209a c.c.p., optional), Czech Republic (Section 362 c.c., mandatory), Estonia (Section 205 c.c., optional), Greece (Section 187B c.c., mandatory), Latvia (Section 58 c.c., optional), Lithuania (Section 391 c.c., optional), Slovakia (Section 215 c.c., optional), United Kingdom – England, Wales and Northern Ireland (Section 72 Serious Organised Crime and Police Act 2005, optional), United Kingdom – Scotland (Section 328 Criminal Procedure Act 1995, mandatory);

c) *Other reasons* in Germany (Section 31 c.c., mandatory), Latvia (Section 58 c.c., optional), United Kingdom – England, Wales and Northern Ireland (Section 71 Serious Organised Crime and Police Act 2005, optional), United Kingdom – Scotland (Section 97 Criminal Procedure Act 1995, optional).

4.6.2. Mapping of MS legislation – special circumstances

Table 4.14 summarises how MS legislation deals with the 'special circumstances' element. The table highlights, for three types of special circumstances ('renouncing criminal activity', 'providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain', 'others'):

- a) The presence of each type of special circumstance in the national legal system.
- b) If present, the features of each special circumstance (i.e. if it is an exemption or mitigation of the penalty, or both); and if its application is mandatory and/or optional.

For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.14: Special circumstances – mapping

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Austria 	Presence	YES	YES	
	Features	Exemption/Mitigation, Mandatory	Mitigation, Mandatory/Optional	
	Source	<p>Section 278(4) c.c. No member of a criminal organisation is to be punished if no criminal offences of the kind planned have been carried out and the organisation has voluntarily dissolved itself or it is otherwise clear from its conduct that it has voluntarily abandoned its plans. Anyone who has voluntarily left the organisation before any offence of the kind planned has been committed or attempted is not to be punished for the offence of criminal association. This applies to leading members only if they eliminate the dangers posed by the organisation by a voluntary report or through other means.</p> <p>Section 34 c.c. If the perpetrator (a) voluntarily refrains from doing greater damage although he or she had the opportunity to do it, (...) then this is deemed to be a special mitigating attenuating circumstance for the purposes of sentencing.</p>	<p>Section 34 c.c. If the perpetrator (...) (b) makes a confession showing repentance, or his or her statement makes a substantial contribution to establishing the truth, then this is deemed to be a special mitigating attenuating circumstance for the purposes of sentencing.</p> <p>Section 41a c.c. Cooperation with the law enforcement authorities is to be deemed an extraordinary mitigating circumstance and a sentence may be reduced below the statutory minimum if, after committing the offence punishable under Section 278 StGB or an offence associated with such a conspiracy, association or organisation, the perpetrator discloses to a law enforcement authority facts the knowledge of which significantly contributes to eliminating or substantially reducing the danger caused by the organisation, to solving or helping to solve the crime or to tracking down a person who has played a leading role in such an association or organisation.</p>	

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Belgium 	Presence		YES	
	Features		Exemption, Mandatory	
	Source		section 326 c.c. Seront exemptés des peines prononcées par le présent chapitre, ceux des coupables qui, avant toute tentative de crimes ou délits faisant l'objet de l'association et avant toutes poursuites commencées auront révélé à l'autorité l'existence de ces bandes et les noms de leurs commandants en chef ou en sous-ordre.	
Bulgaria 	YES		YES	
	Features		Exemption/Mitigation, Mandatory	
	Source		Section 321 c.c. (4) Members of organised criminal groups who surrender voluntarily to the authorities and disclose everything they know about the group before they or the group commit any offence shall be exempted from punishment. (5) Members of organised criminal groups who surrender voluntarily to the authorities, disclose everything they know about the group and thus give substantial assistance in the discovering or proving of offences committed by the group shall be punished in accordance with Article 55.	

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Croatia 	Presence		YES	
	Feature		Exemption, Optional	
	Source		<p>Section 327 c.c. [...] (2) A perpetrator who uncovers the conspiracy referred to in paragraph 1 of this Article before the agreed upon criminal offence is committed may have his/her punishment remitted.</p> <p>Section 328 c.c. [...] (3) The perpetrator of a criminal offence referred to in paragraph 1 or 2 of this Article who by timely disclosure of a criminal association prevents the commission of any of the criminal offences set forth in paragraph 4 of this Article or a member of a criminal association who discloses a criminal association before committing, as its member or on its behalf, any of the criminal offences set forth in paragraph 4 of this Article may have his/her punishment remitted.</p>	

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Cyprus 	Presence		YES	
	Feature		Mitigation, Optional	
	Source		<p>Section 16(3) of the Witness Protection Law 95(I)/2001 In the Plan may be included any person holding information which the Attorney General deems substantial for the purposes of criminal proceedings and which may put this person in danger if disclosed.</p> <p>Section 17(2) of the Witness Protection Law 95(I)/2001 The Plan includes: [...] (e) special detention conditions for the collaborators of justice.</p>	

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Czech Republic 	Presence		YES	YES
	Feature		Mitigation, Mandatory	Mitigation, Mandatory
	Source		Section 33 c.c. When deciding on the extent of a sentence, the court shall consider as an attenuating circumstance in particular the fact that the offender: [...] <ul style="list-style-type: none"> i) himself reported his criminal offence to the authorities; j) assisted the appropriate organs in clearing up criminal acts which he had committed; k) assisted the appropriate organs in clearing up criminal acts committed as a part of a criminal conspiracy. 	Section 33 c.c. When deciding on the extent of a sentence, the court shall consider as an attenuating circumstance in particular the fact that the offender: <ul style="list-style-type: none"> a) committed the criminal offence in a state of severe agitation (excitement); b) committed the criminal offence at an age close to that of juvenile; c) committed the criminal offence while dependent or subordinate; d) committed the criminal offence under threat or duress; e) committed the criminal offence under the influence of a difficult personal or family situation not caused by himself; f) committed the criminal offence while averting an attack or another danger, without the conditions of necessary defence or extreme necessity being fully met; g) had led an orderly life prior to committing the criminal offence; h) endeavoured to remove the harmful consequences of his criminal offence, or voluntarily provided compensation for damage he had caused; i) sincerely regretted his criminal offence;

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Estonia 	Presence	YES	YES	YES
	Feature	Mitigation, Mandatory	Mitigation, Mandatory	Mitigation, Mandatory
	Source	Section 57 c.c. (1) Mitigating circumstances are: [...] 3) appearance for voluntary confession [...]	Section 57 c.c. (1) Mitigating circumstances are: [...] 3) [...] active assistance in detection of the offence; [...]	Section 57 c.c. (1) Mitigating circumstances are: 1 prevention of harmful consequences of the offence, and provision of assistance to the victim immediately after the commission of the offence; 2) voluntary compensation for damage; 3) [...] sincere remorse [...]; 4) commission of the offence due to a difficult personal situation; 5) commission of the offence under threat or duress, or due to service, financial or family-related dependent relationship; 6) commission of the offence in a highly provoked state caused by unlawful behaviour; [...] (2) Circumstances not specified in subsection (1) of this section may be taken into consideration in imposition of a punishment.

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Finland 	Presence		YES	
	Feature		Mitigation, Optional	
	Source		<p>Chapter 6, Section 6(3) c.c. The following are grounds for reducing penalties: [...] (...) efforts by the perpetrator to prevent or remedy the effects of the offence or to further the investigation of the offence.</p>	
France 	Presence		YES	
	Feature		Exemption, Mandatory	
	Source		<p>Section 450-2 c.c. Any person who has participated in the group or the conspiracy defined by Article 450-1 is exempted from punishment if, before any prosecution is instituted, he discloses the existence of the group or conspiracy to the competent authorities and enables the other participants to be identified.</p>	

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Germany 	Presence		YES	YES
	Feature		Exemption/Mitigation, Optional	Exemption, Optional
	Source		<p>Section 129 c.c. [...]</p> <p>(6) The court may in its discretion mitigate the punishment (Section 49 subsection (2)) or dispense with punishment under these provisions if the perpetrator:</p> <ol style="list-style-type: none"> 1. voluntarily and earnestly makes efforts to prevent the continued existence of the organisation or the commission of a crime consistent with its goals; or 2. voluntarily discloses his knowledge to a government agency in time, so that crimes, the planning of which he is aware, may still be prevented; if the perpetrator attains his goal of preventing the continued existence of the organisation or if it is attained without his efforts, then he shall not be punished. 	<p>Section 129 c.c. [...]</p> <p>(5) The court may dispense with punishment under subsections (1) and (3) in the case of participants whose guilt is slight or whose involvement is of minor significance. [...]</p>

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Greece 	Presence		YES	
	Feature		Exemption/Mitigation, Mandatory/Optional	
	Source		<p>Section 187B c.c.</p> <p>(1) A person guilty of the acts of forming or joining a criminal organisation or conspiracy within the meaning of Article 187(1) and (3) [...] who reports and thus makes it possible to prevent the commission of a planned crime or thus materially helps to dismantle the criminal organisation or conspiracy [...] shall be exempt from punishment for those acts.</p> <p>[...]</p> <p>(2) If, in the cases referred to in the previous paragraph, the offender has committed one of the planned crimes referred to in Article 187(1) and (3) [...], the court shall impose a lighter sentence in accordance with Article 83. In exceptional circumstances, once it has appraised all the circumstances, especially the danger represented by the criminal organisation, conspiracy [...], the degree of involvement of the offender in it and the extent of his assistance in dismantling it, the court may order a suspended sentence of between 3 and 10 years and apply Articles 99 to 104.</p>	

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Hungary 	Presence		YES	
	Feature		Exemption, Mandatory	
	Source		Section 263/C c.c. [...] (2) Any person who reports the criminal act to the authorities beforehand and reveals the circumstances of its perpetration shall be exonerated from punishment for participation in a criminal organisation.	
Ireland 	Judicial discretion in determination of sentencing includes consideration of mitigating factors			

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Italy 	Presence			YES
	Feature			Mitigation, Mandatory/Optional
	Source			<p>Section 56 c.c. [...] If he voluntarily prevents the event, he will be liable to the penalty laid down for the attempted offence, reduced by one third to a half.</p> <p>Section 62 c.c. The offence is mitigated by the following circumstances, if they are not constitutive elements of the offence or special mitigation circumstances:</p> <ol style="list-style-type: none"> 1) having committed the offence for reasons with a particularly high moral or social value; 2) having committed the offence driven by anger caused by an unjust act committed by a third; 3) having committed the offence under the influence of a rioting crowd, except if such a muster was forbidden by the law or by Public Authority, and the guilty person is not a usual, professional or by tendency offender; 4) having, in crimes against property, caused a limited damage to the victim or in case of crimes committed for economic gain, having committed the offence to get a limited gain,

				<p>if the dangerous or damaging fact is particular limited per se.</p> <p>5) having contributed to the creation of the event, together with the action or omission of the guilty person, the voluntary or guilty action of the victim.</p> <p>6) having, before the sentence, completely restored the damaged caused through reimbursement and, when possible, through the restitution; or having, before the sentence [...], spontaneously acted to mitigate or eliminate the dangerous or damaging consequences of the offence.</p> <p>Section 62bis c.c.</p> <p>The judge, independently from the circumstances envisaged by Article 62, can take into account other and different circumstances that s/he considers suitable to allow a penalty mitigation. They are taken into account, in order to apply this Article, as a single circumstance that can also be joint to one or more of the circumstances of Article 62.</p> <p>[...]</p>
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Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Latvia 	Presence		YES	YES
	Feature		Mitigation, Mandatory/Optional	Mitigation, Mandatory
	Source		<p>Section 47 c.c.</p> <p>(1) The following circumstances shall be considered as circumstances mitigating the liability: [...]</p> <p>2) the offender has actively furthered the disclosure and investigation of the criminal offence; [...]</p> <p>4) the offender has facilitated the disclosure of a crime of another person; [...]</p> <p>Section 60 c.c.</p> <p>If a convicted person has helped uncover a crime, committed by other persons, which is more serious or more dangerous than the criminal offence committed by the person, the court, by whose judgment such person has been convicted, may reduce the punishment specified in the judgment, but where life imprisonment has been adjudged, a term of deprivation of liberty for twenty years shall be substituted therefore.</p>	<p>Section 47 c.c.</p> <p>(1) The following circumstances shall be considered as circumstances mitigating the liability:</p> <p>1) the perpetrator of the criminal offence has admitted his or her guilt, has freely confessed and has regretted the offence committed; [...]</p> <p>3) the offender has voluntarily compensated the harm caused by the criminal offence to the victim or has eliminated the harm caused; [...]</p> <p>(2) In determining a punishment, circumstances which are not provided for in this Law and which are related to the criminal offence committed, may be considered as circumstances mitigating the liability.</p> <p>(3) A circumstance, which is provided for in this Law as a constituent element of a criminal offence, may not be considered to be a mitigating circumstance.</p>

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Lithuania 	Presence	YES	YES	YES
	Feature	Mitigation, Optional	Mitigation, Optional	Mitigation, Optional
	Source	<p>Section 62 c.c. [...]</p> <p>2. Having considered all the circumstances of a case, a court may impose for every criminal act a more lenient penalty than provided for by a law also in the presence of mitigating circumstances, at least partial compensation for or elimination of property damage, if any has been incurred, and where: [...]</p> <p>4) the act was discontinued at the stage of preparation to commit the crime or at the stage of an attempt to commit the criminal act; [...]</p> <p>3. In the presence of the condition indicated [...], a court may:</p> <p>1) impose a more lenient penalty than the minimum penalty provided for in the sanction of an article for a criminal act committed; or</p> <p>2) impose a more lenient penalty than stipulated in paragraph 2 of Article 56 of this Code, or</p> <p>3) impose a more lenient type of penalty than provided for in the sanction of an article for a criminal act committed.</p>	<p>Article 62 c.c.</p> <p>1. Where, a person who has committed a criminal act freely and voluntarily gives himself or reports this act, confesses to commission thereof and sincerely regrets and/or assists pre-trial investigators and a court in detecting the criminal act and has fully or partially compensated for or eliminated the incurred property damage, a court may, having considered all the circumstances of the case, impose for every criminal act a more lenient penalty than provided for by a law. [...]</p> <p>3. In the presence of the condition indicated [...], a court may:</p> <p>1) impose a more lenient penalty than the minimum penalty provided for in the sanction of an article for a criminal act committed; or</p> <p>2) impose a more lenient penalty than stipulated in paragraph 2 of Article 56 of this Code, or</p> <p>3) impose a more lenient type of penalty than provided for in the sanction of an article for a criminal act committed.</p>	<p>Article 62 c.c. [...]</p> <p>2. Having considered all the circumstances of a case, a court may impose for every criminal act a more lenient penalty than provided for by a law also in the presence of mitigating circumstances, at least partial compensation for or elimination of property damage, if any has been incurred, and where:</p> <p>1) the offender maintains the persons suffering from a grave illness or are disabled and no one else can look after them, or</p> <p>2) the offender maintains young children and there would be no one to look after them if the penalty provided for by a law was imposed; or</p> <p>3) the offender as an accomplice had only a secondary role in the commission of the criminal act; or [...]</p> <p>5) the act has been committed by exceeding the limits of self-defence, or</p> <p>6) the act has been committed in violation of conditions of arrest of the person who has committed the criminal act, direct necessity, discharge of professional duty or performance</p>

				<p>of an assignment of law enforcement institutions, conditions of industrial or economic risk or lawfulness of a scientific experiment.</p> <p>3. In the presence of the conditions indicated in paragraphs 1 and 2 of this Article, a court may:</p> <ol style="list-style-type: none"> 1) impose a more lenient penalty than the minimum penalty provided for in the sanction of an article for a criminal act committed; or 2) impose a more lenient penalty than stipulated in paragraph 2 of Article 56 of this Code, or 3) impose a more lenient type of penalty than provided for in the sanction of an article for a criminal act committed. <p>4. A court may also, according to paragraph 3 of this Article, impose a more lenient penalty than provided for by a law upon a person who participated in the commission of a premeditated murder, where he makes a confession regarding all the criminal acts committed by him and actively assists in detecting a premeditated murder committed by members of an organised group or criminal association and where:</p> <ol style="list-style-type: none"> 1) the murder has been committed as a result of a threat or coercion; or 2) the offender as an accomplice had only a secondary role in the commission of the murder, or 3) the act has been discontinued at the stage of preparation for the commission of the murder or at the stage of attempting to commit the murder.
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Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Luxembourg 	Presence		YES	
	Feature		Exemption, Mandatory	
	Source		Section 326 c.c. Seront exemptés des peines prononcées par le présent chapitre, ceux des coupables qui, avant toute tentative de crimes ou délits faisant l'objet de l'association et avant toutes poursuites commencées, auront révélé à l'autorité l'existence de ces bandes et les noms de leurs commandants en chef ou en sous-ordre.	
Malta 	Presence	YES	YES	YES
	Feature	Mitigation, Optional	Mitigation, Optional	Mitigation, Optional
	Source	Section 21 c.c. Saving the provisions of Article 492, the court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence or under the provisions of Article 20, saving the provisions of Article 7.	Section 21 c.c. Saving the provisions of Article 492, the court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence or under the provisions of article 20, saving the provisions of article 7.	Section 21 c.c. Saving the provisions of article 492, the court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence or under the provisions of article 20, saving the provisions of article 7.

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Netherlands 	Presence		YES	
	Feature		Mitigation, Optional	
	Source		<p>Section 44a c.c.</p> <p>1. On application of the public prosecutor, the court may, on the basis of the agreement made under Section 226h(3) of the Code of Criminal Procedure, reduce the sentence it considered imposing in the manner set out in subsection (2). In the sentence reduction, the court shall take into account the fact that by giving testimony as a witness an important contribution is or can be made to the investigation or prosecution of serious offences.</p> <p>[...]</p> <p>Section 226g c.c.p.</p> <p>1. The public prosecutor shall notify the examining magistrate of the agreement he intends to make with a suspect who is prepared to give a witness statement in the criminal case against another suspect in exchange for the prosecutor's promise to demand a reduced sentence in his own criminal case under application of section 44a of the Penal Code. The agreement shall exclusively relate to a witness statement to be given in the context of a criminal investigation into serious offences, as defined in section 67(1) of the Code of Criminal Procedure, which are committed by an organised group and in view of their nature or the relation to other serious offences committed by the suspect constitute a serious breach of law and order or into serious offences which carry a</p>	

			<p>statutory term of imprisonment of at least eight years. The agreement shall exclusively relate to a sentence reduction as referred to in section 44a(2).</p> <p>(2) The intended agreement shall be put in writing and shall contain the most precise description possible of:</p> <ul style="list-style-type: none"> a. the serious offences about which and where possible, the suspect against whom, the witness, referred to in subsection (1), is prepared to give a witness statement; b. the criminal offences for which the witness in the case in which he is a suspect will be prosecuted and to which that promise relates; c. the conditions which are set for the witness who is also a suspect and with which said witness is prepared to comply; d. the substance of the promise of the public prosecutor. <p>(3) On application of the public prosecutor, the examining magistrate shall review the lawfulness of the agreement referred to in subsection (2). The public prosecutor shall provide the examining magistrate with the information he requires for his review.</p> <p>(4) An official record shall be prepared of agreements which cannot be deemed to be an agreement within the meaning of subsection (1), and which could be relevant to the investigation in the case. The public prosecutor shall add this official record to the case documents as soon as possible.</p> <p style="text-align: center;">Section 226h c.c.p.</p> <p>(1) The witness who consults with the public prosecutor about making an agreement under the terms of section 226g, may have the legal representation of a lawyer. A lawyer shall be assigned to the witness who does not yet have legal representation. The board of the Legal Aid</p>	
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			<p>Council shall arrange the assignment of said lawyer by order of the examining magistrate.</p> <p>(2) The examining magistrate shall hear the witness, referred to in section 226g(1), on the intended agreement.</p> <p>(3) The examining magistrate shall review the lawfulness of the agreement and shall take into account the urgent necessity and the importance of obtaining the statement to be given by the witness. He shall also give an opinion on the credibility of the witness. His opinion shall be given in the form of a decision. If he judges the agreement to be lawful, said agreement shall be concluded.</p> <p>(4) The public prosecutor shall not add the official records and other objects from which data can be derived, which were obtained by making an agreement as referred to in section 226g, to the case documents until the examining magistrate has judged the agreement to be lawful.</p>	
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Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Poland 	Presence		YES	YES
	Feature		Exemption, Mandatory	Exemption, Mandatory
	Source		Section 259 c.c. Whoever voluntarily abandoned the participation in the group or association and disclosed to an authority responsible for prosecuting offences all the essential circumstances of the committed act or [...] shall not be subject to the penalty for the offence specified in Article 258.	Section 259 c.c. Whoever [...] has voluntarily averted the impending danger shall not be subject to the penalty for the offence specified in Article 258.
Portugal 	Presence		YES	YES
	Feature		Exemption/Mitigation, Optional	Exemption/Mitigation, Optional
	Source		Section 299 c.c. [...] (4) The penalties referred to may be especially mitigated or not take place punishment if the agent [...] submit to the authority of its existence in order to be able to avoid this practice crimes.	Section 299 c.c. [...] (4) The penalties referred to may be especially mitigated or not take place punishment if the agent [...] prevent serious efforts to prevent the continuation of groups, organisations or associations [...].
Romania 	Presence	YES	YES	YES
	Feature	Exemption, Mandatory	Mitigation/Exemption, Optional/Mandatory	Mitigation, Optional
	Source	Section 323 c.c. [...] (3) The persons in para. (1) shall not be punished if they denounce the association to the authorities before it is discovered and before the beginning of commission of the offence that is the purpose of the association. Section 22 c.c. (1) A perpetrator who divested him/herself or who prevented the occurrence of the outcome before the act was discovered shall not be punished. (2) If the acts accomplished up to the moment of divestment or prevention of outcome occurrence represent another offence, the penalty for that offence shall be applied.	Section 74 c. c. (1) The following situations can be deemed as mitigating circumstances: [...] c)[...] the facilitation of the discovery or arrest of participants. (2) The situations enumerated in the present Article are examples. Section 9 Law 39/2003 (1) The person who, while committing one of the deeds stipulated in art. 7 paragraph (1) lays information against the organised criminal group, before it has been discovered and before the grave offence that is the purpose of this group is committed, shall not be punished.	Art. 74 c.c. (1) The following situations can be deemed as mitigating circumstances: a) the offender's good conduct before committing the offence; b) the offender's endeavour to remove the result of the offence or to repair the damage caused; c) the offender's attitude after committing the offence, shown by his/her appearance before the authority, the sincere behaviour during the trial[...]. (2) The situations enumerated in the present Article are examples.

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Slovakia 	Presence		YES	
	Feature		Exemption/Mitigation, Mandatory/Optional	
	Source		<p>Section 36 c.c. A 'mitigating factor' comprises the fact that an offender has [...] o. contributed to the discovery or conviction of an organised group, a criminal group or a terrorist group.</p> <p>Section 39 (2) The court may also reduce the penalty to below the threshold of the criminal tariff specified by this Act when sentencing an offender [...] b. who has made an important contribution to the investigation of an offence committed for the benefit of a criminal group or a terrorist group or has helped prevent the commissioning of an offence planned or attempted by another person for the benefit of a criminal group or terrorist group by reporting such activity to the law enforcement authorities and providing information which they would not otherwise have obtained and thus helping them to prevent or mitigate the consequences of the offence, identify or convict the offenders or secure evidence of an offence which assists in convicting a criminal group or terrorist group, [...] e. who has made a particularly important contribution to the investigation of [...] the offence of establishing, plotting and supporting a criminal group under Section</p>	

			<p>296 [...] or a particularly serious crime committed by an organised group, criminal group or terrorist group, or for identifying or convicting the offender by providing evidence in criminal proceedings concerning such an act where, with regard to the nature and seriousness of the crime he has committed the court concludes that the purposes of punishment may also be achieved by a sentence of shorter duration; reduction of a prison sentence below the lower threshold of the criminal tariff is not permitted in the case of organisers, abettors or commissioners of an offence in respect of which the person in question provides evidence in criminal proceedings.</p> <p style="text-align: center;">Section 86</p> <p>An offence shall also cease to be punishable where it involves [...]</p> <p>e. establishing, plotting and supporting a criminal group under Section 296 or establishing, plotting and supporting a terrorist group under Section 297, where the offender has made a voluntary report to a law enforcement authority or the Police Force concerning a criminal group or a terrorist group and its activities at a time when the danger posed by its continuing activities may still be eliminated; [...]</p>	
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Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Slovenia 	Presence	YES	YES	YES
	Feature	Exemption/Mitigation, Optional	Mitigation, Optional	Mitigation, Optional
	Source	Section 36 c.c. (1) If the perpetrator has attempted to commit a criminal offence but voluntarily desisted to go through with it, his sentence may be withdrawn. (2) If the perpetrator voluntarily desists from committing a criminal offence, he shall be punished for those acts, which present some other independent criminal offence. (3) The perpetrator may be granted a remission of his sentence if he has sincerely and appropriately endeavoured to prevent the consequences of his act – even if the consequences did not occur for another reason.	Section 294 c.c. [...] (3) A perpetrator of a criminal offence from the preceding paragraphs who [...] discloses information which has a bearing on the investigation and proving of criminal offences that have already been committed, may have his punishment for these offences mitigated, in accordance with Article 51 of this Penal Code.	Section 294 [...] (3) A perpetrator of a criminal offence from the preceding paragraphs who prevents further commission of these offences [...] may have his punishment for these offences mitigated, in accordance with Article 51 of this Penal Code.

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
Spain 	Presence	YES	YES	YES
	Feature	Mitigation, Mandatory	Mitigation, Optional	Mitigation, Mandatory/Optional
	Source	Section 21 c.c. [...] <p>4. Is a mitigating circumstance: the convict having proceeded to confess his crime to the authorities before having knowledge of the judicial proceedings brought against him.</p>	Section 570 quater c.c. [...] <p>4. The Judges or Courts of Law, giving the reasons in their judgement, may impose a lower punishment by one or two degrees on the person responsible for any of the felonies foreseen in this Chapter, as long as the subject has voluntarily quit his criminal activities and has actively collaborated with the authorities or their agents either to obtain decisive evidence for the identification or capture of others who are responsible or to prevent the activities or furtherance of the organisations or groups to which they have belonged or to prevent a felony being committed within or through those organisations or groups.</p> <p>Section 294 c.c. [...]</p> <p>(3) A perpetrator of a criminal offence from the preceding paragraphs who [...] discloses information which has a bearing on the investigation and proving of criminal offences that have already been committed, may have his punishment for these offences mitigated, in accordance with Article 51 of this Penal Code.</p>	Section 21 c.c. [...] <p>(7) Any other circumstance of a similar importance to the aforesaid.</p> <p>Section 294 c.c. [...]</p> <p>(3) A perpetrator of a criminal offence from the preceding paragraphs who prevents further commission of these offences [...] may have his punishment for these offences mitigated, in accordance with Article 51 of this Penal Code.</p>

Member State	Presence of special circumstances	Type of special circumstances		
		<i>Renouncing criminal activity</i>	<i>Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain</i>	<i>Others</i>
United Kingdom 	England, Wales, Northern Ireland	Judicial discretion in determination of sentencing includes consideration of mitigating factors		
	Scotland	Judicial discretion in determination of sentencing includes consideration of mitigating factors		

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Table 4.15: Special circumstances – summary table

Type of special circumstance	Exemption		Mitigation	
	Mandatory	Optional	Mandatory	Optional
Renouncing criminal activity	Austria; Romania	Slovenia	Austria; Estonia; Spain	Ireland; Lithuania; Malta; Slovenia; United Kingdom (all jurisdictions)
Providing the administrative or judicial authorities with information which they would not otherwise have been able to obtain	Belgium; Bulgaria; France; Greece; Hungary; Luxembourg; Poland; Romania; Slovakia	Croatia; Germany; Greece; Portugal	Austria; Bulgaria; Czech Republic; Greece; Latvia; Slovakia; Estonia	Austria; Cyprus; Finland; Germany; Ireland; Lithuania; Malta; Netherlands; Portugal; Romania; Slovakia; Slovenia; Spain; United Kingdom (all jurisdictions)
Others⁶⁷	Poland	Germany; Portugal	Estonia; Czech Republic; Italy; Latvia; Spain;	Ireland; Italy; Latvia; Lithuania; Malta; Portugal; Romania; Slovenia; Spain;; United Kingdom (all jurisdictions)

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

4.6.3. Transposition assessment of Article 4 of the Framework Decision

As presented in Section 4.7.1, Article 4 of the Framework Decision is not binding, since it is stated that MS *may* take the necessary measures. Our research and analysis indicates that all MS⁶⁸ foresee in some circumstances reducing penalties or exempting the offender from penalties for crimes committed in the framework of a criminal organisation.

Table 4.16 graphically illustrates MS transposition of Article 4 of the Framework Decision, in a yes/no format. A 'yes' is assigned if MS legislation envisages at least one type of mitigation/exemption circumstance.

⁶⁷ For details see Appendix A, containing all relevant quotations from the national legislation, and Table 4.13.

⁶⁸ This excludes Denmark and Sweden, which have not introduced any self-standing offences which could form the basis for the application of Article 4. See Section 4.4 above and Chapter 5 for more details.

Table 4.16: MS transposition of the standard set in Article 4 of Framework Decision 2008/841/JHA

Member State	Special circumstances	Member State	Special circumstances
Austria 	YES	Italy 	YES
Belgium 	YES	Latvia 	YES
Bulgaria 	YES	Lithuania 	YES
Croatia 	YES	Luxembourg 	YES
Cyprus 	YES	Malta 	YES
Czech Republic 	YES	Netherlands 	YES
Estonia 	YES	Poland 	YES
Finland 	YES	Portugal 	YES
France 	YES	Romania 	YES
Germany 	YES	Slovakia 	YES
Greece 	YES	Slovenia 	YES
Hungary 	YES	Spain 	YES
Ireland 	YES	United Kingdom 	YES (all jurisdictions)

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

4.7. Liability of legal persons for offences relating to participation in a criminal organisation (Article 5)

4.7.1. Standard and elements – liability of legal persons

The fourth 'legal minimum standard' presented in the Framework Decision relates to the liability of legal persons for offences relating to participation in a criminal organisation. It is outlined in Article 5, and reads as follows:

'1. Each Member State shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Article 2 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Article 2 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who are perpetrators of, or accessories to, any of the offences referred to in Article 2.

4. For the purpose of this Framework Decision 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.'

In order to map MS criminal law with reference to the legal minimum standard set in Article 5 of the Framework Decision and to assess transposition of this standard, the following elements are to be taken into account:

- 1) Individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation (different categories are identified: e.g. people having a power of representation; people with authority to take decisions; people with authority to exercise control).
- 2) Lack of supervision, i.e. if the legal persons may be held liable where the lack of supervision or control by a person under the previous element has made possible the commission, by a person under its authority, of an offence relating to participation in a criminal organisation.
- 3) No prejudice from proceedings against legal persons to criminal proceedings against natural persons, who are perpetrators of, or accessories to, any of the offences relating to participation in a criminal organisation.
- 4) Scope of application, i.e. the body that can be held liable is any entity having legal personality under the applicable national law, with the exception of State, public bodies, or international organisations.

This provision concerns the liability of legal persons limited to the offences related to a criminal organisation (Article 2). It refers to offences committed by a person having a key role/position within the legal person or as a result of lack of supervision by a person under the authority of the former. All three elements mentioned above are binding on

the MS. At the same time this provision, unlike the previous Framework Decision provisions, does not require the introduction of criminal law measures. The Article refers to 'liability', which is not necessarily of criminal nature. In this way the Framework Decision follows the example set by numerous previously adopted criminal law instruments which are flexible in terms of type of liability foreseen for legal persons in a particular MS. The Framework Decision does not state any preference in this regard, leaving the MS the possibility of making their own choices.

4.7.2. Mapping of MS legislation – liability of legal persons

Table 4.17 summarises how MS legislation deals with all three of the issues relating to 'liability of legal persons' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.17: Liability of legal persons

Member State	Liability of legal persons							
Austria 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	YES	YES	explicit mention	YES
	<i>source: Sections 2 and 3 below</i>	<i>source: Sections 2 and 3 below</i>	<i>source: Sections 2 and 3 below</i>	<i>source: Sections 2 and 3 below</i>	<i>source: Section 3 below</i>	<i>source: Section 3 below</i>	<i>source: Section 1 below</i>	
<p style="text-align: center;">Federal Law on the Criminal Liability of Associations</p> <p style="text-align: center;">Section 1 [...]</p> <p>(2) For the purpose of this law associations shall mean legal persons, registered partnerships and European Economic Interest Groupings. (3) For the purpose of this law the following shall not be associations:</p> <ol style="list-style-type: none"> 1. a (deceased person's) estate; 2. the federal state, provinces and municipalities and other legal persons in so far as they enforce laws; 3. recognised churches, religious societies and religious communities in so far as they are engaged in pastoral care. <p style="text-align: center;">Section 2</p> <p>(1) For the purpose of this law a decision-maker shall mean a person who</p> <ol style="list-style-type: none"> 1. is a managing director, an executive board member or authorised representative, or who is authorised in a comparable manner to represent the association in external dealings either according to statutory or corporate power of representation, 2. is a member of the supervisory board or board of directors or otherwise exercises controlling powers in a leading position, or 3. otherwise exercises significant influence on the management of the association. <p>(2) For the purpose of this law an employee shall mean a person who works for the association</p> <ol style="list-style-type: none"> 1. on the basis of an employment, apprentice or other training relationship, 2. on the basis of a relationship that is subject to the provisions of the 1960 Law on Home Working [Heimarbeitsgesetz], BGBl. No. 105/1961, or that is of an employee-like status, 3. as an employee provided on a temporary basis as defined in § 3(4) of the Temporary Employment Law, BGBl. No 196/1988, or 4. on the basis of a service relationship or other special public-law relationship. 								

Section 3

- (1) Subject to the additional conditions laid down in paragraphs 2 or 3, an association shall be liable for a criminal offence if
1. the offence was committed for its benefit or
 2. as a result of the act, duties incumbent on the association have been infringed.
- (2) The association shall be liable for offences committed by a decision-maker if the decision-maker as such acted unlawfully and culpably.
- (3) The association shall be liable for criminal offences of employees if
1. the facts and circumstances which correspond to the statutory definition of an offence have been realised in an illegal manner; the association shall be liable for an offence that requires wilful action only if an employee has acted with wilful intent, and for a criminal offence for which negligent action is a condition only if an employee has failed to apply the due care required in the respective circumstances; and
 2. committing the offence was made possible or considerably easier due to the fact that decision-makers failed to apply the due and reasonable care required in the respective circumstances, in particular by omitting to take material technical, organisational or staff-related measures to prevent such offences.
- (4) Liability of an association for an offence and criminal liability of decision-makers or employees on grounds of the same offence shall not be mutually exclusive.

Member State	Liability of legal persons							
Belgium 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	YES	NO	explicit mention	YES
		<i>source: Section 5 below</i>	<i>source: Section 5 below</i>	<i>source: Section 5 below</i>	<i>source: Section 5 below</i>	<i>source: not applicable</i>	<i>source: Section 5 below</i>	<i>source: Section 5 below</i>
<p style="text-align: center;">Criminal Code Section 5</p> <p>Toute personne morale est pénalement responsable des infractions qui sont intrinsèquement liées à la réalisation de son objet ou à la défense de ses intérêts, ou de celles dont les faits concrets démontrent qu'elles ont été commises pour son compte.</p> <p>Lorsque la responsabilité de la personne morale est engagée exclusivement en raison de l'intervention d'une personne physique identifiée, seule la personne qui a commis la faute la plus grave peut être condamnée. Si la personne physique identifiée a commis la faute sciemment et volontairement, elle peut être condamnée en même temps que la personne morale responsable.</p> <p>Sont assimilées à des personnes morales :</p> <p>1° les associations momentanées et les associations en participation;</p> <p>2° les sociétés visées à l'Article 2, alinéa 3, des lois coordonnées sur les sociétés commerciales, ainsi que les sociétés commerciales en formation;</p> <p>3° les sociétés civiles qui n'ont pas pris la forme d'une société commerciale.</p> <p>Ne peuvent pas être considérées comme des personnes morales responsables pénalement pour l'application du présent Article : l'Etat fédéral, les régions, les communautés, les provinces, l'agglomération bruxelloise, les communes, les zones pluricommunales, les organes territoriaux intra-communaux, la Commission communautaire française, la Commission communautaire flamande, la Commission communautaire commune et les centres publics d'aide sociale.</p>								

Member State	Liability of legal persons							
Bulgaria 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, non criminal	YES <i>source: Section 83a below</i>	YES <i>source: Section 83a below</i>	YES <i>source: Section 83a below</i>	YES <i>source: Section 83a below</i>	NO <i>source: not applicable</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 83a below</i>
Law on Administrative Violations and Administrative Penalties								
Section 83a								
(1) Legal persons that have or would have enriched themselves as a result of one of the criminal offences described in Articles (...), 320 to 321a, (...) of the Criminal Code, or as a result of any criminal offence committed on instructions from or pursuant to a decision of an organised criminal group, if the perpetrator is: <ol style="list-style-type: none"> 1. a natural person authorised to make decisions on behalf of the legal person; 2. a natural person representing the legal person; 3. a natural person, elected to a supervisory board of the legal person, or 4. an employee to whom the legal person has assigned a certain task, if the offence was committed during or in connection with the performance of this task; shall be subject to a fine of up to BGN 1,000,000 which shall be at least equivalent to the benefit in question if it is material in nature, or, if the benefit is not material in nature or its value cannot be established, the fine shall be BGN 5,000 to 100,000.								
(2) The fine shall also be imposed on the legal person if the persons referred to in Paragraph (1) items 1, 2 and 3 have aided or abetted the commission of the above acts, even if the said acts were stopped at the stage of attempt.								
(3) The fine shall be imposed regardless of the materialisation of the criminal liability of the perpetrator of the offence referred to in Paragraph 1.								
(4) The benefit or its equivalent shall be forfeited to the state, if not subject to return or restitution, or forfeiture under the Criminal Code.								
(5) The state, state authorities and local government authorities, and international organisations shall not be liable to the fines referred to in paragraph 1.								

Member State	Liability of legal persons							
Croatia 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	NO <i>source: not applicable</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 6 below</i>
<p style="text-align: center;">Act on the Responsibility of Legal Person for the Criminal Offences</p> <p style="text-align: center;">Section 4</p> <p style="text-align: center;">The responsible person within the meaning of this Act is a natural person in charge of the operations of the legal person or entrusted with the tasks from the scope of operation of the legal person.</p> <p style="text-align: center;">Section 5</p> <p style="text-align: center;">Responsibility of legal person is based on the guilt of the responsible person. The legal person shall be punished for the criminal Offence of the responsible person also in cases when the existence of legal or actual obstacles for establishing of responsibility of responsible person is determined.</p> <p style="text-align: center;">Section 6</p> <p style="text-align: center;">The Republic of Croatia as a legal person may not be punished for a criminal offence. Units of local and regional self-government may be punished only for criminal offences that have not been committed in their execution of public authority.</p>								

Member State	Liability of legal persons
Cyprus 	National provision regarding the liability of legal persons in CY do not cover the offence of participation in a criminal organisation.

Member State	Liability of legal persons							
Czech Republic 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 8 below</i>	YES <i>source: Section 8 below</i>	YES <i>source: Section 8 below</i>	YES <i>source: Section 8 below</i>	YES <i>source: Section 8 below</i>	explicit mention <i>source: Section 9 below</i>	YES <i>source: Section 6 below</i>
<p style="text-align: center;">Act No. 418/2011 Coll. on Criminal Liability of Legal Person and Proceedings against Them</p> <p style="text-align: center;">Section 6</p> <p style="text-align: center;">(1) Following legal persons are not criminally liable according to this Act:</p> <p style="text-align: center;">a) Czech Republic;</p> <p style="text-align: center;">b) local self-governing entities while exercising public authority.</p> <p style="text-align: center;">(2) Share of legal persons stipulated in Paragraph 1 in (another) legal person does not preclude criminal liability of such legal person under this Act.</p> <p style="text-align: center;">Section 8</p> <p>(1) Criminal act committed by a legal person is an unlawful act committed in its name or in its interest or within its activity, if committed by</p> <p style="margin-left: 20px;">a) statutory body or member of the statutory body or the person entitled to act on behalf of or for the legal person,</p> <p style="margin-left: 20px;">b) a person performing managerial or controlling activity within the legal person, even if he/she is not a person as mentioned in Letter a),</p> <p style="margin-left: 20px;">c) a person with a decisive authority on management of this legal person, if his/her act was at least one of the conditions leading to a consequence establishing criminal liability of a legal person, or</p> <p style="margin-left: 20px;">d) employee or a person with similar status (thereinafter 'employee') while fulfilling his/her duties/tasks, even if he/she is not a person as mentioned in Letters a) to c),</p> <p style="margin-left: 40px;">given that the act can be attributed to the legal person in accordance with Paragraph 2.</p> <p>(2) Commitment of a criminal act as specified in Section 7 can be attributed to a legal person, if committed by</p> <p style="margin-left: 20px;">a) action of bodies or persons mentioned in Paragraph 1 letters a) to c), or</p> <p style="margin-left: 20px;">b) an employee mentioned in Paragraph 1 Letter d) on the grounds of a decision, approval or guidance of bodies of the legal person or persons mentioned in Paragraph 1 Letters a) to c), or because the bodies of the legal person or persons mentioned in Paragraph 1 Letters a) to c) did not take measures required by other legal regulation or that can be justly required, namely that they did not perform obligatory or</p>								

necessary control (supervision) over the activities of employees or other persons, they are superiors to, or they did not take necessary measures to prevent or stave off the consequences of a committed criminal act.

(3) Criminal liability of a legal person is not obstructed by the fact that a concrete natural person who has acted in a way specified in Paragraphs 1 and 2 cannot be identified.

(4) Provisions of Paragraphs 1 and 2 will apply also if

- a) the activity specified in Paragraphs 1 and 2 took place prior to establishing the legal person,
- b) the legal person has been established but the court decided on nullity of the legal person,
- c) the legal act establishing authorisation for action on the legal persons behalf is invalid or ineffective, or
- d) the acting natural person is not (held) criminally liable for such criminal act.

Section 9

[...]

(3) Criminal liability of legal person does not affect criminal liability of natural persons specified in Section 8 Paragraph 1 and criminal liability of these natural persons does not affect criminal liability of the legal person. If the criminal act has been committed by means of a joint action of more persons, where at least one of them was a legal person, every each one of these persons is liable as if the person committed the act on its own.

Member State	Liability of legal persons							
Estonia 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	NO	NO	explicit mention	YES
		<i>source: Section 14 below</i>	<i>source: Section 14 below</i>	<i>source: Section 14 below</i>	<i>source: not applicable</i>	<i>source: not applicable</i>	<i>source: Section 14 below</i>	<i>source: Section 14 below</i>
<p style="text-align: center;">Criminal code</p> <p style="text-align: center;">Section 14</p> <p>(1) In the cases provided by law, a legal person shall be held responsible for an act which is committed in the interests of the legal person by its body, a member thereof, or by its senior official or competent representative.</p> <p>(2) Prosecution of a legal person does not preclude prosecution of the natural person who committed the offence.</p> <p>(3) The provisions of this Act do not apply to the state, local governments or to legal persons in public law.</p>								

Member State	Liability of legal persons							
Finland 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Sections 2 and 3 below</i>	YES <i>source: Sections 2 and 3 below</i>	YES <i>source: Sections 2 and 3 below</i>	YES <i>source: Sections 2 and 3 below</i>	YES <i>source: Section 2 below</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 1 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Chapter 9</p> <p style="text-align: center;">Section 1</p> <p>(1) A corporation, foundation or other legal entity in whose operations an offence has been committed may, at the request of the public prosecutor, be sentenced to a corporate fine if this Code provides for such a sanction for the offence (441/2011). (2) The provisions of this Chapter do not apply to offences committed in the exercise of public authority.</p> <p style="text-align: center;">Section 2</p> <p>(1) A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation. (2) A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished. However, no corporate fine shall be imposed for a complainant offence which is not reported by the injured party so as to have charges brought, unless there is a very important public interest for the bringing of charges.</p> <p style="text-align: center;">Section 3</p> <p>(1) The offence is deemed to have been committed in the operations of a corporation if the perpetrator has acted on the behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation. (2) The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on statutes on corporations and foundations.</p>								

Member State	Liability of legal persons							
France 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	NO	NO	explicit mention	YES
		<i>source: Section 121-2 below</i>	<i>source: Section 121-2 below</i>	<i>source: Section 121-2 below</i>	<i>source: not applicable</i>	<i>source: not applicable</i>	<i>source: Section 121-2 below</i>	<i>source: Section 121-2 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 121-2</p> <p style="text-align: center;">Legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives, according to the distinctions set out in Articles 121-4 and 121-7. However, local public authorities and their associations incur criminal liability only for offences committed in the course of their activities which may be exercised through public service delegation conventions. The criminal liability of legal persons does not exclude that of any natural persons who are perpetrators or accomplices to the same act, subject to the provisions of the fourth paragraph of Article 121-3.</p>								

Member State	Liability of legal persons							
Germany 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, non criminal	YES <i>source: Section 30 below</i>	YES <i>source: Section 30 below</i>	NO <i>source: not applicable</i>	YES <i>source: Section 30 below</i>	YES <i>source: Section 130 below</i>	no mention <i>source: not applicable</i>	YES <i>source: Sections 30 and 130 below</i>
<p style="text-align: center;">Administrative Offences Act of the Federal Republic of Germany</p> <p style="text-align: center;">Section 30</p> <p style="text-align: center;">(1) If a person</p> <ol style="list-style-type: none"> 1. acting in the capacity of an agency authorised to represent a legal entity, or as a member of such an agency, 2. as the board of an association not having legal capacity, or as a member of such a board, 3. as a partner of a commercial partnership authorised to represent, or 4. as the fully authorised representative or in a leading position as a procura holder, or as general agent of a legal entity or of an association as specified in Nos. 2 or 3 <p>has committed a criminal or administrative offence by means of which duties incumbent upon the legal entity or the association have been violated, or the legal entity or the association has gained or was supposed to gain a profit, a fine may be imposed on the latter.</p> <p style="text-align: center;">[...]</p> <p>(4) If criminal proceedings or administrative fine proceedings in respect of the criminal or administrative offence are not initiated, or if they are discontinued, or if no punishment is deemed appropriate, the fine may be assessed separately. It may be specified by means of a statute that the fine may also be assessed separately in further cases. Separate assessment of a fine on the legal entity or association shall however be ruled out if the criminal or administrative offence cannot be prosecuted for legal reasons; section 33 subsection 1 second sentence shall remain unaffected.</p> <p style="text-align: center;">Section 130</p> <p>(1) Whoever, as the owner of a firm or an enterprise, wilfully or negligently fails to take the supervisory measures required to prevent contravention of duties in the firm or the enterprise which concern the owner in this capacity, and the violation of which is punishable by a penalty or a fine, shall be deemed to have committed an administrative offence if such a contravention is committed which could have been prevented or made much more difficult by proper supervision. The required supervisory measures shall also comprise appointment, careful selection and surveillance of supervisory personnel.</p>								

	<p>(2) A firm or an enterprise in accordance with subsections 1 and 2 shall include a public enterprise.</p> <p>(3) If the administrative offence is subject to punishment, it may be punished by a fine not exceeding one million Euros. If the violation of duty is punishable by a fine, the maximum amount of the fine for a violation of obligatory supervision shall be dependent on the maximum amount of the fine provided for the violation of duty. The second sentence shall also apply in the event of a breach of duty which at the same time is punishable by a penalty and a fine if the maximum amount of the fine is in excess of the maximum amount in accordance with the first sentence.</p>
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Member State	Liability of legal persons							
Greece 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, non criminal	YES <i>source: Section 41 below</i>	YES <i>source: Section 41 below</i>	YES <i>source: Section 41 below</i>	NO <i>source: not applicable</i>	YES <i>source: Section 41 below</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 41 below</i>
Law 3251/2004 Section 41 (1) If a criminal act referred to in Articles 187 and 187A of the Penal Code was committed via or for the benefit or on behalf of a legal entity by a natural person acting either individually or as a member of an organ of the legal entity with a leading position within it based on powers of representation thereof or the authority to take decisions on its behalf or to exercise control within it, the following penalties shall be imposed on the legal entity, either cumulatively or alternatively, by joint decision of the Minister for Justice, Transparency and Human Rights and the Minister for Citizen Protection: i) an administrative fine of between EUR 50,000 (fifty thousand) and EUR 5,000,000 (five million); ii) permanent or temporary withdrawal for between one month and two years or suspension of the business licence or a ban on business activities; iii) a ban on certain business activities or the establishment of branches or increases in share capital for the same period of time; iv) permanent or temporary exclusion for the same period of time from public procurement, aid, grants, works, service and supply contracts, advertisements and government and broader public-sector competitions. The administrative fine referred to in point (i) shall always be imposed, irrespective of any other penalties. (2) The above penalties shall also be imposed if one of the crimes referred to in Article 187(1) of the Penal Code was committed by a criminal organisation on behalf of a legal entity with the involvement of a natural person referred to in the previous paragraph. (3) Where lack of supervision or control by a natural person referred to in paragraph 1 makes it possible for a hierarchically lower person to commit an offence referred to in paragraphs 1 and 2 via or for the benefit or on behalf of a legal entity, the following penalties shall be imposed, either cumulatively or alternatively, on the legal entity: - an administrative fine of between EUR 10,000 (ten thousand) and EUR 1,000,000 (one million); - The penalties referred to in points (ii), (iii) and (iv) for up to six months. [...] (5) The provisions of the previous paragraphs shall apply irrespective of any civil, disciplinary or criminal liability on the part of the natural								

	<p>persons referred to therein.</p> <p>(6) The prosecution and police authorities shall inform the Ministry for Justice, Transparency and Human Rights of cases in which a legal entity within the meaning of paragraphs 1 to 3 was involved in the commission of the crimes referred to in Articles 187 and 187A of the Penal Code and of any court judgments passed.</p>
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Member state	Liability of legal persons							
Hungary 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 2 below</i>	YES <i>source: Section 2 below</i>	YES <i>source: Section 2 below</i>	YES <i>source: Section 2 below</i>	YES <i>source: Section 2 below</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 1 below</i>
<p style="text-align: center;">Act 104 of 2001 on Measures Applicable to Legal Entities Under Criminal Law</p> <p style="text-align: center;">Section 1</p> <p style="text-align: center;">(1) For the purposes of this Act</p> <p>1. 'Legal entities' shall be understood as any organization or organizational units thereof vested with rights of individual representation, which the governing rules of law recognise as legal entities, as well as organizations that can be subject to conditions of civil law in their own right and possess assets distinct from that of their members, including companies active prior to registration pursuant to the Act on Economic Associations, [...]</p> <p>(2) This act shall not apply to the State of Hungary, foreign states, the institutions listed in the Constitution of the Republic of Hungary, the Office of the National Assembly, the Office of the President of the Republic, the Office of the Ombudsmen, and any bodies which are, according to the law, responsible for tasks of governance, public administration and local government administration, and international organizations established under international agreements.</p> <p style="text-align: center;">Section 2</p> <p>(1) The measures defined in the present act are applicable to legal entities in the event of perpetration of any intentional criminal act defined in Act IV of 1978 on the Criminal Code if the perpetration of such an act was aimed at or has resulted in the legal entity gaining benefit, and the criminal act was committed by</p> <p>(a) the legal entity's executive officer, its member, employee, officer, managing clerk entitled to represent it, its supervisory board member and/or their representatives, within the legal entity's scope of activity, (b) a member or employee of the legal entity within its scope of activity, and could have been prevented by the executive officer, the managing clerk or the supervisory board by fulfilling his/her/its supervisory or control obligations.</p> <p>(2) Other than in the cases defined in paragraph (1), the measures defined in this act shall be applicable also if perpetration of the criminal act resulted in the legal entity gaining benefit and the legal entity's executive officer or member, employee, officer or managing clerk</p>								

	entitled to represent it or its supervisory board member had knowledge of perpetration of the criminal act.
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Member State	Liability of legal persons							
Ireland 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	YES	YES	no mention	YES
	<i>source: Section 76 below</i>	<i>source: Section 76 below</i>	<i>source: Section 76 below</i>	<i>source: Section 76 below</i>	<i>source: Section 76 below</i>	<i>source: not applicable</i>	<i>source: Section 76 below</i>	
Criminal Justice Act 2006								
Section 76								
<p>(1) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person, being a director, manager, secretary or any other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.</p> <p>(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.</p>								

Member State	Liability of legal persons							
Italy 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, non criminal	YES <i>source: Section 5 below</i>	YES <i>source: Section 5 below</i>	YES <i>source: Section 5 below</i>	YES <i>source: Section 5 below</i>	YES <i>source: Sections 6 and 7 below</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 1 below</i>
<p style="text-align: center;">Legislative Decree 231 of 8 June 2001</p> <p style="text-align: center;">Section 1</p> <p>(1) This Legislative Decree disciplines the liability of legal bodies for administrative violations dependant from criminal offences (2) The provisions of this Decree are applied to legal persons and to corporates and associations that are not legal persons (3) The provisions of this Decree are not applied to State, local bodies, public bodies without economic nature and public bodies that carry out activities of constitutional relevance</p> <p style="text-align: center;">Section 5</p> <p>(1) The legal person will be held liable for offences committed in its interest or to its advantage: a) by persons exercising the functions of representation, administration or management of the legal person or of one of its organisational units having financial and functional autonomy, as well as by persons exercising the formal or de facto management and control thereof; b) by persons under the management or supervision of one of the persons referred to in a). 2. The legal person will not be held liable if the persons indicated in paragraph 1 have acted in their own exclusive interest or in the interest of third parties.</p> <p style="text-align: center;">Section 6</p> <p>1. If the crime has been committed by the persons indicated at section 5, par. 1, letter a), the body shall not be considered liable if it proves that: a) the leading organ adopted and efficiently enacted, before the commission of the fact, organisation and management models able to prevent offences of the same kind of the one occurred; b) the task of controlling the functioning and the respect of models and their updating has been given to an organ of the body with autonomous control powers; c) the persons committed the crimes fraudulently eluding the organisation and management models;</p>								

	<p>d) if there has not been insufficient or omitted control by the organ envisaged at letter b) [...]</p> <p>Section 7</p> <p>1. In the case envisaged by section 5, par. 1, letter b), the body shall be considered liable if the commission of the offence has been enabled by the non respect of the direction or control duties.</p> <p>2. In any case, the non respect of the direction or control duties shall be excluded if the body, before the commission of the offence, adopted organisation and management models able to prevent offences of the same kind of the one occurred. [...]</p> <p>Section 8</p> <p>1. The liability for the body shall be existent also when:</p> <p>a) the author of the offence has not been identified or is not indictable; [...]</p>
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Member State	Liability of legal persons							
Latvia 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 70.1 below</i>	YES <i>source: Section 70.1 below</i>	YES <i>source: Section 70.1 below</i>	NO <i>source: not applicable</i>	YES <i>source: Section 70.1 below</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 70.1 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 70.1</p> <p>For the criminal offences provided for in the Special Part of this Law, a court or in the cases provided for by the Law – a public prosecutor may apply a coercive measure to a legal person governed by private law, including State or local government capital company, as well as partnership, if a natural person has committed the offence in the interests of the legal person, for the sake of the person or as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person:</p> <ol style="list-style-type: none"> 1) on the basis of the right to represent the legal person or act on the behalf thereof; 2) on the basis of the right to take a decision on behalf of the legal person; 3) in implementing control within the scope of the legal person. 								

Member State	Liability of legal persons							
Lithuania 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	NO	YES	explicit mention	YES
		<i>source: Section 20 below</i>	<i>source: Section 20 below</i>	<i>source: Section 20 below</i>	<i>source: not applicable</i>	<i>source: Section 20 below</i>	<i>source: Section 20 below</i>	<i>source: Section 20 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 20</p> <p>(1) A legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code.</p> <p>(2) A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying an executive position in the legal entity, was entitled:</p> <ol style="list-style-type: none"> 1) to represent the legal entity, or 2) to take decisions on behalf of the legal entity, or 3) to control activities of the legal entity. <p>(3) A legal entity may be held liable for criminal acts also where they have been committed by an employee or authorised representative of the legal entity as a result of insufficient supervision or control by the person indicated in paragraph 2 of this Article.</p> <p>(4) Criminal liability of a legal entity shall not release from criminal liability a natural person who has committed, organised, instigated or assisted in commission of the criminal act.</p> <p>(5) The State, a municipality, a state and municipal institution and agency as well as international public organisation shall not be held liable under this Code.</p>								

Member State	Liability of legal persons							
Luxembourg 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	NO	NO	explicit mention	YES
		<i>source: Section 34 below</i>	<i>source: Section 34 below</i>	<i>source: Section 34 below</i>	<i>source: not applicable</i>	<i>source: not applicable</i>	<i>source: Section 34 below</i>	<i>source: Section 34 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 34</p> <p>Lorsqu'un crime ou un délit est commis au nom et dans l'intérêt d'une personne morale par un de ses organes légaux ou par un ou plusieurs de ses dirigeants de droit ou de fait, la personne morale peut être déclarée pénalement responsable et encourir les peines prévues par les Articles 35 à 38. La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions. Les alinéas précédents ne sont pas applicables à l'Etat et aux communes.</p>								

Member State	Liability of legal persons							
Malta 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 83A below</i>	YES <i>source: Section 83A below</i>	YES <i>source: Section 83A below</i>	NO <i>source: not applicable</i>	NO <i>source: not applicable</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 83A below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 83A [...]</p> <p style="text-align: center;">(4) Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable as follows: [...]</p>								

Member State	Liability of legal persons							
Netherlands 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	YES	YES The national expert stated that: 'In the jurisprudence the criminal liability of leading staff of a legal person has evolved into a broad criminal liability principle. Briefly: liable are those who act (first level); make other people/staff to commit crime(s) (second level); or did not prevent people/staff committing	explicit mention	YES

						crime(s) if these acts are within the general assignment of the operations of the legal person (general level), also if the manager was not informed of the actual commitment of those acts.'		
		<i>source: Section 51 below</i>	<i>source: jurisprudence</i>	<i>source: Section 51 below</i>	<i>source: Section 51 below</i>			
Criminal Code								
<p>Section 51</p> <p>(1) Criminal offences can be committed by natural persons and legal persons.</p> <p>(2) If a criminal offence is committed by a legal person, criminal proceedings may be instituted and such punishments and measures as prescribed by law, where applicable, may be imposed:</p> <p style="padding-left: 40px;">1°. on the legal person; or</p> <p style="padding-left: 40px;">2°. on those persons who have ordered the commission of the criminal offence, and on those persons who actually directed the unlawful acts; or</p> <p style="padding-left: 40px;">3° on the persons referred to in 1° and 2° jointly.</p> <p>(3) In the application of the preceding subsections, the following shall be considered as equivalent to the legal person: the unincorporated company, the partnership, the shipping company and the special purpose fund.</p>								

Member State	Liability of legal persons							
Poland 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, non criminal	YES <i>source: Section 3 below</i>	YES <i>source: Section 3 below</i>	YES <i>source: Section 3 below</i>	YES <i>source: Section 3 below</i>	YES <i>source: Section 5 below</i>	explicit mention <i>source: Section 6 below</i>	YES <i>source: Section 2 below</i>
<p style="text-align: center;">Act on the Liability of Collective Entities for Acts Prohibited Under Penalty</p> <p style="text-align: center;">Section 2</p> <p>A collective entity, as understood in the Act, denotes a legal person and/or organisational entity without personality at law for which specific legal provisions grant legal capacity, except for the State Treasury, local self-government units and their associations.</p> <p>A collective entity, as understood in the Act, also denotes a commercial company with equity participation of the State Treasury, a local self-government unit or an association thereof, a commercial company in organisation, an entity in liquidation, and an entrepreneur other than a natural person, as well as a foreign organisational entity.</p> <p style="text-align: center;">Section 3</p> <p>The collective entity shall be liable for a prohibited act consisting in conduct of a natural person who:</p> <ol style="list-style-type: none"> 1) acts in the name or on behalf of the collective entity under the authority or duty to represent it, to make decisions in its name, or to exercise internal control, or whenever such person abuses the authority or neglects the duty, 2) is allowed to act as the result of abuse of the authority or neglecting of the duty by the person referred to in point 1 above, 3) acts in the name or on behalf of the collective entity on consent or at the knowledge of the person referred to in point 1, <ol style="list-style-type: none"> 3a) being an entrepreneur, which directly interacts with the collective entity in achieving the legally permissible goal, <ul style="list-style-type: none"> - if such conduct did or could have given the collective entity an advantage, even of non-financial nature <p style="text-align: center;">Section 5</p> <p>The collective entity shall be held liable if the offence has been committed in the effect of:</p> <ol style="list-style-type: none"> 1) at least absence of due diligence in electing the natural person referred to in Section 3. point 2 or 3. point 3, or of at least the absence of due supervision over this person, by an authority or a representative of the collective entity. 2) business organization of a collective entity which has not assured to avoid the offence by the person referred to in Section 3 point 1 or 								

	<p>3a, while it could provide due diligence required under the circumstances, by the authority or the representative of the collective entity.</p> <p style="text-align: center;">Section 6</p> <p>Neither the existence nor non-existence of liability of the collective entity under the principles set forth in this Act shall exclude civil liability for the inflicted damage, administrative liability, or personal legal responsibility of the perpetrator of the prohibited act.</p>
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Member State	Liability of legal persons							
Portugal 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 11 below</i>	YES <i>source: Section 11 below</i>	YES <i>source: Section 11 below</i>	NO <i>source: not applicable</i>	YES <i>source: Section 11 below</i>	explicit mention <i>source: Section 11 below</i>	YES <i>source: Section 11 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 11</p> <p>(1) Unless otherwise stated and with the exception of the following provisions, only individuals are liable to criminal responsibility.</p> <p>(2) Legal persons and equivalent entities, with exception of the State, public legal persons and international public law organisations, are liable for the offences concerned in Articles 152 -A and 152-B, 159 and 160, 163 and 166, if the victim is a minor, and Articles 168, 169, 171 to 176, 217 to 222, 240, 256, 258, 262 to 283, 285, 299, 335, 348, 353, 363, 367, 368-A and 372 to 374, when committed:</p> <p style="margin-left: 40px;">a) In behalf and in the interest of the legal person by someone who is in a leadership position within that legal person; or</p> <p style="margin-left: 40px;">b) By someone acting under the authority of those in a leadership position within that legal person as a result of a violation of their duties of surveillance or control.</p> <p style="margin-left: 40px;">(3) By 'public legal persons' to the extent of criminal law, the expression covers:</p> <p style="margin-left: 80px;">a) Legal persons constituted under public law, including public companies;</p> <p style="margin-left: 80px;">b) Entities who hold a public service concession;</p> <p style="margin-left: 80px;">c) Other legal persons granted prerogatives of public powers.</p> <p>(4) The holders of corporate bodies, representatives of the legal person and those in control of its activity are considered as holders of a leadership position.</p> <p>(5) To criminal liability extent, civil societies and de facto associations are equivalent to a legal person.</p> <p>(6) The liability of a legal person is excluded when the perpetrator has acted against direct orders or instructions of those who are legally responsible.</p> <p>(7) The liability of a legal person does not exclude the individual liability of the agents and it is not determined by their individual liability.</p> <p>(8) Mergers or divisions do not lead to the extinction of criminal liability of a legal person, being liable:</p> <p style="margin-left: 40px;">a) The legal person resulted from the merger; and</p> <p style="margin-left: 40px;">b) All legal persons resulting from the division.</p>								

	<p>(9) Individuals in a leadership position are, in a subsidiary way, liable for fines and civil compensation determined against the legal person, keeping the right of recovery, regarding offences:</p> <ul style="list-style-type: none">a) Committed during the period of their mandate, without their direct opposition;b) Committed before, when they are held responsible for the incapacity of the legal person correspond to the expected
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Member State	Liability of legal persons							
Romania 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	YES	NO	explicit mention	YES
		<i>source: Section 135 below</i>	<i>source: Section 135 below</i>	<i>source: Section 135 below</i>	<i>source: Section 135 below</i>	<i>source: not applicable</i>	<i>source: Section 135 below</i>	<i>source: Section 135 below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 135</p> <p>(1) Legal persons, except for state and public authorities are criminally liable for crimes committed in the realization of their main activity or in the interest or in the name of the legal person.</p> <p>(2) Public institutions are not criminally liable for offences committed in the exercise of activities that may not be done in the private sector.</p> <p>(3) The liability of the legal person does not exclude the criminal liability of the natural person that contributed to the commission of the respective crime.</p>								

Member State	Liability of legal persons							
Slovakia 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	YES	NO	YES	no mention	YES
		<i>source: Sections 83a and 83b below</i>	<i>source: Sections 83a and 83b below</i>	<i>source: Sections 83a and 83b below</i>	<i>source: Sections 83a and 83b below</i>	<i>source: Sections 83a and 83b below</i>	<i>source: not applicable</i>	<i>source: Sections 83a and 83b below</i>
<p style="text-align: center;">Criminal Code Section 83a</p> <p style="text-align: center;">(1) Court may impose the confiscation of a specific sum of money on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence in connection with:</p> <p style="text-align: center;">a) exercising the right to represent that legal person b) exercising the right to make decisions in the name of that legal person c) exercising the right to carry out the control within that legal person, or d) negligence concerning the supervision or due diligence within that legal person. [...]</p> <p style="text-align: center;">Section 83b</p> <p style="text-align: center;">(1) Court shall impose the confiscation of a property on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence as described in Article 58 paragraph 2 and if the legal person gained the property or its part by a crime or from proceeds of a crime, in connection with:</p> <p style="text-align: center;">a) exercising the right to represent that legal person b) exercising the right to make decisions in the name of that legal person c) exercising the right to carry out the control within that legal person, or d) negligence concerning the supervision or due diligence within that legal person. [...]</p>								

Member State	Liability of legal persons							
Slovenia 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	YES <i>source: Section 4 below</i>	explicit mention <i>source: Section 5 below</i>	YES <i>source: Section 2 below</i>
<p style="text-align: center;">Liability of Legal Persons for Criminal Offences Act</p> <p style="text-align: center;">Section 2</p> <p>(1) The Republic of Slovenia and local communities of self-government as legal persons shall not be liable for criminal offences.</p> <p>(2) For legal persons not included under the preceding paragraph the statute may stipulate that for a specific criminal offence all or only certain types of legal persons are liable.</p> <p style="text-align: center;">Section 4</p> <p>A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or in favour of the legal person:</p> <ol style="list-style-type: none"> 1. If the committed criminal offence means carrying out an unlawful resolution, order or endorsement of its management or supervisory bodies; 2. If its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence; 3. If it has at his disposal unlawfully obtained property benefit or uses objects obtained through a criminal offence; 4. If its management or supervisory bodies have omitted due supervision of the legality of the actions of employees subordinate to them. <p style="text-align: center;">Section 5</p> <p>(1) Under the conditions under the preceding Article a legal person shall also be liable for a criminal offence if the perpetrator is not criminally liable for the committed criminal offence.</p> <p>(2) The liability of a legal person does not preclude the criminal liability of natural persons or responsible persons for committed criminal offence.</p> <p>(3) A legal person may only be liable for criminal offences committed out of negligence under the conditions from Point 4 of Article 4 of this Act. In this case the legal person may be given a reduced punishment.</p> <p>(4) If a legal person has no other body besides the perpetrator who could lead or supervise the perpetrator, the legal person shall be liable for the committed criminal offence within the limits of the perpetrator's guilt.</p> <p style="text-align: center;">[...]</p>								

Member State	Liability of legal persons							
Spain 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES <i>source: Section 31bis below</i>	YES <i>source: Section 31bis below</i>	YES <i>source: Section 31bis below</i>	NO <i>source: not applicable</i>	YES <i>source: Section 31bis below</i>	no mention <i>source: not applicable</i>	YES <i>source: Section 31bis below</i>
<p style="text-align: center;">Criminal Code</p> <p style="text-align: center;">Section 31bis</p> <p>(1) In the cases foreseen in this Code, legal persons shall be held criminally accountable for the felonies committed in their name or on their behalf, and to their benefit, by their legal representatives and de facto or de jure administrators. In the same cases, legal persons shall also be criminally accountable for the felonies committed when perpetrating the corporate activities and on account and to the advantage thereof, who, these being committed by the natural persons mentioned in the preceding Section, were able to perpetrate the acts as due control was not exercised over them in view of the specific circumstances of the case.</p> <p>(2) The criminal accountability of legal persons shall be applicable whenever there is record of a felony being committed that must have been committed by the person who holds office or perpetrates the duties referred to in the preceding Section, even when the specific natural person responsible has not been individually identified, or it has not been possible to prosecute that person. When fines are handed down to both as a consequence of these acts, the Judges or Courts of Law shall modulate the respective amounts, so the resulting sum is not disproportionate in relation to the seriousness of such acts.</p> <p>(3) Concurrence, in the persons who have materially perpetrated the acts or those who have made these possible due to not having exercised due control, of circumstances that affect the culpability of the accused or aggravate his responsibility, or the fact that those persons have died or have escaped the action of justice, shall not exclude or modify the criminal accountability of legal persons, without prejudice to what is set forth in the following Section. [...]</p> <p>(5) The provisions related to criminal accountability of legal persons shall not be applicable to the State, to the territorial and institutional Public Administrations, to the Regulatory Bodies, the Public Agencies and Corporate Entities, to political parties and Trade Unions¹, to organisations under Public International Law, or to others that exercise public powers of sovereignty, administration, or in the case of State Mercantile Companies that implement public policies or provide services of general economic interest. [...]</p>								

Member State	Liability of legal persons							
United Kingdom⁶⁹ 	existence and type of liability of legal persons	individuals for whose conduct legal persons are held liable for offences relating to participation in a criminal organisation, by position				liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons	scope of application
		<i>individuals with power of representation</i>	<i>individuals with authority to take decisions</i>	<i>individuals with authority to exercise control</i>	<i>other</i>			
	yes, criminal	YES	YES	NO	NO	YES	explicit mention	YES
	<i>source: Crown Prosecution Service, Legal Guidance, Corporate Prosecutions</i>	<i>source: Crown Prosecution Service, Legal Guidance, Corporate Prosecutions</i>	<i>source: not applicable</i>	<i>source: not applicable</i>	<i>source: Crown Prosecution Service, Legal Guidance, Corporate Prosecutions</i>	<i>source: Crown Prosecution Service, Legal Guidance, Corporate Prosecutions</i>	<i>source: Crown Prosecution Service, Legal Guidance, Corporate Prosecutions</i>	
<p style="text-align: center;">As highlighted Crown Prosecution Service in issuing legal guidance on corporate prosecutions:</p> <p>'In the absence of legislation which expressly creates criminal liability for companies, corporate liability may be established by:</p> <ul style="list-style-type: none"> - vicarious Liability for the acts of a company's employees/agents. This has some limited application at common law e.g. in relation to public nuisance. Statutes frequently impose liability on companies. This is quite common for offences under the Road Traffic Act 1988. Many statutory/regulatory offences impose liability upon employers (corporate and human) to ensure compliance with the relevant regulatory legislation. - non-vicarious liability arising from the so-called 'identification principle'. The identification principle determines whether the offender was a directing mind and will of the company. It applies to all types of offences, including those which require mens rea (see <i>Tesco Supermarkets v Nattrass</i> [1972] AC 153 and, for Scotland, <i>Transco v HM Advocate</i> [2004] JC 29)' <p>A company can be convicted of a conspiracy (see <i>R. v. I.C.R. Haulage Co. Ltd</i> [1944] KB 551) although the company cannot conspire with a sole person responsible in the company and acting for the company for the offence charged, as they are treated as the same person.</p>								

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

⁶⁹ All jurisdictions (i.e. England, Wales, Northern Ireland and Scotland).

Findings

Based on Table 4.17, it is possible to conclude that, within the MS national legal systems, the following approaches exist in relation reference to the 'liability of legal persons' element:

- Most MS envisage a liability of legal persons for offences relating to participation in a criminal organisation: Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Slovakia, Spain and the United Kingdom; while a minority of MS have a non-criminal liability of legal persons system (Bulgaria, Germany, Greece, Italy and Poland).
- The only assessed MS which does not have a general provision concerning the liability of legal persons in relation to offences from Article 2 is Cyprus, although some rules on liability of legal persons exist and are applicable to numerous other offences.⁷⁰

Regarding individuals for whose conduct legal persons are held liable for offences in relation to a criminal organisation:

- Most MS recognise the liability of legal persons arising from all the three types of leading positions identified in the Framework Decision (individuals with power of representation; individuals with authority to take decisions; individuals with authority to exercise control). This 'three leading positions' approach is taken by: Estonia, France, Greece, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia and Spain; such an approach is broader than the minimum required.
- Some MS recognise the liability of legal persons arising from two out of the three leading positions identified in the Framework Decision. This 'two leading positions' approach is taken by: Germany (individuals with power of representation; individuals with authority to take decisions) and the United Kingdom (individuals with power of representation; individuals with authority to take decisions). Such an approach is broader than the required minimum.
- Some MS extend the scope of liability of legal persons beyond the conduct of the three leading positions to other individuals (e.g. persons who have *de facto* control of a legal person, including employees at a low level). This 'broader' approach is taken by: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Finland, Hungary, Ireland, Italy, the Netherlands, Poland, Romania and Slovenia.⁷¹
- Regarding the liability of legal persons from lack of supervision, some MS envisage this in their legal provisions: Austria, the Czech Republic, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and the United Kingdom. In some of these MS, this particular type of liability does not arise from legislative

⁷⁰ There are sporadic specific provisions relating to some criminal markets typical of organised crime but the provisions do not relate to the offence of participation in a criminal organisation existing in CY (e.g. section 19 of Law 87(I)/2007 on human trafficking, section 5 of law 134(I)/2011 on racism & xenophobia, section 27 of law 29/77 on drugs, section 14 of Law 110(I)/2010 on terrorism).

⁷¹ This can be related to the United Kingdom's long-standing inclusion in its criminal and other liability provisions under Companies Law a reference to the liability of 'shadow directors', i.e. those in accordance with whose instructions the nominal directors are accustomed to act.

texts, but instead stems from case law and jurisprudence (NL, UK). It may also be that some MS interpret broadly their general provisions extending them also to cases of lack of supervision or control, even though such an interpretation cannot be deduced from the legal text at first sight. The question also arises if those measures have the required legal certainty (see comments on transposition of directives and framework decisions at the beginning of this chapter).

- Regarding the existence of no prejudice from proceedings against legal persons to criminal proceedings against natural persons, who are perpetrators of, or accessories to, any of the offences relating to participation in a criminal organisation, some MS explicitly mention it in their national legislation. They are: Austria, Belgium, Czech Republic, Estonia, France, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovenia and the United Kingdom.
- Some other MS do not explicitly mention the existence of no prejudice. They are: Bulgaria, Croatia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Malta, Slovakia and Spain. For the latter group it can be concluded that as long as there is no contrary provision in the national legislation, compliance with this Article should be assumed.

As for the scope of application, in all assessed MS the bodies that can be held liable are all entities having legal personality under the applicable national law, with the possible exception of States, public bodies and international organisations.

4.7.3. Transposition assessment of Article 5 of the Framework Decision

The transposition of the legal minimum standard set in Article 5 of the Framework Decision can be assessed by taking into account all three relevant elements regarding the liability of legal persons in relation to criminal organisations, as discussed in previous sections. These relate to the liability of legal persons flowing from a leading position or a lack of supervision, as well as the absence of prejudice and the scope of application.

Based on the information presented in the previous sub-section, Table 4.18 graphically illustrates MS transposition of Article 5 of the Framework Decision, in a yes/no format.

Table 4.18: MS transposition of the standard set in Article 5 of Framework Decision 2008/841/JHA

Member State	liability of legal persons from conducts of individuals in leading positions	liability of legal persons from lack of supervision	no prejudice from proceedings against legal persons to criminal proceedings against natural persons⁷²	scope of application
Austria 	YES	YES	YES	YES
Belgium 	YES	NO	YES	YES
Bulgaria 	YES	NO	YES	YES
Croatia 	YES	NO	YES	YES
Cyprus 	NO	NO	NO	YES
Czech Republic 	YES	YES	YES	YES
Estonia 	YES	NO	YES	YES
Finland 	YES	YES	YES	YES
France 	YES	NO	YES	YES
Germany 	YES	YES	YES	YES
Greece 	YES	YES	YES	YES

⁷² 'YES' to transposition is given both in the case of the explicit mention of such a prejudice or in case of 'no mention' in the national legislation, since also the latter does not hamper the proceeding against a natural person.

Hungary 	YES	YES	YES	YES
Ireland 	YES	YES	YES	YES
Italy 	YES	YES	YES	YES
Latvia 	YES	YES	YES	YES
Lithuania 	YES	YES	YES	YES
Luxembourg 	YES	NO	YES	YES
Malta 	YES	NO	YES	YES
Netherlands 	YES	YES	YES	YES
Poland 	YES	YES	YES	YES
Portugal 	YES	YES	YES	YES
Romania 	YES	NO	YES	YES
Slovakia 	YES	YES	YES	YES
Slovenia 	YES	YES	YES	YES
Spain 	YES	YES	YES	YES
United Kingdom 	YES	YES	YES	YES

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

4.8. Penalties for legal persons for offences relating to participation in a criminal organisation (Article 6)

4.8.1. Standard and elements – penalties for legal persons

The fifth 'legal minimum standard' introduced by the Framework Decision relates to the penalties imposed to legal persons for offences relating to participation in a criminal organisation. It is outlined in Article 6 of the Framework Decision and reads as follows:

'1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, for example:

- (a) exclusion from entitlement to public benefits or aid
- (b) temporary or permanent disqualification from the practice of commercial activities
- (c) placing under judicial supervision
- (d) judicial winding-up
- (e) temporary or permanent closure of establishments which have been used for committing the offence [...]'.

This provision requires MS to introduce penalties in relation to the liability of legal persons for offences relating to participation in a criminal organisation (Article 6 relates back to Article 5, and therefore to offences from Article 2 of the Framework Decision). This provision does not introduce the obligation of setting criminal penalties, giving MS flexibility in this regard. According to this provision MS:

- Must introduce fines (criminal or non-criminal), and
- May also introduce other penalties (some examples of those are indicated in the provision).

Therefore, in the sections below, in order to map MS criminal law with reference to the legal minimum standard set in Article 6 of the Framework Decision and to assess transposition of this standard, the following elements will be taken into account:

- 'Presence in the national legal system of criminal or non-criminal fines' to punish legal persons for offences relating to participation in a criminal organisation, and amount thereof.
- 'Presence in the national legal system of penalties other than fines' (at least one) to punish legal persons for offences relating to participation in a criminal organisation (e.g. exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishments which have been used for committing the offence). This element is not prescriptive, since the Framework Decision states that other penalties may be included.

Due to the fact that Cyprus does not render applicable the general rules of liability of legal persons to the offences of Article 2, this MS will not be assessed in relation to penalties for legal persons.

4.8.2. Mapping of MS legislation – penalties for legal persons

Presence in the national legal system of criminal or non-criminal fines

Table 4.19 summarises how MS legislation deals with the 'presence in the national legal system of criminal or non-criminal fines' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.19: Penalties for legal persons – criminal and non-criminal fines

Member State	Fines	
Austria 	Presence	YES (criminal fine)
	Amount	<p>(1) If an association is liable for a criminal offence, it shall be subject to a corporate fine.</p> <p>(2) The corporate fine shall be determined in daily rates. It shall amount to at least one daily rate.</p> <p>(3) The maximum number of daily rates shall be</p> <ul style="list-style-type: none"> - 180: if the offence attracts a penalty of life imprisonment or up to 20 years' imprisonment - 155: if the offence attracts a penalty of up to 15 years' imprisonment, - 130: if the offence attracts a penalty of up to 10 years' imprisonment, - 100: if the offence attracts a penalty of up to 5 years' imprisonment, - 85: if the offence attracts a penalty of up to 3 years' imprisonment, - 70: if the offence attracts a penalty of up to 2 years' imprisonment, - 55: if the offence attracts a penalty of up to 1 year's imprisonment, - 40: in all other cases. <p>(4) The daily rate shall be determined according to the income situation of the association, with due regard for its general economic performance. It shall be set at an amount corresponding to 1/360th of the annual income, or a figure which is no more than one-third above or below that amount, but subject to a minimum of EUR 50 and a maximum of EUR 10,000. If the association is for charitable, humanitarian or religious purposes (§§ 34 to 47 of the Austrian Federal Tax Code [Bundesabgabenordnung], BGBl. No. 194/1961) or is otherwise not-for-profit, the daily rate shall be set at a minimum of EUR 2 and a maximum of EUR 500.</p>
	Source	<i>Section 4, Federal Law on the Criminal Liability of Associations</i>

Belgium 	Presence	YES (criminal fine)
	Amount	<p>1er. Les amendes applicables aux infractions commises par les personnes morales sont :</p> <p>en matière criminelle et correctionnelle :</p> <ul style="list-style-type: none"> - lorsque la loi prévoit pour le fait une peine privative de liberté à perpétuité : une amende de deux cent quarante mille [euros] à sept cent vingt mille euros; - lorsque la loi prévoit pour le fait une peine privative de liberté et une amende, ou l'une de ces peines seulement : une amende minimale de cinq cents euros multipliés par le nombre de mois correspondant au minimum de la peine privative de liberté, et sans pouvoir être inférieure au minimum de l'amende prévue pour le fait; le maximum s'élève à deux mille euros multipliés par le nombre de mois correspondant au maximum de la peine privative de liberté, et sans pouvoir être inférieure au double du maximum de l'amende prévue pour le fait; - lorsque la loi ne prévoit pour le fait qu'une amende : le minimum et le maximum sont ceux prévus par la loi pour le fait; <p>en matière de police :</p> <ul style="list-style-type: none"> - une amende de vingt-cinq euros à deux cent cinquante euros.
	Source	<i>Section 41 bis c.c.</i>
Bulgaria 	Presence	YES (non criminal fine)
	Amount	Legal persons [...] shall be subject to a fine of up to BGN 1,000,000 which shall be at least equivalent to the benefit in question if it is material in nature, or, if the benefit is not material in nature or its value cannot be established, the fine shall be BGN 5,000 to 100,000.
	Source	<i>Section 83A, Administrative Infringements and Penalties Act</i>
Croatia 	Presence	YES (criminal fine)
	Amount	<p>(1) If the criminal offence is punishable by imprisonment for a term of up to one year, the legal person may be punished by a fine of 5,000 to 2,000,000 kuna.</p> <p>(2) If the criminal offence is punishable by imprisonment for a term of up to 5 years, legal person may be punished by a fine of 10.000,00 to 3,000,000 kuna.</p> <p>(3) If the criminal offence is punishable by imprisonment for term of up to 10 years, legal person may be punished by a fine of 15.000,00 to 4,000,000 kuna.</p> <p>(4) If the criminal offence is punishable by imprisonment for a term of up to 15 years or by long-term imprisonment, the legal person may be punished by a fine of 20,000 to 5,000,000 kuna.</p>
	Source	<i>Section 10, Act on the Responsibility of Legal Person for the Criminal Offences</i>
Cyprus 	Cyprus national legislation does not provide a general provision concerning the liability of legal persons for offences relating to participation in a criminal organisation.	
Czech Republic 	Presence	YES (criminal fine)
	Amount	A monetary penalty from CZK 1,000 to CZK 2,000,000 for the term of 20 to 730 days, up to a maximum monetary penalty of CZK 1.46 billion.
	Source	<i>Act No. 418/2011 Coll. on Criminal Liability of Legal Person and Proceedings against Them</i>

Estonia 	Presence	YES (criminal fine)
	Amount	<p>(8) In case of a legal person, the court may impose a pecuniary punishment of 3,200 to 16,000,000 Euros.</p> <p>(9) In the cases provided for in the Special Part of this Code, the court may impose a pecuniary punishment on a legal person, the amount of which is calculated as a percentage of the turnover of the legal person during the financial year immediately preceding the year in which the criminal proceedings were commenced or in case the person has operated for less than a year, during the year of commencing the criminal proceedings. In such case, the upper limit of the pecuniary punishment imposed shall not exceed the upper limit of the pecuniary punishment provided for in subsection (8) of this section.</p>
	Source	<i>Section 44 c.c.</i>
Finland 	Presence	YES (criminal fine)
	Amount	<p>Section 5 A corporate fine is imposed as a lump sum. The corporate fine is a minimum of €850 and a maximum of €850,000.</p> <p>Section 6 (1) The amount of the corporate fine shall be determined in accordance with the nature and extent of the omission or the participation by management, as referred to in Section 2, and the financial standing of the legal person. [...] (3) When evaluating the financial standing of the legal person, account shall be taken of the size and solvency of the legal person, as well as the earnings and the other essential indicators of the financial standing of the legal person.</p>
	Source	<i>Chapter 9, Sections 5 and 6 c.c.</i>
France 	Presence	YES (criminal fine)
	Amount	<p>The maximum amount of a fine applicable to legal persons is five times that which is applicable to natural persons by the law sanctioning the offence.</p> <p>Where this is an offence for which no provision is made for a fine to be paid by natural persons, the fine incurred by legal persons is €1,000,000.</p>
	Source	<i>Section 131-38 c.c.</i>
Germany 	Presence	YES (non criminal fine)
	Amount	<p>Section 30 [...] (2) The fine shall be 1. up to one million Euros in cases of a wilfully committed offence; 2. up to five hundred thousand Euros in cases of a negligently committed offence.</p> <p>In cases of an administrative offence the maximum amount of the fine shall be assessed in accordance with the maximum fine provided for the administrative offence in question.</p> <p>Section 130 [...] (3) If the administrative offence is subject to punishment, it may be punished by a fine not exceeding one million Euros. If the violation of duty is punishable by a fine, the maximum amount of the fine for a violation of obligatory supervision shall be dependent on the maximum amount of the fine provided for the violation of duty. The second sentence shall also apply in the event of a breach of duty which at the same time is punishable by a penalty and a fine if the maximum amount of the fine is in excess of the maximum amount in accordance with the first sentence.</p>
	Source	<i>Sections 30 and 130, Administrative Offences Act of the Federal Republic of Germany</i>

Greece 	Presence	YES (non criminal fine)
	Amount	<p>If a criminal act referred to in Articles 187 and 187A of the Penal Code was committed via or for the benefit or on behalf of a legal entity by a natural person acting either individually or as a member of an organ of the legal entity with a leading position within it based on powers of representation thereof or the authority to take decisions on its behalf or to exercise control within it, the following penalties shall be imposed on the legal entity, either cumulatively or alternatively, by joint decision of the Minister for Justice, Transparency and Human Rights and the Minister for Citizen Protection:</p> <p>i) an administrative fine of between EUR 50,000 (fifty thousand) and EUR 5,000,000 (five million) [...]</p> <p>3) Where lack of supervision or control by a natural person referred to in paragraph 1 makes it possible for a hierarchically lower person to commit an offence referred to in paragraphs 1 and 2 via or for the benefit or on behalf of a legal entity, the following penalties shall be imposed, either cumulatively or alternatively, on the legal entity: - an administrative fine of between EUR 10,000 (ten thousand) and EUR 1,000,000 (one million);</p>
	Source	<i>Section 41 Law 3251/2004</i>
Hungary 	Presence	YES (criminal fine)
	Amount	<p>(1) The highest fine that can be imposed on the legal entity shall be three times the financial advantage gained or intended to be gained through the criminal act, but at least HUF 500,000.</p> <p>(2) The Court may estimate the rate of the financial advantage if the financial advantage gained or intended to be gained could only be established at unreasonably high cost or not at all.</p> <p>(3) If the benefit gained or intended to be gained through the criminal act is not financial advantage, the court imposes the fine considering the financial situation of the legal entity, but at least HUF 500,000.</p>
	Source	<i>Section 6 Act 104 of 2001 on Measures Applicable to Legal Entities Under Criminal Law</i>
Ireland 	Presence	YES (criminal fine)
	Amount	Judicial discretion in determination of the amount
	Source	<i>Section 76, Criminal Justice Act 2006</i>

Italy 	Presence	YES (non criminal fine)
	Amount	<p>Section 10</p> <p>(1) For the administrative offence a monetary penalty is always applied.</p> <p>(2) The monetary sanction is applied by shares in a number neither less than one hundred nor above one thousand.</p> <p>(3) The monetary value of a share ranges from minimum 500,000 Lire to 3,000,000 Lire.</p> <p>[...]</p> <p>Section 11</p> <p>(1) In calculating the amount of the penalty, the judge determines the number of shares considering the seriousness of the fact, the level of responsibility of the body and the activity carried out to eliminate or mitigate the consequences of the fact and to prevent the commission of further offences.</p> <p>(2) The amount of the share is set on the basis of the economic and patrimonial conditions of the body in order to ensure the effectiveness of the penalty.</p> <p>[...]</p> <p>Section 24 ter</p> <p>(1) In relation to the commission of any of the crimes referred to in Articles 416, sixth paragraph of Article 416-bis, 416-ter and 630 of the Penal Code, crimes committed under the conditions laid down by that Article 416-bis of or in order to facilitate activities associations provided in that Article , as well as crimes provided for in Article 74 of the single Text of the decree of the President of the Republic October 9, 1990, n. 309 , applies a fine of four hundred to one thousand shares.</p> <p>(2) In relation to the commission of any of the crimes referred to in Article 416 of the Penal Code, with the exception of the sixth paragraph, or referred to in Article 407, paragraph 2, letter a), number 5) of the Code of Criminal Procedure, it shall be imposed a fine of three hundred to eight hundred shares.</p>
	Source	<i>Section 24 ter Law 146 of 16 March 2006, Sections 10 and 11 Legislative Decree 231 of 8 June 2001</i>
Latvia 	Presence	YES (criminal fine)
	Amount	<p>A monetary levy is a sum of money, which is imposed by a court or public prosecutor to be paid for the benefit of the State within 30 days. Monetary levy, in conformity with the seriousness of the criminal offence and the financial circumstances of a legal person, shall be determined in the amount of not less than ten thousand and not exceeding hundred thousand times the minimum monthly wage specified in the Republic of Latvia at the time of the rendering of the adjudication, indicating in the adjudication the amount of the monetary levy in the monetary units of the Republic of Latvia. A public prosecutor may, in an injunction regarding a coercive measure, apply not more than half of the maximum amount of monetary levy provided for in this Section, complying to the amount of the minimum wage specified in the Republic of Latvia at the time of drawing up the referred to injunction and indicating therein the sum of such monetary levy in the monetary units of the Republic of Latvia.</p>
	Source	<i>Sections 70.2 and 70.6 c.c.</i>

Lithuania 	Presence	YES (criminal fine)
	Amount	<p>A fine shall be calculated in the amounts of minimum standard of living (MSL). The minimum amount of a fine shall be one MSL.</p> <p>The amounts of a fine shall be determined as follows:</p> <ol style="list-style-type: none"> 1) for a misdemeanour – up to the amount of 50 MSLs. 2) for a minor crime – up to the amount of 100 MSLs; 3) for a less serious crime – up to the amount of 200 MSLs; 4) for a serious crime – up to the amount of 300 MSLs; 5) for a negligent crime – up to the amount of 75 MSLs. <p>The amount of a fine for a legal entity shall be up to 50 000 MSLs.</p> <p>The sanction of an Article shall not indicate the amount of a fine for a committed criminal act. It shall be specified by a court when imposing the penalty.</p>
	Source	<i>Sections 43 and 47 c.c.</i>

Luxembourg 	Presence	YES (criminal fine)
	Amount	<p style="text-align: center;">Section 36</p> <p>L'amende en matière criminelle et correctionnelle applicable aux personnes morales est de 500 euros au moins. En matière criminelle, le taux maximum de l'amende applicable aux personnes morales est de 750.000 euros. En matière correctionnelle, le taux maximum de l'amende applicable aux personnes morales est égal au double de celui prévu à l'égard des personnes physiques par la loi qui réprime l'infraction. Lorsqu'aucune amende n'est prévue à l'égard des personnes physiques par la loi qui réprime l'infraction, le taux maximum de l'amende applicable aux personnes morales ne peut excéder le double de la somme obtenue par multiplication du maximum de la peine d'emprisonnement prévue, exprimée en jours, par le montant pris en considération en matière de contrainte par corps.</p> <p style="text-align: center;">Section 37</p> <p>Le taux maximum de l'amende encourue selon les dispositions de l'Article 36 est quintuplé lorsque la responsabilité pénale de la personne morale est engagée pour une des infractions suivantes:</p> <ul style="list-style-type: none"> - crimes et délits contre la sûreté de l'Etat - actes de terrorisme et de financement de terrorisme - infractions aux lois relatives aux armes prohibées en relation avec une association de malfaiteurs ou une organisation criminelle <ul style="list-style-type: none"> - traite des êtres humains et proxénétisme - trafic de stupéfiants en relation avec une association de malfaiteurs ou une organisation criminelle <ul style="list-style-type: none"> - blanchiment et recel - concussion, prise illégale d'intérêts, corruption active et passive, corruption privée - aide à l'entrée et au séjour irréguliers en relation avec une association de malfaiteurs ou une organisation criminelle. <p style="text-align: center;">Section 57-2</p> <p>Lorsqu'une personne morale, ayant été condamnée à une peine criminelle au titre de l'Article 36, engage sa responsabilité pénale par un nouveau crime, le taux maximum de l'amende applicable est égal au quadruple de celui fixé à l'Article 36. Lorsqu'une personne morale, ayant été condamnée à une peine criminelle au titre de l'Article 37, engage sa responsabilité pénale par un nouveau crime, le taux maximum de l'amende applicable est égal au quadruple de celui fixé à l'Article 37.</p> <p style="text-align: center;">Section 57-3</p> <p>Lorsqu'une personne morale, ayant été condamnée à une peine criminelle, engage sa responsabilité pénale par un délit, le taux maximum de l'amende applicable est égal au quadruple de celui fixé à l'Article 36. Les peines prévues à l'alinéa précédent pourront être prononcées lorsqu'une personne morale, antérieurement condamnée à une amende correctionnelle d'au moins 36.000 euros, engage sa responsabilité par un nouveau délit avant l'expiration de cinq ans depuis qu'elle a subi ou prescrit sa peine.</p>
	Source	<i>Sections 36, 37, 57-2, 57-3 c.c.</i>

Malta 	Presence	YES (criminal fine)
	Amount	<p>Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable as follows:</p> <p>Where the offence of which the person was found guilty is the offence in Section 83A(1), to the payment of a fine (multa) of not less than thirty-four thousand and nine hundred and forty euro and sixty cents (34,940.60) and not more than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67);</p> <p>Where the offence of which the person was found guilty is the offence in Section 83A(2), to the payment of a fine (multa) of not less than twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) and not more than sixty-nine thousand and eight hundred and eighty-one euro and twenty cents (69,881.20);</p> <p>Where the offence of which the person was found guilty is punishable as provided in Section 83A(3) of this Article:</p> <p>(i) where the offence is that provided in Section 83A(1), to the punishment of a fine (multa) of not less than forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70);</p> <p>(ii) where the offence is that provided in Section 83A(1), to the punishment of a fine (multa) of not less than thirty-four thousand and nine hundred and forty euro and sixty cents (34,940.60) and not more than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).</p>
	Source	<i>Section 83A c.c.</i>
Netherlands 	Presence	YES (criminal fine)
	Amount	<p>(7) In the case of conviction of a legal person, a fine up to the maximum of the next highest category may be imposed if the fine category specified for the offence does not provide for an appropriate punishment.</p> <p>(8) The preceding subsection shall apply mutatis mutandis in the case of conviction of an unincorporated company, a partnership, a shipping company or a special purpose fund.</p>
	Source	<i>Section 23 c.c.</i>
Poland 	Presence	YES (non criminal fine)
	Amount	<p>A fine between 1,000 and 205,000,000 PLN but no more than up to 103% of the revenue generated in the tax year when the offence which is a ground for the collective entity's liability was committed.</p> <p>When adjudicating the fine the court shall consider in particular weight of irregularities in electing or supervising, the size of the advantages obtained or possible to obtain by the collective entity, its financial situation and social consequences of the penalty and an influence of punishment on further functioning of the collective entity.</p>
	Source	<i>Sections 7 and 10 Act on the Liability of Collective Entities for Acts Prohibited Under Penalty</i>

Portugal 	Presence	YES (criminal fine)
	Amount	<p>(1) The minimum and maximum limits of a fine applicable to legal persons and similar entities are determined by reference to the term of imprisonment provided for individuals.</p> <p>(2) One month of imprisonment shall, for legal persons and equivalent, 10 days of fine entities.</p> <p>(3) Whenever the penalty applicable to individuals is determined solely or alternatively a fine, shall apply to legal persons or entities treated the same fine days .</p> <p>(4) The penalty of fine is determined in days, according to the criteria set out in paragraph 1 of Article 71.</p> <p>(5) Each day of fine corresponds to an amount of (euro) 100 and (euro) 10,000, which the court decides according to the economic and financial situation of the convicted and their costs with workers being applicable paragraphs. 3 to 5 of Article 47.</p>
	Source	<i>Section 90B c.c.</i>
Romania 	Presence	YES (criminal fine)
	Amount	<p>(1) The fine consists in the amount of money the convicted legal person has to pay to the state.</p> <p>(2) The amount of the fine is calculated using a calculation system based on the concept of 'days-fine'. The monetary value of one 'day-fine' varies between 100 and 5,000 RON and the total amount of the fine is calculated by multiplying this value with the number of 'days-fine'. The number of 'day-fine' varies between 30 and 600.</p> <p>(3) The court decides on the number of 'days-fine' taking into account the general criteria for individualizing the penalties. The concrete value of one 'day-fine' is established taking into account the turnover of the legal person in question if it is a for-profit entity or the value of the assets of all other legal persons, as well as all the debts of the respective legal person.</p> <p>(4) The special limits of 'days-fine' are set between:</p> <p>a) 60 and 180 'days-fine', for crimes sanctioned uniquely by fines in accordance to the law;</p> <p>b) 120 and 240 'days-fine', for crimes sanctioned by imprisonment of not more than 5 years as unique sanction or as an alternative sanction to a fine;</p> <p>c) 180 and 300 'days-fine', for crimes sanctioned by imprisonment of not more than 10 years;</p> <p>d) 240 and 420 'days-fine', for crimes sanctioned by imprisonment of not more than 20 years;</p> <p>e) 360 and 510 'days-fine', for crimes sanctioned by imprisonment of over 20 years or life imprisonment;</p> <p>(5) When the crime was committed with a view to acquire a pecuniary benefit the special limits of 'days-fine' may be increased by a third provided that the general maximum limit set for fines is not exceeded. In the process of setting the fine the value of the pecuniary benefit obtained or sought is taken into account.</p>
	Source	<i>Section 137 c.c.</i>

Slovakia 	Presence	YES (criminal fine)⁷³
	Amount	[...] (2) The protection measures under paragraph 1 may not be imposed on a legal person whose financial circumstances as a debtor cannot be settled pursuant to the specific regulation governing insolvency proceedings, or where implementation of the protection measure will affect assets of the state or of the European Union, or the authorities of a foreign state or international public law organisations. It shall also not be imposed if this would result in an offence listed in paragraph 1 ceasing to be punishable through the barring of criminal proceedings or on the basis of effective regret. (3) The court may impose the confiscation of a sum of money of between EUR 800 and EUR 1,660,000. When setting the level of the confiscation of a sum of money, the court shall take account of the seriousness of the offence committed, the scope of the act, the benefit obtained, the harm caused, the circumstances under which the offence is committed and the consequences for the legal person. The court shall not impose the confiscation of a sum of money if it imposes a protection measure on the legal person concerning the confiscation of assets under Section 83b. [...]
	Source	<i>Section 83a c.c.</i>
Slovenia 	Presence	YES (criminal fine)
	Amount	(1) The fine which may be prescribed may not be less than 10,000 EUR or more than 1,000,000 EUR. (2) In the case of the legal person's criminal offence having caused damage to another's property, or of the legal person having obtained unlawful property benefit, the highest limit of the fine imposed may be 200 (two hundred) times the amount of such damage or benefit.
	Source	<i>Section 13 Liability of Legal Persons for Criminal Offences Act</i>
Spain 	Presence	YES (criminal fine)
	Amount	[...] (7) Penalties applicable to legal persons, that are all deemed serious, are as follows: a) Fine by quotas or proportional; [...]
	Source	<i>Section 33 c.c.</i>
United Kingdom 	Presence	YES (criminal fine)
	Amount	Determination by judge, based also on recommendations from the Sentencing Council Guidelines ⁷⁴
	Source	Sentencing Council Guidelines; jurisprudence

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Table 4.19 illustrates that all assessed MS have adopted some sort of fine, whether criminal or non-criminal, to sanction legal persons convicted of offences relating to participation in a criminal organisation in line with Article 6. The majority of MS (20) have adopted criminal fines as sanctions (Austria, Belgium, Croatia, the Czech Republic, Estonia, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom), while other MS have resorted to administrative fines as an alternative (Bulgaria, Germany, Greece, Italy and Poland).

⁷³ Article 83a of the Slovakian criminal code refers to 'confiscation' as a protective measure, nonetheless the rules on the application of this measures recalls rather a fine than confiscation.

⁷⁴ For more details, see Sentencing Guidelines Council (2010).

Presence in the national legal system of other penalties

Table 4.20 summarises how MS legislation deals with the 'presence in the national legal system of other penalties' element. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.20: Penalties for legal persons – penalties other than fines

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Austria 	Presence						YES
	Type						Disgorgement of gains
	Source						<i>Section 20 StGB</i>
Belgium 	Presence		YES		YES	YES	YES
	Type		Temporary or permanent interdiction to exercise activities relevant to the scope of legal person		Winding-up	Temporary or permanent closure of establishments	Special confiscation Publication or diffusion of the sentence
	Source		<i>Sections 7bis and 36 c.c.</i>		<i>Sections 7bis and 35 c.c.</i>	<i>Sections 7bis and 37 c.c.</i>	<i>Sections 7bis, 37bis and 42 c.c.</i>
Bulgaria 	Presence						YES
	Type						Forfeiture of the benefit or its equivalent
	Source						<i>Section 83A, Administrative Infringements and Penalties Act</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Croatia 		YES	YES		YES		YES
	Presence Type	Ban on obtaining of licenses, authorisations, concessions or subventions	Ban of performances of certain activities or transaction Ban on obtaining of licenses, authorisations, concessions or subventions Ban on transaction with beneficiaries of the national or local budgets		Termination of the legal person		Suspended sentence instead of the fine Confiscation
	Source	<i>Section 15, Act on the Responsibility of Legal Person for the Criminal Offences</i>	<i>Section 15, Act on the Responsibility of Legal Person for the Criminal Offences</i>		<i>Section 12, Act on the Responsibility of Legal Person for the Criminal Offences</i>		<i>Sections 13 and 15, Act on the Responsibility of Legal Person for the Criminal Offences</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Cyprus 		N/A					

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Czech Republic 	Presence	YES	YES		YES		YES
	Type	Prohibition to perform public contracts, debarment from concession procedure or public procurement Prohibition to receive endowments (grants) and subsidies	Prohibition of activity		Dissolution		Confiscation Forfeiture of a thing or other asset value Publication of the judgment
	Source	<i>Section 15, Act No. 418/2011 Coll. on Criminal Liability of Legal Person and Proceedings against Them</i>	<i>Section 15, Act No. 418/2011 Coll. on Criminal Liability of Legal Person and Proceedings against Them</i>		<i>Section 15, Act No. 418/2011 Coll. on Criminal Liability of Legal Person and Proceedings against Them</i>		<i>Section 15, Act No. 418/2011 Coll. on Criminal Liability of Legal Person and Proceedings against Them</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	Other
Estonia 	Presence						YES
	Type						Compulsory dissolution
	Source						<i>Section 46 c.c.</i>
Finland 	No other sanctions foreseen						

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
France 	Presence	YES	YES	YES	YES	YES	YES
	Type	<p>Temporary (max 5 years) or permanent disqualification from public tenders</p> <p>Temporary (max. 5 years) or permanent prohibition to make a public appeal for funds</p>	<p>Temporary (max.5 years) or permanent prohibition to exercise, directly or indirectly one or more social or professional activity</p>	<p>Temporary (max. 5 years) placement under judicial supervision</p>	<p>Dissolution</p>	<p>Temporary (max. 5 years) or permanent closure of the establishment, or one or more of the establishments, of the enterprise that was used to commit the offences in question</p>	<p>Temporary (max. 5 years) prohibition to draw cheques, except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques, and the prohibition to use payment cards</p> <p>Confiscation of the assets, whatever their nature, movable or immovable which was used or</p>

							intended for the commission of the offence, or of the assets, whatever their nature, movable or immovable which is the product of it
							Confiscation of all or part of assets, whatever their nature, movable or immovable, severally or jointly owned.
	Source	<i>Section 131-39 c.c.</i>	Publication of the decision				
							<i>Sections 131-39 and 450-5 c.c.</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Germany 	Presence						YES
	Type						Confiscation
	Source						<i>Section 73 c.c.</i>
Greece 	Presence	YES	YES				
	Type	Temporary (between 1 month and 2 years) or permanent exclusion from public procurement, aid, grants, works, service and supply contracts, advertisements and government and broader public-sector competitions	Temporary (between 1 month and 2 years) or permanent withdrawal or suspension of the business licence or a ban on business activities Ban on certain business activities or the establishment of branches or increases in share capital for the same period of time				
	Source	<i>Section 41, Law 3251/2004</i>	<i>Section 41, Law 3251/2004</i>				

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Hungary 	Presence Type	YES Temporary (between 1 and 3 years) prohibition of collect deposits based on a public call for tenders, participate in public procurement procedures, enter into concession contracts, receive funding from central or local government budgets, earmarked state funds and or targeted support from foreign states, the European Community or other international organisations Immediate rescission of contract concluded with legal entity under the public procurement procedure, rescission of			YES Winding up		YES Temporary (between 1 and 3 years) prohibition of be classified as a public benefit organization and pursue any other activities that have been prohibited by the court. The procedure involving classification as a public benefit organisation is considered terminated, and the legal entity is considered deleted from the registry of public benefit organisations

		<p>concession contract concluded with legal entity</p> <p>The procedure involving the granting of subsidies is considered terminated, and any subsidy received in conjunction with the criminal act shall be repaid.</p>					
	Source	<p><i>Sections 3 and 5, Act 104 of 2001 on Measures Applicable to Legal Entities Under Criminal Law</i></p>			<p><i>Sections 3 and 4, Act 104 of 2001 on Measures Applicable to Legal Entities Under Criminal Law</i></p>		<p><i>Sections 3 and 5, Act 104 of 2001 on Measures Applicable to Legal Entities Under Criminal Law</i></p>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Ireland 		No other sanctions foreseen					

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Italy 	Presence	YES	YES	YES			YES
	Type	Temporary (between 3 months and 2 years) suspension or termination of the authorisations, permits, concessions functional to the commission of the offence; Permanent or temporary (between 3 months and 2 years) prohibition to conclude contracts with the public administration, excluding those to obtain a public service Temporary	Permanent or temporary (between 3 months and 2 years) prohibition to exercise body's activity Temporary (between 3 months and 2 years) prohibition to advertise goods or services	Judicial supervision			Confiscation Publication of the sentence

		(between 3 months and 2 years) exclusion from benefits, funds, contributions and possible termination of those already received					
	Source	<i>Sections 9, 13 and 16, Legislative Decree 231 of 8 June 2001</i>	<i>Sections 9, 13 and 16, Legislative Decree 231 of 8 June 2001</i>	<i>Section 15, Legislative Decree 231 of 8 June 2001</i>			<i>Sections 9, 18 and 19, Legislative Decree 231 of 8 June 2001</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Latvia 	Presence	YES			YES		YES
	Type	Temporary (between 1 and 10 years) deprivation of specific rights or permits or the determination of such prohibition, which prevents a legal person from receive State support or assistance, participate in a State or local government procurement procedure			Compulsory termination of the activities of a legal person (liquidation)		Confiscation of property Temporary (between 1 and 10 years) deprivation of specific rights or permits or the determination of such prohibition, which prevents a legal person from exercising certain rights, to perform a specific type of activity.
	Source	<i>Sections 70.2 and 70.4 c.c.</i>			<i>Sections 70.2 and 70.3 c.c.</i>		<i>Sections 70.2, 70.4 and 70.5 c.c.</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Lithuania 	Presence		YES		YES	YES	
	Type		Temporary (between 1 year and 5 years) prohibition from engaging in certain activities		Liquidation	Temporary (between 1 year and 5 years) or permanent order to close a certain or all division of the legal entity	
	Source		<i>Sections 43 and 52 c.c.</i>		<i>Sections 43 and 53 c.c.</i>	<i>Sections 43 and 52 c.c.</i>	
Luxembourg 	No other sanctions foreseen						
Malta 	No other sanctions foreseen						

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Netherlands 	Presence						YES
	Type						All punishments that are imposed on natural persons, with the exception of a detention
	Source						Section 51 c.c.
Poland 	Presence	YES	YES				YES
	Type	<p>Temporary (between 1 and 5 years) ban on using grants, subsidies, or other forms of financial support originating from public funds</p> <p>Temporary (between 1 and 5 years) prohibition of access to public resources</p> <p>Temporary (between 1 and 5 years) ban on using the aid provided by the international organisations the Republic of Poland</p>	<p>Temporary (between 1 and 5 years) ban on promoting or advertising the business activities it conducts, the products it manufactures or sells, the services it renders, or the benefits it grants</p> <p>Temporary (between 1 and 5 years) ban on pursuing the indicated prime or incidental business</p>				<p>Forfeiture of the objects coming, even indirectly, from the prohibited act, or objects used or designated for use as the tools of perpetrating the prohibited act, the financial gains originating, even indirectly, from the prohibited act, the amount equivalent to the objects or financial benefit coming, even indirectly, from the prohibited act</p>

		holds membership in Temporary (between 1 and 5 years) ban on applying for public procurement contracts	activities repealed				Publication of the sentence
	Source	<i>Section 9.1, Act on the Liability of Collective Entities for Acts Prohibited Under Penalty</i>	<i>Section 9.1, Act on the Liability of Collective Entities for Acts Prohibited Under Penalty</i>				<i>Sections 8.1 and 9.1, Act on the Liability of Collective Entities for Acts Prohibited Under Penalty</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Portugal 	Presence	YES	YES	YES	YES	YES	YES
	Type	Temporary (between 1 and 5 years) ineligibility public to grants, subsidies or incentives	Temporary (between 1 and 5 years) prohibition of certain contracts or enter into contracts with certain entities Temporary (between 3 months and 5 years) or permanent prohibition of certain activities	Order by the court to adopt certain measures, including those illicit activity needed to stop or avoid its consequences Temporary (between 1 and 5 years) judicial supervision instead of a fine	Dissolution	Temporary (between 3 months and 5 years) or permanent closure of establishment	Publication of the sentence Admonition instead of a fine Good behaviour caution instead of a fine
	Source	<i>Sections 90A and 90I c.c.</i>	<i>Sections 90A, 90H and 90J c.c.</i>	<i>Sections 90A, 90E and 90G c.c.</i>	<i>Sections 90A and 90F c.c.</i>	<i>Sections 90A and 90L c.c.</i>	<i>Section 90A, 90C, 90D and 90M c.c.</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Romania 	Presence	YES	YES	YES	YES	YES	YES
	Type	Prohibition to directly or indirectly take part in procedures for the attribution of public procurement contracts	Permanent or temporary (up to 3 months) suspension to perform the activity the realisation of which the crime was committed (not applicable to public institutions, to political parties, to unions, to business associations, to religious organisations or to organisations that belong to national minorities)	Temporary (between 1 and 3 years) judicial supervision (not applicable to public institutions, to political parties, to unions, to business associations, to religious organisations or to organisations that belong to national minorities)	Dissolution (not applicable to public institutions, to political parties, to unions, to business associations, to religious organisations or to organisations that belong to national minorities)	Closure of one or several offices in which the crime was committed (not applicable to legal persons that perform their activities in the media business)	Publication of the sentence
	Source	Section 143 c.c.	Sections 140 and 141 c.c.	Section 144 c.c.	Section 139 and 141 c.c.	Section 142	Section 145 c.c.

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Slovakia 	Presence						YES
	Type						Confiscation of a property
	Source						source: Section 83b c.c.
Slovenia 	Presence		YES		YES		YES
	Type		Prohibition of a specific commercial activity		Winding-up		Confiscation of property Suspended sentence instead of a fine Publication of the judgment
	Source		<i>Section 20, Liability of Legal Persons for Criminal Offences Act</i>		<i>Section 15, Liability of Legal Persons for Criminal Offences Act</i>		<i>Sections 14, 17 and 19 Liability of Legal Persons for Criminal Offences Act</i>

Member State	Presence/type/source	Penalties for legal persons other than fines					
		<i>exclusion from entitlement to public benefits or aid</i>	<i>temporary or permanent disqualification from the practice of commercial activities</i>	<i>placing under judicial supervision</i>	<i>judicial winding-up</i>	<i>temporary or permanent closure of establishments which have been used for committing the offence</i>	<i>Other</i>
Spain 	Presence	YES	YES		YES	YES	YES
	Type	Temporary (up to 15 years) barring from obtaining public subsidies and aid, to enter into contracts with the public sector and to enjoy tax or Social Security benefits and incentives	Temporary (up to 5 years) Suspension of the activities Temporary (up to 15 years) or permanent prohibition to carry out the activities through which it has committed, favoured or concealed the felony in the future		Dissolution	Temporary (up to 5 years) closure of its premises and establishments	Temporary (up to 15 years) judicial intervention to safeguard the rights of the workers or creditors
	Source	<i>Section 33 c.c.</i>	<i>Section 33 c.c</i>		<i>Section 33 c.c</i>	<i>Section 33 c.c</i>	<i>Section 33 c.c</i>
United Kingdom 	No other sanctions						

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

In addition to the existence of fines, many MS have also introduced alternative sanctions for legal persons convicted of offences relating to participation in a criminal organisation, as shown by Table 4.20. All but five of the MS (Finland, Ireland, Luxembourg, Malta and the United Kingdom) have some combination of alternative sanctions in their legal system.

The most widely used sanctions are:

- Exclusion from entitlement to public benefits or aid (Croatia, the Czech Republic, France, Greece, Hungary, Italy, Latvia, Poland, Portugal, Romania and Spain).
- Temporary or permanent disqualification from the practice of commercial activities (Belgium, Croatia, the Czech Republic, France, Greece, Italy, Lithuania, Poland, Portugal, Romania, Slovenia and Spain).
- Judicial winding-up (Belgium, Croatia, the Czech Republic, France, Hungary, Lithuania, Portugal, Romania, Slovenia and Spain).

Other possible sanctions were less taken up by MS, including judicial supervision (France, Italy, Portugal and Romania) and the temporary or permanent closure of establishments which have been used for committing the offence (Belgium, France, Lithuania, Portugal, Romania and Spain). These sanctions are generally only temporary rather than permanent.

Finally, 17 MS have adopted other sanctions not suggested by Article 6 of the Framework Decision, focusing in particular on the use of confiscation, forfeiture and the publication of judgments (Austria, Belgium, Bulgaria, Croatia, the Czech Republic, France, Germany, Hungary, Italy, Latvia, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain).

4.8.3. Transposition assessment of Article 6 of the Framework Decision

The transposition of the legal minimum standard set in Article 6 of the Framework Decision can be assessed by taking into account the presence in MS legal systems of criminal or non-criminal fines against legal persons for offences relating to participation in a criminal organisation, as well as possible penalties other than fines, as outlined above in Sections 4.8.1 and 4.8.2.

Only the first element is obligatory and therefore has to be present in a given MS, while the second one is optional.

Based on the information presented in the previous sub-section, Table 4.21 graphically illustrates MS transposition of Article 6 of the Framework Decision, in a yes/no format.

Table 4.21: MS transposition of the standard set in Article 6 of Framework Decision 2008/841/JHA

Member State	Presence in the national legal system of criminal or non-criminal fines for the offences from Article 2 committed by legal persons	Presence in the national legal system of penalties other than fines for the offences from Article 2 committed by legal persons
Austria 	YES	YES
Belgium 	YES	YES
Bulgaria 	YES	YES
Croatia 	YES	YES
Cyprus 	N/A	N/A
Czech Republic 	YES	YES
Estonia 	YES	YES
Finland 	YES	NO
France 	YES	YES
Germany 	YES	YES
Greece 	YES	YES
Hungary 	YES	YES
Ireland 	YES	NO
Italy 	YES	YES

Latvia 	YES	YES
Lithuania 	YES	YES
Luxembourg 	YES	NO
Malta 	YES	NO
Netherlands 	YES	YES
Poland 	YES	YES
Portugal 	YES	YES
Romania 	YES	YES
Slovakia 	YES	YES
Slovenia 	YES	YES
Spain 	YES	YES
United Kingdom 	YES	NO

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

The transposition of Article 6 of the Framework Decision varies significantly between different MS. All assessed MS have introduced fines (criminal or non-criminal) and/or alternative sanctions in line with Article 6.

Those MS which have introduced administrative rather than criminal fines (Bulgaria, Germany, Greece, Italy and Poland) also rely on additional alternative sanctions against legal persons, some of which were suggested in Article 6, but also others such as confiscation or publication of judgements (Germany, Italy and Bulgaria).

Of the MS that have adopted criminal fines, five do not rely on any other alternative sanctions (Finland, Ireland, Luxembourg, Malta and the United Kingdom), but most use them in combination with a range of other sanctions. France in particular has introduced criminal fines against legal persons in relation to criminal organisations, but also relies on all five possible alternative sanctions listed in Article 6, as well as an extensive list of other possible sanctions.

4.9. Jurisdiction for offences relating to participation in a criminal organisation (Article 7)

4.9.1. Standard and elements – jurisdiction

The sixth 'legal minimum standard' introduced by the Articles of the Framework Decision relates to the jurisdiction for offences relating to participation in a criminal organisation. It is outlined in Article 7 of the Framework Decision and reads as follows:

'1. Each Member State shall ensure that its jurisdiction covers at least the cases in which the offences referred to in Article 2 were committed:

- (a) in whole or in part within its territory, wherever the criminal organisation is based or pursues its criminal activities;
- (b) by one of its nationals; or
- (c) for the benefit of a legal person established in the territory of that Member State.

A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in (b) and (c) where the offences referred to in Article 2 are committed outside its territory.

2. When an offence referred to in Article 2 falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders, with the aim, if possible, of centralising proceedings in a single Member State.

To this end, Member States may have recourse to Eurojust or any other body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Special account shall be taken of

the following factors:

- (a) the Member State in the territory of which the acts were committed;
- (b) the Member State of which the perpetrator is a national or resident;
- (c) the Member State of the origin of the victims;
- (d) the Member State in the territory of which the perpetrator was found.

3. A Member State which, under its law, does not as yet extradite or surrender its own nationals shall take the necessary measures to establish its jurisdiction over and, where appropriate, to prosecute the offence referred to in Article 2, when committed by one of its nationals outside its territory.

4. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.'

The provision, which relates back to Article 2 of the Framework Decision in relation to the offences targeted, has a twofold aim:

- To set clear rules regarding MS jurisdiction over offences relating to participation in a criminal organisation (paragraphs 1 and 3).
- To set rules concerning the judicial cooperation in the prosecution of offences related to Article 2 of the Framework Decision in case of transnational cases (paragraph 2).

In addition, paragraph 4 includes a safeguard clause that guarantees in any case the exercise of jurisdiction in criminal matters by MS. Such a paragraph does not require transposition and will not be examined.

a) Rules about MS jurisdiction (paragraphs 1 and 3)

In order to map MS criminal law with reference to paragraph 7.1 of the Framework Decision and assess its transposition, the following section will examine the issue of jurisdiction in relation to offences which were:

- Committed in whole or in part within its territory, wherever the criminal organisation is based or pursues its criminal activities, or
- Committed by one of its nationals, or
- Committed for the benefit of a legal person established in the MS territory.

In addition, to map MS criminal law with reference to paragraph 7.3 of the Framework Decision (that is to be read together with the requirement of Article 7.1b) and assess its transposition, the following section will examine if a MS that does not extradite or surrender its own nationals it:

- Takes the necessary measures to establish its jurisdiction over and, where appropriate, to prosecute the offence referred to in Article 2, when committed by one of its nationals outside its territory.

b) Rules about judicial cooperation and coordination (paragraph 2)

As for judicial cooperation among MS in cases of potential jurisdiction conflicts, it should be pointed out that the Framework Decision imposes a 'behavioural obligation', i.e. they 'shall cooperate in order to decide which of them will prosecute the offenders'. In other words MS do not have to transpose any provision to comply with the Framework Decision, but can use national and/or EU tools to cooperate, thus complying with the Framework Decision. Thus, due to the nature of Article 7.2, its mapping and transposition assessment is not possible from a legislative point of view.

In reaction to the obligation for cooperation and coordination of procedures, all MS participate in EU relevant bodies (especially Eurojust) and envisage cooperation mechanisms that can make it possible to follow this behavioural obligation.

4.9.2. Mapping MS legislation – jurisdiction

Table 4.22 summarises how MS legislation deals with all three elements mentioned in Article 7.1 and 7.3 of the jurisdiction for offences relating to participation in a criminal organisation. For each MS, excerpts from relevant legislative texts are given, with details of the source.

Table 4.22: Jurisdiction over offences relating to participation in a criminal organisation

Member State	Territorial jurisdiction over	Personal jurisdiction over	
	<i>offences committed in whole or in part within its territory</i>	<i>offences committed by one of its nationals</i>	<i>offences committed for the benefit of a legal person established in the MS</i>
Austria 	YES	YES	NO
	<i>Section 62 c.c.</i>	<i>Sections 64.1 and 65 c.c.</i>	<i>n.a.</i>
Belgium 	YES	YES	NO
	<i>Section 3 c.c.</i>	<i>Section 7 Code of Criminal Procedure</i>	<i>n.a.</i>
Bulgaria 	YES	YES	NO
	<i>Section 3 c.c.</i>	<i>Section 4 c.c.</i>	<i>n.a.</i>
Croatia 	YES	YES	NO
	<i>Section 13 c.c.</i>	<i>Section 14 c.c.</i>	<i>n.a.</i>
Cyprus 	YES	YES	NO
	<i>Section 5 c.c.</i>	<i>Section 5 c.c.</i>	<i>n.a.</i>
Czech Republic 	YES	YES	YES
	<i>Section 4 c.c.</i>	<i>Section 6 c.c.</i>	<i>Section 8 c.c.</i>
Estonia 	YES	YES	NO
	<i>Section 6 c.c.</i>	<i>Section 7 c.c.</i>	<i>n.a.</i>
Finland 	YES	YES	NO
	<i>Chapter 1, Section 1 c.c.</i>	<i>Chapter 1, Section 6 c.c.</i>	<i>n.a.</i>
France 	YES	YES	NO
	<i>Section 113-2 c.c.</i>	<i>Section 113-6 c.c.</i>	<i>n.a.</i>
Germany 	YES	YES	NO
	<i>Section 3 c.c.</i>	<i>Section 7 c.c.</i>	<i>n.a.</i>
Greece 	YES	YES	NO
	<i>Section 5 c.c.</i>	<i>Section 6 c.c.</i>	<i>n.a.</i>
Hungary 	YES	YES	NO
	<i>Section 3 c.c.</i>	<i>Section 3 c.c.</i>	<i>n.a.</i>
Ireland 	YES	YES	YES
	<i>Section 71 and 71A Criminal Justice Act 2006, as amended in 2009</i>	<i>Section 74 Criminal Justice Act 2006, as amended in 2009</i>	<i>Section 74 Criminal Justice Act 2006, as amended in 2009</i>
Italy 	YES	YES	YES
	<i>Section 6 c.c.</i>	<i>Section 9 c.c.</i>	<i>Section 4 Legislative Decree 231, 8 June 2001</i>

Latvia 	YES	YES	NO
	<i>Section 2 c.c.</i>	<i>Section 4 c.c.</i>	<i>n.a.</i>
Lithuania 	YES	YES	NO
	<i>Section 4 c.c.</i>	<i>Section 5 c.c.</i>	<i>n.a.</i>
Luxembourg 	YES	YES	NO
	<i>Section 3 c.c.</i>	<i>Section 5 Code of Criminal Procedure</i>	<i>n.a.</i>
Malta 	YES	YES	NO
	<i>Sections 5 and 83A c.c.</i>	<i>Sections 5 and 83A c.c.</i>	<i>n.a.</i>
Netherlands 	YES	YES	YES
	<i>Section 2 c.c.</i>	<i>Sections 5 and 5a c.c.</i>	<i>Sections 5 and 5a c.c.</i>
Poland 	YES	YES	NO
	<i>Section 5 c.c.</i>	<i>Section 109 c.c.</i>	<i>n.a.</i>
Portugal 	YES	YES	NO
	<i>Section 4 c.c.</i>	<i>Section 5 c.c.</i>	<i>n.a.</i>
Romania 	YES	YES	NO
	<i>Section 8 c.c.</i>	<i>Section 10 c.c.</i>	<i>n.a.</i>
Slovakia 	YES	YES	NO
	<i>Section 3 c.c.</i>	<i>Section 4 c.c.</i>	<i>n.a.</i>
Slovenia 	YES	YES	NO
	<i>Section 10 c.c.</i>	<i>Section 12 c.c.</i>	<i>n.a.</i>
Spain 	YES	YES	NO
	<i>Section 23 Ley orgánica del poder judicial</i>	<i>Section 23 Ley orgánica del poder judicial</i>	<i>n.a.</i>
United Kingdom 	YES	YES	NO
	<u>conspiring in the UK to commit a crime abroad:</u> <i>Section 1A of the Criminal Law Act 1997</i> <u>conspiring abroad to commit a crime in the UK: jurisdiction always present (common law principle)</u>	<u>conspiring in the UK to commit a crime abroad:</u> <i>Section 1A of the Criminal Law Act 1997</i>	<i>n.a.</i>

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

As Table 4.22 shows, all MS have adopted jurisdiction over offences committed in whole or in part within their territory, as well as over offences committed by one of their nationals, according to the terms of Article 7 of the Framework Decision. However, in terms of the jurisdiction over offences committed for the benefit of a legal person established in the MS, only four MS have adopted jurisdiction (the Czech Republic, Ireland, Italy and the Netherlands). The latter does not mean lack of transposition of Article 7.1 of the Framework Decision, as the three criteria are to be read as alternatives.

In reaction to the obligation for cooperation and coordination of procedures all MS participate in relevant EU bodies (especially Eurojust) and envisage cooperation mechanisms.

4.9.3. Transposition assessment of Article 7 of the Framework Decision

The transposition of the legal minimum standard set out in Article 7 of the Framework Decision can be assessed by taking into account the rules regarding territorial and personal jurisdiction for offences relating to criminal organisation in each MS, according to the categories outlined in the previous sections. Since all MS prosecute offences of Article 2 in relation to their nationals when committed outside their territory, the requirement of Article 7.3 is also satisfied.

Based on information presented in the previous sub-section, Table 4.23 graphically illustrates MS transposition of Article 7 of the Framework Decision, in a yes/no format.

Table 4.23: MS transposition of the standard set in Article 7 of Framework Decision 2008/841/JHA

Member State	Jurisdiction over offences relating to participation in a criminal organisation committed a) in whole or in part within its territory, wherever the criminal organisation is based or pursues its criminal activities; or b) by one of its nationals; or c) for the benefit of a legal person established in the MS territory
Austria 	YES
Belgium 	YES
Bulgaria 	YES
Croatia 	YES
Cyprus 	YES
Czech Republic 	YES

Estonia 	YES
Finland 	YES
France 	YES
Germany 	YES
Greece 	YES
Hungary 	YES
Ireland 	YES
Italy 	YES
Latvia 	YES
Lithuania 	YES
Luxembourg 	YES
Malta 	YES
Netherlands 	YES
Poland 	YES
Portugal 	YES
Romania 	YES

<p>Slovakia</p> 	YES
<p>Slovenia</p> 	YES
<p>Spain</p> 	YES
<p>United Kingdom</p> 	YES

Source: Elaboration of information drawn from legal texts validated by national experts through their replies to questionnaires and other secondary sources.

Findings

Perhaps by virtue of the conditional nature of Article 7's recommendations, its transposition into MS legislation appears to have been very successful. Although the more far-reaching option of jurisdiction over offences committed for the benefit of a legal person established in the MS territory has only been adopted by four MS (the Czech Republic, Ireland, Italy and the Netherlands), the recognition by all assessed MS of jurisdiction over offences relating to participation in a criminal organisation committed in whole or in part within its territory as well as those committed by one of its nationals shows the ease with which this particular article has been transposed.

4.10. Absence of dependence on a report or accusation by victims (Article 8)

The seventh 'minimum legal standard' introduced by the Articles of the Framework Decision relates to the dependence of prosecutions for offences relating to criminal organisations on reports or accusations made by victims of such offences. It is outlined in Article 8 of the Framework Decision and reads:

Member States shall 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 provision relates back to Article 2 of the Framework Decision and therefore requires MS to ensure that a report/accusation from a victim is not needed to conduct investigations and prosecutions for offences relating to participation in a criminal organisation.

No table can be produced since in this case, since there is an *a contrario* reasoning. As remarked on by national experts, MS legislation envisages that all crimes shall be prosecuted *ex officio* **apart from some exceptions** (e.g. offences against honour such as defamation) and this is not the case with crimes related to Article 2 of the Framework

Decision. As a consequence, offences under Article 2 are prosecuted *ex officio* in all MS, precisely because they are not included in the list of crimes (and the related criminal norms) that can be prosecuted only after the report/accusation is made by the victim(s).

Findings

With reference to this provision, all the national experts maintained that such offences would be prosecuted *ex officio* (i.e. irrespective of the wishes or participation of the victim) in their states.

It either stems directly from the national legislation that such a declaration is not needed for the prosecution purposes or it can be deduced from the absence of a specific condition rendering prosecution dependant from such a declaration.

As a consequence, all 26 assessed MS (out of 28) appear to have successfully transposed this standard: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom.

4.11. Key findings

This section presents the key findings drawn from the mapping and transposition assessment of the Framework Decision 2008/841/JHA, article by article. Article 2 (and Article 1):

- The general **level of transposition of Article 2** is, overall, **very satisfactory**. All MS, with the exception of DK and SE,⁷⁵ have transposed the key elements of the Framework Decision and introduced a self-standing offence relating to at least one of the two types of conduct from Article 2. However, the majority of MS were compliant with the Framework Decision before it entered into force and all MS have some minor discrepancies.
- Due to the fact that DK and SE lack compliance with the basis offence of Article 2, those MS are not further assessed for all provisions that are based on Article 2. For this reason, unless stated otherwise, **'all assessed MS' means all MS apart from DK and SE**.
- Within this good level of transposition, some **minor discrepancies** remain in relation to certain specific elements of the offences. France, Hungary and Slovakia define a criminal organisation according to its commission of predicate offences punishable by 5 years imprisonment or more, despite the fact that Article 1 explicitly states that the threshold should be 4 years. Estonia and Lithuania also alter the definition of criminal organisation by targeting only organisations of permanent duration, contrary to the terms of the Framework Decision.
- In addition, **approximation** of national legislation on offences relating to participation in a criminal organisation between MS legislation is in practice **relatively low**. While remaining within the limits set by the Framework

⁷⁵ As mentioned in Section 4.4, DK and SE have not implemented any of the measures of the Framework Decision in their legal system. As a result, they have been left out of this assessment, although their alternative legal measures to fight organised crime are examined in Chapter 5.

Decision, MS have adopted **disparate definitions of criminal organisations**, from the very broad, as in the case of Germany and the Netherlands,⁷⁶ to the very precise and narrow, as with Croatia and Lithuania.⁷⁷ Although those definitions all match the requirements set out in the Framework Decision, such disparity could lead to practical difficulties in their application (see further conclusions in Chapter 9).

- Approximation between MS legislation is further hindered by the possibility granted by the Framework Decision of choice between the participation in a criminal organisation model (Article 2a of the Framework Decision) and conspiracy to commit criminal offences model (Article 2b of the Framework Decision) (or both).

Article 3, par. 1 (penalties)

- **All 26 assessed MS are compliant with the Framework Decision** in relation to the minimum threshold required (the minimum level of the upper threshold of 2 years of imprisonment).
- At the same time it must be noted that **8 MS (BE, CY, CZ, DE, IE, LV, LU, UK) allow for the alternative possibility of the imposition of a fine**. This means that it is possible that the penalty of imprisonment is not applied in practice. This fact does not mean that the possibility to impose imprisonment is not at disposal of a national judge in line with the Framework Decision. As a consequence, these MS partially transpose the Framework Decision provisions.
- In any case (also when imprisonment is, in principle, the only penalty foreseen) a national judge could, within the bounds of judicial discretion, convert it into any other penalty (e.g. community service or fine) in line with national rules. Also, approximation of national legislation on penalties for offences relating to participation in a criminal organisation seems far from being reached, since imprisonment penalties vary a lot from one MS to another. So, for example, in Finland the maximum penalty is up to 2 years, while in Lithuania it is up to 15 years.
- The latter could be partly due to the fact that some MS distinguish many participation conducts (e.g. founding, leading role, participation, recruitment, participation in the legal activities of a criminal organisation), while others do not. So, for example, Bulgaria, Greece and Lithuania differentiate among conducts and envisage high imprisonment penalties; while Austria and Finland do not differentiate much and envisage low penalties for all conducts.

Article 3, par. 2 (aggravating circumstances)

- Only 11 MS made a specific reference in the national legislation to an aggravation of predicate offences due to the fact that they were committed in

⁷⁶ '[...] an organization, the objectives or activity of which are directed towards the commission of crimes[...]' and '[...] organisation which has as its purpose the commission of serious offences [...]'.

⁷⁷ Croatian criminal law states that 'a criminal association shall be made up of three or more persons acting in concert with the aim of committing one or more criminal offences that are punishable with imprisonment for a term longer than three years and shall not include an association randomly formed for the immediate commission of one criminal offence,' whereas Lithuanian criminal law states that 'a criminal association shall be one in which three or more persons linked by permanent mutual relations and division of roles or tasks join together for the commission of a joint criminal act – one or several serious and grave crimes. An anti-state group or organisation and a terrorist group shall be considered equivalent to a criminal association'.

the framework of a criminal organisation (17 MS did not: AT, BE, BG, CY, FR, DE, DK, EL, IT, LV, LU, MT, NL, PT, ES, SE, UK).⁷⁸

- This may be the consequence of a potential conflict between Articles 2 and 3 of the Framework Decision. Most MS have followed Article 2 in introducing a self-standing offence to criminalise participation to a criminal organisation, which is defined by the commission of certain offences. Yet Article 3 additionally requires MS to aggravate the sentence for offences committed within the framework of a criminal organisation.
- The question arises of how to ensure the application of both provisions. It can happen that both offences (predicate offences and the offence of Article 2) are prosecuted in the course of the same trial – or they could be prosecuted in separate proceedings. In such cases, one must take into account that the obligations stemming from both provisions (Article 2 and 3.2 of the Framework Decision) do not run the risk of infringing the principle of *ne bis in idem*, which guarantees that the same cause of action cannot twice form the basis for legal action. The risk of *bis in idem* is due to the possibility that two separate convictions can take place for different conduct, namely one for the offence in relation to participation in a criminal organisation and the other for a specific predicate offence, e.g. drug trafficking. In the second case the fact that the framework of a criminal organisation is raised constitutes only the context of another offence and not its core element (i.e. there is no *idem*).
- As explained above even though this issue does not constitute the infringement of the *ne bis in idem* principle there may be certain doubts on how those provisions need to be applied in practice (see Chapter 6 in relation to practice).
- It is worth mentioning that MS provide, despite no obligation stemming from the Framework Decision in this regard, certain aggravating circumstances in relation to the offence of organised crime (and not to predicate offences as in Article 3.2). Those MS aggravate the offence of Article 2 in relation to certain organisational features and circumstances such as use of violence or weapons by a criminal organisation.⁷⁹
- In addition, the introduction of aggravating circumstances is unlikely to be transposed in MS which have adopted a conspiracy offence under Article 2b of the Framework Decision, since the system will already be relying on a similar mechanism to criminalise such behaviour, and might not have a working definition of criminal organisation, despite its being in line with the Framework Decision. This is more specifically the case in the UK, where the sole offence introduced is one of conspiracy, and the aggravating circumstances do not stem from written law but can only be applied through judicial discretion.

Article 4 (special circumstances)

- All 26 assessed MS are compliant with the Framework Decision.

⁷⁸ It should be stressed that the obligation stemming from Article 3(2) is not meant for the offence of conspiracy in OC (Article 2(b)) due to the fact that the nature of this offence does not relate to predicate offences but punishes the mere agreement irrespectively of the specific offences that may be committed in practice. For this reason the UK being the only MS that transposed solely Article 2(b) is not assessed against Article 3(2). For other MS providing for the conspiracy offence the assessment in this case is carried out only in relation to the Article 2(a), namely the offence of participation in a criminal organisation.

⁷⁹ These alternative methods of criminalisation are examined in Chapter 5.

- This is due to the fact that the provision is not obligatory (Article 4 states that MS **'may** take the necessary measures to ensure that the penalties referred to in Article 3 may be reduced or that the offender may be exempted').
- It should be noted, however, that despite the optional nature of Article 4, **all MS have adopted some form of special circumstances** for the reduction of penalties for offences relating to participation in a criminal organisation or exempting the offender from those penalties.

Article 5 (liability of legal persons)

- **All assessed MS**, with the exception of Cyprus, **envisage criminal or non-criminal liability for legal persons** involved in offences relating to participation in a criminal organisation.
- The transposition is satisfactory in its scope of application, since in all MS the bodies that can be held liable are all entities having legal personality under the applicable national law, with the (possible) exception of state and public bodies, or international organisations.
- As for leading positions within a legal person, 10 MS (EE, FR, GR, LV, LT, LU, MT, PT, SK, ES) envisage the liability of legal persons arising from all the three types of leading positions identified in the Framework Decision (i.e. individuals with power of representation; individuals with authority to take decisions; individuals with authority to exercise control), 2 MS (DE, UK) envisage the liability of legal persons arising from two out of the three leading positions identified in the Framework Decision, and 13 MS (AT, BE, BG, HR, CZ, FI, HU, IE, IT, NL, PL, RO, SL) extend even the scope of liability of legal persons beyond the conduct of the three leading positions to other individuals (e.g. persons who have *de facto* the control of a legal person, including employees at a low level).
- Less satisfactory is the transposition of the part of the Article requiring MS to take the necessary measures to ensure that such liability also arises for lack of supervision or control by persons having a leading position; in 8 MS (BE, BG, HR, EE, FR, LU, MT, RO) this element was not transposed.
- Of the 25 MS that envisage criminal or non-criminal liability for legal persons (all except CY, DK, SE), the national legislation of 24 of those MS (all apart from DE) expressly mentions that no prejudice arises from proceedings against legal persons to criminal proceedings against natural persons who are perpetrators of, or accessories to, any of the offences relating to participation in a criminal organisation. However the national legislation of 2 MS (PL, HU) indicates that proceedings against legal persons can be launched only following the conviction of the natural person for the same offence. Such an approach may in practice restrict holding legal persons liable for offences.

Article 6 (penalties for legal persons)

- **All assessed MS** (CY is not assessed due to the fact that the liability for legal persons is not applicable in this MS to the offence of Article 2) **envisage criminal or non-criminal penalties for legal persons.**
- In relation to the optional 'other penalties', including the non-exhaustive list enumerated in the provision all MS apart from 5 (FI, IE, LU, MT, UK) also

provide measures other than fines. Those alternative measures principally include forfeiture/confiscation of entity's assets and/or publication of the conviction.

- It should be stressed that in many cases **MS go much beyond the provisions of the Framework Decision** providing numerous additional measures which are not obligatory under the Framework Decision. France in particular has adopted all possible measures, ranging from criminal fines in accordance with Article 6's obligatory provision, to alternative measures contained in the same provision, as well as a wide range of other alternative measures (including confiscation, publication, etc.)

Article 7 (jurisdiction)

- **All 26 assessed MS** envisage the required standards under Article 7 in terms of jurisdiction rules as well as cooperation in cross-border investigations.
- While all assessed MS establish their own jurisdiction in whole or in part within their territory and over offences committed by their nationals, whenever the criminal organisation is based or pursues its criminal activities, only 4 MS (CZ, IE, IT, NL) extend their jurisdiction to offences committed for the benefit of a legal person established in the territory of that MS.
- 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 MS decided to have such a recourse.**

Article 8 (absence of requirement of a report or accusation by victims)

- In accordance with the obligation set out in Article 8, **all assessed MS** ensure that relevant investigations do not depend on a report or accusation made by a person subjected to the offence.

5. Further/alternative criminal law tools to fight organised crime⁸⁰

As described in Chapter 4, all MS (with the exception of DK and SE), have offences relating to participation in a criminal organisation, which transpose either Article 2a or 2b (or both) of the Framework Decision in their criminal system.

This does not exclude that:

- MS having such offences might have further criminal law tools to fight the organised crime phenomenon horizontally. This is the case in 11 MS (AT, BE, BG, FI, FR, DE, HU, IT, LU, PT, ES) out of 26 that – besides punishing participation in a criminal organisation and/or conspiracy (or both) in line with the Framework Decision – have further criminal law tools to fight organised crime. Section 5.1 reviews these further criminal law tools.
- For a number of MS the tools are shaped to tackle the most serious or largest organised crime groups, setting higher requirements in areas such as the number of persons involved (this is the case for AT and IT; the latter's approach relates in particular to the country's longstanding problem with mafia-type organisations).
- Some MS (BG, FI, FR, DE, HU, IT, LU, PT) provide specific offences, to be considered as *lex specialis* to the basic offence discussed in the previous chapter, which tackle specific objectives, mostly referring to the criminal market, e.g. organised crime groups committing drug trafficking.
- It should be noted that in 5 of the 11 MS with further criminal law tools (BE, FR, HU, LU, ES) some additional offences are defined more broadly than the basic requirements of the Framework Decision. In cases when both provisions existing in a MS were generally in line with the Framework Decision, the provision discussed in the previous section was the one that is more specific while the additional one is discussed in the current section. The existence of a more generic offence allows MS to punish behaviour that would not be covered by the more specific offence (e.g. in cases of less serious offences or when the organisational structure is not advanced enough to qualify it as a 'criminal organisation' under the Framework Decision provisions or simply when it is difficult to prove in practice one of the elements required by the specific offence). The more generic offence allows punishment of those conducts that fall outside the scope foreseen by the Framework Decision, and remains within

⁸⁰ With a joint research effort under the supervision of Andrea Di Nicola (scientific coordinator of eCrime, University of Trento) and Barbara Vettori (Catholic University of Milan, member of the Advisory Board), authorship is as follows: Andrea Di Nicola Introduction, 5.2; Barbara Vettori 5.1 (Portugal, Spain), 5.3, 5.4; Andrea Cauduro 5.1 (France, Germany, Hungary, Italy, Luxembourg); Gabriele Baratto 5.1 (Austria, Belgium, Bulgaria, Finland).

the discretion of each MS; it does not stem from the EU legislation, which targets only serious criminality (predicate offences with maxima of at least 4 years of imprisonment).

- MS not having such offences (Denmark and Sweden) might have **alternative criminal law tools** to fight the organised crime phenomenon. Section 5.2 provides an overview of these alternative criminal law tools.

These further and alternative tools have been identified from national experts' answers to the questionnaire administered by this study. The list of tools is not exhaustive and it is limited to those linked to participation in a criminal organisation horizontally, and not tools relating to specific criminal markets, if any.

Key findings and recommendations are presented in Sections 5.3 and 5.4.

5.1. Further criminal law tools

Austria

In Austria, alongside participation in a criminal organisation punished by Article 278 c.c., Article 278a c.c. envisages another offence that punishes participation in a different and more structured criminal group made up of a large number of members (at least 10), with a hierarchical structure and shared tasks among members. The predicate offences committed by this criminal group have to be serious, with the aim of gaining a large amount of money (at least 50,000 Euros) and include corruption, intimidation and the attempt to evade criminal investigation using specific means. Participation in such a criminal group is punishable with imprisonment for between 6 months and 5 years.

The definition of such a criminal group differs from that of a 'criminal organisation' in the Framework Decision (Article 1) as follows:

- 1) Structure: Article 278a⁸¹ c.c. requests a defined hierarchy and a division of tasks among members.
- 2) Number of members: Article 278a c.c. requests a larger number (10 or more).
- 3) Benefit: Article 278a c.c. requests the commission of predicate crimes aimed at gaining a large amount of money (more than 50,000 Euros).

Belgium

In Belgium, alongside participation in a criminal organisation punished by Article 324 bis c.c., Articles 322, 323 and 324 c.c.⁸² punish gangs (*bandes*). Such provisions generically

⁸¹ Section 278:

(1) Who founds a criminal organization or participates in it as a member, shall be punished with imprisonment up to three years;

(2) 'criminal organisation' is an association, set up for the longer term, of more than two persons for the purpose of one or more members of the organisation committing one or more crimes, other serious acts of violence against life and limb, not only minor damage to property, theft or fraud, offences under Sections 104a, 165, 177b, 233 to 239, 241a to 241c, 241e, 241f, 304 or 307, other offences specified in Section 278d(1) or offences under Sections 114(1) or 116 of the Immigration Authorities Act;

(3) Is a member participant in a criminal organization, who commits a criminal offense within its criminal orientation or participates in the activities of the organization through the provision of information or assets or otherwise, in the knowledge that he thereby promotes the association or their criminal acts.

⁸² See Appendix A for Article 324.

Art. 322: Toute association formée dans le but d'attenter aux personnes ou aux propriétés est un crime ou un délit, qui existe par le seul fait de l'organisation de la bande.

criminalise the formation of/participation in a gang aimed at **committing crimes against persons or properties**.

Leading/forming such a criminal group is punished with:

- 5 to 10 years imprisonment for serious offences punished with life imprisonment, or serious offences punished from 10 to 15 years imprisonment or a higher term.
- 2 to 5 years imprisonment for other serious offences.
- 6 months to 3 years in case for other offences (Article 323 c.c.).

Participation/support is punished with:

- 6 months to 5 years imprisonment for serious offences punished with life imprisonment, or serious offences punished from 10 to 15 years imprisonment or a higher term.
- 2 months to 3 years imprisonment for other serious offences.
- 1 month to 2 years for other offences (Article 324 c.c.).

The definition provided by Article 322 c.c. is broader than that of criminal organisation contained in Article 324 bis c.c., which fulfils all the legal minimum standards set out in Articles 1 and 2 of the Framework Decision.⁸³ However, as the national expert remarked:

This Article on banditism and the related Art. 323 and 324 are not created for the prosecution of organised crime. These Articles are older. However for a criminal organisation there are more than two people needed. In case of two people the public prosecutor can rely on the article of banditism. The Articles 322, 323 and 324 requires an element of intention. This is not the case for Art. 324 bis and ter: the intention to belong to the criminal organisation is sufficient.

Notwithstanding this, Article 322 c.c. is also in line with the Framework Decision requirements since it is so broad as to incorporate all of them.

Bulgaria

In Bulgaria, alongside participation in a criminal organisation punished by Article 321 c.c., other criminal norms specifically criminalise formation/direction/participation in criminal groups that have specific goals. This is the case of:

- Article 162(3) and (4) c.c.⁸⁴ for criminal groups aimed at committing **offences against national, racial and ethnic equality, and religious and political**

Art. 323: (Si l'association a eu pour but la perpétration de crimes emportant la peine de réclusion à perpétuité ou la réclusion de dix ans à quinze ans ou un terme supérieur, les provocateurs de cette association, les chefs de cette bande et ceux qui y auront exercé un commandement quelconque, seront punis de la réclusion de cinq ans à dix ans.) Ils seront punis d'un emprisonnement de deux ans à cinq ans, si l'association a été formée pour commettre d'autres crimes, et d'un emprisonnement de six mois à trois ans, si l'association a été formée pour commettre des délits.

Art. 324: Tous autres individus faisant partie de l'association et ceux qui auront sciemment et volontairement fourni à la bande ou à ses divisions des armes, munitions, instruments de crime, logements, retraite ou lieu de réunion, seront punis : Dans le premier cas prévu par l'article précédent, d'un emprisonnement de six mois à cinq ans; Dans le second cas, d'un emprisonnement de deux mois à trois ans; Et dans le troisième, d'un emprisonnement d'un mois à deux ans.

⁸³ See Chapter 4, Section 4.5.

⁸⁴ Article 162(3): An individual who forms or leads an organization or a group that has set itself the task of doing activities under para.1 and 2, or systematically tolerates the performance of such activities, is subjected to a penalty of imprisonment for a term from one to six years, a fine from ten to thirty BGN and a public execration. Article 162(4) A person who is a member of such an organisation or group shall be punished by deprivation of liberty for up to three years and by public censure.

tolerance. Leading or forming such a criminal group is punished with 1 to 6 years imprisonment and public censure (Article 162(3) c.c.); participation is punished with up to 3 years imprisonment and public censure (Article 162(4) c.c.).

- Article 109(1) and (2) c.c.⁸⁵ for criminal groups aimed at **committing offences against the Republic.** Leading or forming such a criminal group is punished with up to 12 years imprisonment (Article 109(1) c.c.); participation is punished with up to 10 years imprisonment (Article 109(2) c.c.).
- Article 169d c.c.⁸⁶ for criminal groups aimed at committing **offences against citizens' political rights.** Leading or forming such a criminal group is punished with from 1 to 8 years imprisonment; participation is punished with 1 to 6 years imprisonment.
- Article 321a c.c.⁸⁷ for criminal groups aimed at **concluding transactions or deriving benefits by use of force or intimidation.** Leading or forming such a criminal group is punished with 3 to 8 years imprisonment (Article 321a(1) c.c.); participation is punished with up to 5 years imprisonment (Article 321a(2) c.c.).
- Article 354c c.c.⁸⁸ for criminal groups **aimed at the production or processing of narcotic drugs.** Leading or forming such a criminal group is punished with 10 to 20 years imprisonment and a fine (Article 354c(2) c.c.); participation is punished with 3 to 10 years imprisonment and a fine (Article 354c(3) c.c.).

The definition of such criminal groups differs from that of a 'criminal organisation' in the Framework Decision for the scope of the predicate offences, since all these provisions restrict their application only to some specific crimes, as seen above, and not to all offences punishable by deprivation of liberty or a detention order of a maximum of at least 4 years or a more serious penalty.

Finland

In Finland, Chapter 50 § 2 c.c.,⁸⁹ ratifying the 1988 Vienna Convention on drug trafficking,⁹⁰ envisages a separate offence with harsher penalties for participation in a

⁸⁵ Article 109(1): A person who forms or leads an organisation or group, which has set itself the aim of committing crimes under the present Chapter, shall be punished by deprivation of liberty for up to twelve years, but not more than the punishment provided for the respective crime. 109(2) A person who is a member of such an organisation or group shall be punished by deprivation of liberty for up to ten years, but not more than the punishment provided for the respective crime.

⁸⁶ 169d(1): An individual who forms or lead a group that has set itself the task of doing crimes under this section, is subjected to a penalty of imprisonment for a term from one to eight years. 169d (2) An individual who is a member of such group is subjected to a penalty of imprisonment for a term of up to six years.

⁸⁷ 321a(1): A person who participates in the leadership of an organisation or a group, which concludes transactions or makes benefit by use of force or by inspiring fear, shall be punished by deprivation of liberty for three to eight years. (2) A person who participates in such an organisation or group shall be punished by deprivation of liberty for up to five years.

⁸⁸ 354c(2): A person who organises, leads or finances an organised criminal group for the purposes of cultivating plants under paragraph 1, or of extracting, producing, or processing drugs, shall be punished by deprivation of liberty from ten to twenty years and by a fine from BGN 50,000 to BGN 200,000. (3) A person who participates in an organised criminal group under the preceding paragraph, shall be punished by deprivation of liberty for three to ten years and by a fine from BGN 5,000 to BGN 10,000.

⁸⁹ Chapter 50(2): If in the narcotics offence... (3) the offender acts as a member of a group organised for the extensive commission of such an offence ... and the narcotics offence is aggravated also when assessed as a whole, the offender shall be sentenced for an aggravated narcotics offence to imprisonment for at least one and at most ten years.

⁹⁰ United Nations Office on Drugs and Crime (1988).

criminal group organised for the purpose of committing serious drug-related offences. Participation in such a criminal group is punished with 1 to 10 years imprisonment.

The definition of such a criminal group differs from that of a 'criminal organisation' in the Framework Decision (Article 1) for the scope of the predicate offence, since such provision applies only to serious drug-related offences, and not to all offences punishable by deprivation of liberty or a detention order of a maximum of at least 4 years or a more serious penalty.

France

In France, alongside participation in a criminal organisation punished by Article 450–1 c.c., Article 132–71 c.c.⁹¹ refers to the concept of the gang (*bande organisée*), namely any criminal group formed or any agreement made with the aim of preparing one or more offences (both serious and other offences – *crimes et délits*). The preparation of such offences is characterised by one or more material facts (*faits matériels*) functional to the commission of the offence(s) for which the group was established/the agreement made.

The commission of a crime by a gang as defined under Article 132–71 c.c. is considered an aggravating circumstance for a number of crimes, e.g. fiscal fraud (Article 87, Law 1646/2009) and environmental crimes (Article L415-6, Law 619/2013).

The definition provided by Article 132–71 c.c. is broader than that of criminal organisation contained in Article 450–1 c.c., which fulfils all the legal minimum standards under Articles 1 and 2 of the Framework Decision.⁹² Notwithstanding this, Article 450–1 c.c. is also in line with the Framework Decision requirements since it is so broad that it can incorporate all of them (felonies or misdemeanours punished by at least 5 years' imprisonment).

Germany

In Germany, alongside participation in a criminal organisation punished by Article 129 c.c., Article 244(1) c.c.⁹³ refers to the concept of the gang (*Schwerer Bandendiebstahl*) formed with the aim of continued commission of robbery or theft. Participation in such a criminal group is punished with 1 to 10 years imprisonment or with 6 months to 5 years imprisonment in less serious cases.

The definition of such a criminal group differs from that of a 'criminal organisation' in the Framework Decision (Article 1) for the scope of the predicate offences, since such provision applies only to robberies and thefts, and not to all offences punishable by deprivation of liberty or a detention order of a maximum of at least 4 years or a more serious penalty. Penalties foreseen in this provision are harsher than the basic offence of Article 129 c.c.

⁹¹ ARTICLE 132-71: An organised gang within the meaning of the law is any group formed or association established with a view to the preparation of one or more criminal offences, preparation marked by one or more material actions.

⁹² See Chapter 4, Section 4.5 for more details.

⁹³ 244(1): Whosoever [...] 2. steals as a member of a gang whose purpose is the continued commission of robbery or theft under participation of another member of the gang... shall be liable to imprisonment from six months to ten years.

Hungary

In Hungary, alongside participation in a criminal organisation punished by Article 459(1), Article 459(1)1 c.c.⁹⁴ punishes 'criminal association'; this is a criminal group made up of at least two persons, with some kind of organisation, engaged in the attempt or commission of at least one criminal activity. This form of criminal cooperation is not 'sophisticated' enough to be legally qualified as criminal organisation (Article 459(1)) as it covers serious and minor offences. Broadly speaking it is in line with the Framework Decision requirements since it is so broad as to incorporate all of the features of a criminal organisation.

This provision is used as an aggravating circumstance for some crimes, e.g. illegal use of a human body (Article 175 c.c.), drug trafficking (Article 176 c.c.), and falsification of health care products (Article 186 c.c.). The Hungarian criminal code envisages an aggravation of the penalty for the commission of such crimes when committed in 'criminal association', namely when such offences are committed by two or more persons (Article 459(2) c.c.). Such provisions include also the possibility of aggravating penalties in case of the commission of such crimes by 'criminal organisations' under Article 459(1).

Italy

In Italy, alongside participation in a criminal organisation punished by Article 416(1-5), there are other offences specifically dealing with formation/direction/participation in criminal groups that have specific goals:

- Article 416(6) c.c.⁹⁵ refers to a criminal group made up of at least three members and aimed at the **commission of offences related to human trafficking and/or smuggling of migrants**. Leading or forming such a criminal group is punished with 5 to 15 years imprisonment (Article 416(6) c.c.); participation is punished with 4 to 9 years imprisonment (Article 416(6) c.c.).
- Article 74 of the Decree of the President of Republic n. 309/1990 refers to a criminal group made up of at least three people and aimed at the **commission of drug-related offences**. Leading or forming such a criminal group is punished with up to 20 years imprisonment (Article 74(1) DPR 309/1990); participation is punished with up to 10 years imprisonment (Article 74(2) DPR 309/1990).
- Article 416 bis c.c. defines 'mafia-type association', namely a criminal group made up of at least of three members that aims to commit criminal offences, to directly and indirectly acquire management or in whatever way control of economic activities, licenses, authorisations, public contracts and services, or to obtain unlawful profits or advantages for themselves or any other person, or with a view to preventing or limiting the freedom to vote, or getting votes for themselves or other persons, on the occasion of an election. Such activities

⁹⁴ Art 459(1)2: 'Criminal association' shall mean when two or more persons are engaged in criminal activities in an organized fashion, or they conspire to do so and attempt to commit a criminal act at least once, without, however, creating a criminal organization [...].

⁹⁵ Art 416(6): [...] If the organization is to commit any of the crimes referred to in Articles 600, 601 and 602 and Article 12, paragraph 3-bis of the Consolidated Law provisions governing immigration and the status of foreigners in the legislative decree 25 July 1998, n. 286, punishment is imprisonment of from five to fifteen years in cases provided for by the first paragraph and from four to nine years in cases provided for in the second paragraph.

shall rely on the use of the 'mafia method', that consists of the intimidating power of association ties (*vincolo associativo*) and of the resulting conditions of submission and silence (*omertà*). In other terms, 'a mafia group is an organized criminal group which has a long history of violence and intimidation: this "history" of violence and intimidation – for the reason of being well-known in the territory – has itself a strong threatening effect, so that the criminal group can easily acquire unlawful advantages through the simple unlawful use of other people's fear, mostly even without the need for explicit and specific new threats.'⁹⁶ Leading or forming such a criminal group is punished with 9 to 14 years imprisonment (Article 416 bis(2) c.c.);⁹⁷ participation is punished with 7 to 12 years imprisonment (Article 416 bis(1) c.c.).⁹⁸

The definitions of such criminal groups differ from that of a 'criminal organisation' in the Framework Decision (Article 1) since they envisage a specific *modus operandi* (416 bis c.c.) or restrict the scope of the predicate offences to some crimes only (i.e. human trafficking, smuggling, drug-related offences (Article 416(6-7) c.c., Article 74 DPR 309/1990)) and not to all offences punishable by deprivation of liberty or a detention order of a maximum of at least 4 years or a more serious penalty.

Luxembourg

In Luxembourg, alongside participation in a criminal organisation punished by Article 324 bis, Articles 322, 323 and 324 punish gangs (*associations de mafaiteurs*). Such provisions generically criminalise the formation of or participation in a gang aimed at committing crimes against persons or properties. Leading/forming such a criminal group is punished with:

- 5 to 10 years imprisonment for serious offences punished with at least 10 years imprisonment.
- 2 to 5 years imprisonment for other serious offences.
- 6 months to 3 years for other offences (Article 323 c.c.).

Participation/support is punished with:

- 6 months to 5 years imprisonment for serious offences punished with at least 10 years imprisonment.
- 2 months to 3 years imprisonment for other serious offences.
- 1 month to 2 years for other offences (Article 324 c.c.).

The definition under Article 322 c.c. is broader than that of criminal organisation contained in Article 324 bis c.c., which fulfils all the legal minimum standards under Articles 1 and 2 of the Framework Decision. Notwithstanding this, Article 322 c.c. is also in line with the Framework Decision requirements since it so broad as to incorporate all of them.

⁹⁶ Turone (2007), 51–52.

⁹⁷ Article 416 bis(2): Those who promote, manage or organize the association are punished for that reason alone, with imprisonment from nine to fourteen.

⁹⁸ Article 416 bis(1). Anyone who takes part in a Mafia-type formed by three or more persons, shall be punished with imprisonment from seven to twelve years.

Portugal

In Portugal, alongside participation in a criminal organisation punished by Article 321 c.c., there are other offences specifically dealing with formation/direction/participation in criminal groups that have specific goals. This is the case of:

- Article 28 of Decree-Law n. 15/93,⁹⁹ that punishes anyone who 'promotes, creates or funds an association, group or organisation of two or more persons with the intent of, in a joint manner' **committing a drug trafficking offence**, as well as collaborators, members or supporters of the group. Forming such a criminal group is punished with 10 to 20 years imprisonment (Article 28(1) Decree-Law n. 15/93); participation is punished with 5 to 10 years imprisonment (Article 28(2) Decree-Law n. 15/93); leading is punished with 12 to 20 years imprisonment (Article 28(3) Decree-Law n. 15/93).
- Article 89 of Law n. 15/2001 envisages criminalisation of a criminal group involved in **tax crimes**.
- Article 2 of Law n.52/2003 punishes **a criminal group aimed at terrorism**. This is an offence that punishes participation in such a group as a separate (and more serious) offence compared to the terrorism offence governed by Article 4 of the same law. While Article 2 punishes participation in a criminal group aimed at committing terrorist acts, Article 4 punishes people engaging in such terrorist acts.

The definitions of such criminal groups differ from that of a 'criminal organisation' in the Framework Decision (Article 1) for the scope of the predicate offences, since all these provisions apply to specific crimes only, as seen above, and not to all offences punishable by deprivation of liberty or a detention order of a maximum of at least 4 years or a more serious penalty.

Spain

In Spain, alongside participation in a criminal organisation punished by Article 570 bis c.c., Article 570 ter c.c. deals with participation in criminal groups (*grupos criminales*).¹⁰⁰

⁹⁹ 1. Any person who promotes the creation of, creates or funds a group, an organization or an association comprising two or more persons for the purpose of concertedly committing any of the offenses described in Articles 21 or 22, shall be liable to imprisonment for a term of 10 to 20 years.

2. Any person who cooperates directly or indirectly with, or supports any group, organization or association as mentioned in the preceding paragraph, shall be liable to imprisonment for a term of 5 to 15 years.

3. Any person who acts as head or steers any group, organization or association as mentioned in paragraph 1, shall be liable to imprisonment for a term of 12 to 20 years.

4. Where the aims of the group, organization or association are to convert, transfer, disguise or receive either goods or the proceeds of any of the offenses described in Articles 21 and 22, or where its activities amount to converting, transferring, disguising or receiving either goods or the proceeds of any of the offenses described in Articles 21 and 22, the offender shall be liable to: a. imprisonment for a term of 2 to 10 years, in the cases mentioned in paragraphs 1 and 3; b. imprisonment for a term of 1 to 8 years, in the cases mentioned in paragraph 2.

¹⁰⁰ Article 570 ter:

1. Whoever constitutes, finances or forms a criminal group shall be punished:

a) If the purpose of the group is to commit the felonies mentioned in Section 3 of the preceding Article, with the punishment of two to four years imprisonment for one or more serious felonies and with that of one to three years imprisonment for less serious felonies;

b) With the punishment of six months to two years imprisonment if the purpose of the group is to commit any other serious felony;

c) With the punishment from three months to a year of imprisonment when the aim is to commit one or several less serious felonies not included in Section a) or reiterated commission of misdemeanours, in the latter case the punishment must be imposed in the lower half, except if the purpose of the group is reiterated

These are groups of more than two persons that aim to jointly commit serious offences or repeatedly perpetrate minor offences, but lack one or more features of the '*organización criminal*' (Article 570 bis). So, for example, '*grupos criminales*' do not have to be stable, nor to distribute tasks among members. Participation in or support of such a criminal group is punished with:

- 2 to 4 years imprisonment for serious offences against life, physical integrity, freedom, sexual freedom, human trafficking (Article 570 ter (a) c.c.).
- 6 months to 2 years imprisonment for other serious offences (Article 570 ter (b) c.c.).
- 3 months to 1 year for other offences (Article 570 ter (c) c.c.).

The definition provided by Article 570 ter c.c. is broader than the definition of criminal organisation under Article 570 bis c.c., which fulfils all the legal minimum standards under Articles 1 and 2 of the Framework Decision. Notwithstanding this, Article 570 ter c.c. is also in line with the Framework Decision requirements since it so broad as to incorporate all of them.

5.2. Alternative criminal law tools

Denmark and Sweden, whose criminal legislation does not include as a self-standing offence either participation in a criminal organisation (Article 2a of the Framework Decision) or conspiracy to commit criminal offences (Article 2b of the Framework Decision), have some alternative criminal law tools to fight organised crime, discussed below.

5.2.1. Denmark

Denmark does not have in its criminal law system any of the offences relating to participation in a criminal organisation requested by the Framework Decision.

MS experts reported that a self-standing offence was unnecessary as potentially any criminal conduct can be covered by the existing provisions. Also, it seems that the Danish approach relating to the transposition of the former third-pillar legislation is affected by various exceptions as regards their EU membership.

The alternatives underlined by the experts are the following:

- *Complicity* (Article 23 of the Danish Criminal Code¹⁰¹) that constitutes a form of committing an offence and is present in legal orders of all MS. It is worth noting that this is not a self-standing offence of participation in a criminal organisation nor of conspiracy. As a form of commission of an offence it does not entail any specific penalties but it only acknowledges that an offence can be committed by more than one person and in such cases each person is responsible legally for their own conduct.

perpetration of the misdemeanour defined in Section 1 of Article 623, in which case the full punishment may be handed down. For the purposes of this Code, a criminal group shall be construed as the collusion of more than two persons who, without fulfilling any or a number of the characteristics of a criminal organisation defined in the preceding Section, has the purpose or object of perpetrating felonies in collusion, or coordinated, reiterated commission of misdemeanours.

¹⁰¹ 'The penalty provisions laid down for an offence shall apply to all persons who have aided, abetted, counselled or procured the commission of the offence. The penalty may be reduced in the case of a person who has only intended to lend assistance of minor importance or strengthen a determined intent and in case the crime has not been completed or an intended contribution has failed.'

- *Aggravating circumstance based on organised crime* (Article 81(2) c.c.), which states that punishment shall be aggravated when a crime is carried out by several people acting in association.¹⁰² This issue is included in the assessment of the Framework Decision in relation to Article 3(2) on the aggravating circumstance (see Chapter 4).
- *Criminalisation of organisations that use violence to achieve their ends* (Article 78, subsection 2 of the Danish Constitution¹⁰³), which imposes the dissolution of *any* organisation that employs violence to reach its aims. The provision was originally meant to fight terrorist or subversive political movements that use violence against population, such as the Hipo Corps established during the Nazi occupation of Denmark during Second World War. Such a provision, through an expansive interpretation, can be applied also to (non-terrorist) criminal organisations that use violence to get their goals.

5.2.2. Sweden

Sweden does not have in its criminal law system any of the offences relating to participation in a criminal organisation requested by the Framework Decision.

Swedish experts consider it difficult to prove the existence of and the specific roles of the members of an organisation. As a result, the participation in a criminal organisation concept is too vague and cannot be a sufficient and useful criterion to determine if an individual concretely belongs to it.

In addition, according to the Swedish interpretation, the Framework Decision does not impose an obligation to introduce a self-standing offence, rather to punish those predicate offences that are *typically* committed by organised crime, such as theft, robbery, fraud, drug dealing, counterfeiting, illegal gambling, exploitation of prostitution and/or human trafficking or smuggling of migrants. According to this interpretation, therefore, criminal organisations could be effectively fought through punishing the actual crime committed and the contemporary criminalisation of the *preparation, aiding and abetting* of such crime (and in general of those predicate offences punished with at least 4 years as a maximum penalty) in order to involve in the accusation all those persons at any level involved in the commission of the offence, including those who gave legal contributions to the criminal organisation.

Such an approach is already present in all MS and does not provide added value in the fight against organised crime as aimed at by the Framework Decision, that on the contrary requires the introduction of a self-standing offence (for further details on the need for a self-standing offence, see Section 4.2.2 above).

- Apart from these considerations, as hinted above and according to the national expert and the stakeholders interviewed, Sweden punishes participation in a criminal organisation with alternative criminal law tools through:
 - *Aggravating circumstance based on organised crime*. Chapter 29, Section 2 of the Swedish criminal code envisages general aggravating circumstances based on organised crime if the offence has been committed 'as part of a criminal

¹⁰² 'In sentencing, the following shall ordinarily be considered aggravating circumstances: [...] 2) the fact that the offence was committed by more than one person acting in association; [...]'.

¹⁰³ 'Subsection 2. Associations employing violence, or aiming at the attainment of their object by violence, by instigation to violence, or by similar punishable influence on persons holding other views, shall be dissolved by court judgement.'

activity which is conducted in an organised way or if the offence has been committed in a systematic way or has been planned'. Moreover, some special pieces of legislation deal with specific aggravated offences when criminal activities are perpetrated systematically or on a large scale (e.g. Section 5, Tax Fraud Law), or when the offence has been committed 'as part of a criminal activity which is conducted systematically' (e.g. Section 5, Smuggling Code), or when it is conducted 'in a large scale or professional' manner (e.g. Section 3, Drug Penal Law). This issue is included in the assessment of the Framework Decision in relation to Article 3(2) on the aggravating circumstance.

- Criminalisation of offences that require involvement of several persons and/or organisation, such as smuggling of migrants (e.g. Chapter 20, Section 9, Foreign Law).

5.2.3. Conclusions regarding alternative tools

The Danish and Swedish legislators do not acknowledge the need to provide a self-standing offence relating to the existence of a criminal organisation. It is considered enough to punish offences committed in practice which can, at times, be aggravated due to the fact that they were committed by a group. For further information on the possible usefulness of the measures used in Denmark and Sweden, please see Chapter 6.

This position goes against the reasoning of the Framework Decision, which explicitly requires the introduction of a self-standing offence of organised crime in addition to any prosecution of predicate offences. In fact, as also stated above in Chapter 4, the Framework Decision requires MS to introduce in their legal system a self-standing offence, namely either the participation in a criminal organisation or the conspiracy to commit serious offences (or both).

The rationale of the Framework Decision therefore stems from the threat of criminal organisations as such, not only from their criminal activities (which change over time and are adjusted to specific circumstances). The Framework Decision aims to tackle and dissolve criminal organisations by envisaging two forms of conduct, at least one of which should be regarded as an offence by an MS, i.e. a) active participation in the illicit activities of a criminal organisation, knowing the aim of the organisation or its intention is to commit crimes, and b) an agreement on the perpetration of crimes, without necessarily taking part in their commission. The latter is not acknowledged by DK or SE legislators.¹⁰⁴

5.3. Key findings

Below are the key findings drawn from the above analysis of further and alternative criminal law tools:

- 11 (AT, BE, BG, FI, FR, DE, HU, IT, LU, PT, ES) MS have further criminal law tools to fight organised crime.
- 7 of these 11 MS (AT, BG, FI, DE, HU, IT, PT) punish criminal groups with specific characteristics (e.g. mafia methods) and/or with a narrower scope of predicate offences (e.g. drug-related offences, human trafficking).
- 4 of out these 12 MS (BE, FR, LU, ES) also punish other criminal groups via a

¹⁰⁴ For further information see the assessment of Article 2 in Chapter 4 of this report.

broader/more general definition.

- Denmark and Sweden are the only 2 MS whose legislation does not include as a self-standing offence either the participation in a criminal organisation (Article 2a of the Framework Decision) or conspiracy to commit offences related to a criminal organisation (Article 2b of the Framework Decision). Our research has not identified any convincing alternatives to compensate for the lack of a self-standing offence in those two MS. The tools invoked by the experts indicate measures common for all MS existing in most of the MS in parallel to the self-standing offence of organised crime.

5.4. Recommendations

It is recommended to explore the possibility of MS introducing, in addition to offences under Article 2 of the Framework Decision, further offences to criminalise criminal groups with specific characteristics or modus operandi (e.g. using intimidation) and/or those targeting specific criminal markets (e.g. drug-related offences, human trafficking). These offences could be tailored by each MS to the peculiarities of their organised phenomenon/criminal law system and they would allow application of tailor-made sanctions. Those measures should take account of the specific national and EU context in order to respond adequately to the threat posed to the MS and to fellow MS. Part of the rationale for legislative compatibility is to enable mutual legal assistance within the EU.

6. Implementation of laws relating to participation in a criminal organisation¹⁰⁵

This chapter describes current practices in the implementation of laws relating to participation in a criminal organisation.

The information in this chapter is based on interviews with national stakeholders, conducted by the MS experts, as well as the views of the national experts themselves. Frequency of use of such offences is discussed (Section 6.1), as well as their perceived usefulness (Section 6.2) and clarity (Section 6.3). Barriers to implementation and factors reported by national experts to assist in the implementation of legislation are then examined (Section 6.4). Key findings and recommendations are presented in Section 6.5.

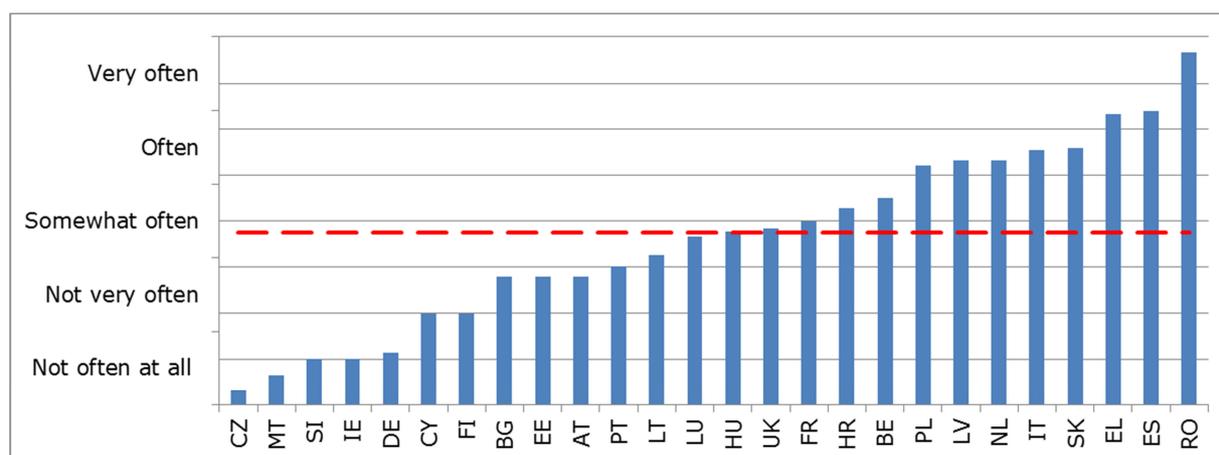
Because Sweden and Denmark do not have a self-standing offence (neither of participation in a criminal organisation nor of conspiracy), those countries are not included in this chapter.

6.1. Reported frequency of use of offences relating to participation in a criminal organisation

Figure 6.1 shows, country by country, answers to the question 'How often are criminal law offences relating to participation in a criminal organisation used in organised crime cases in your country'. National experts were asked to use a scale ranging from 'not often at all' to 'very often'. National experts were not asked to respond separately for offences of participation in a criminal organisation and offences of conspiracy. For the UK the response related to both Scotland and the rest of the UK.

¹⁰⁵ Authorship is as follows: Andrea Di Nicola 6.4, 6.5, 6.7; Barbara Vettori Introduction, 6.1, 6.2, 6.3.

Figure 6.1: Frequency of use of criminal law offences relating to participation in a criminal organisation



Source: information provided by MS experts¹⁰⁶

The EU average (according to respondents) is that offences relating to participation are used 'somewhat often'. Some 13 MSs are below this average (CY, CZ, MT, SI, IE, DE, FI, BG, EE, AT, PT, LT, LU). The frequency of use of these offences is the lowest in CY, CZ, MT, SI, IE, DE and FI.

According to experts, there are many reasons which could explain the differences in frequency of use of participation offences, including:

- Cultural factors and lack of familiarity with organised crime phenomena (CZ, DE)
- Few organised crime cases (MT)
- Difficulty of proving participation (SI, DE)
- Lack of resources (DE)
- Lack of investigative capabilities skills and tools (DE)
- Lack of familiarity with relevant legislation and provisions (IE)
- Preference for predicate offences, rather than for participation offences (FI).

The remaining 13 MSs (HU, UK, FR, HR, BE, PL, LV, NL, SK, ES, IT, EL, RO) have scores equal or above the EU average. The frequency of use of these offences is particularly high in IT, SK, EL, ES and RO). Experts suggest this might be explained by factors such as:

- A long standing judicial practice (IT, RO)
- The existence of a specialised prosecutorial body (IT, RO).

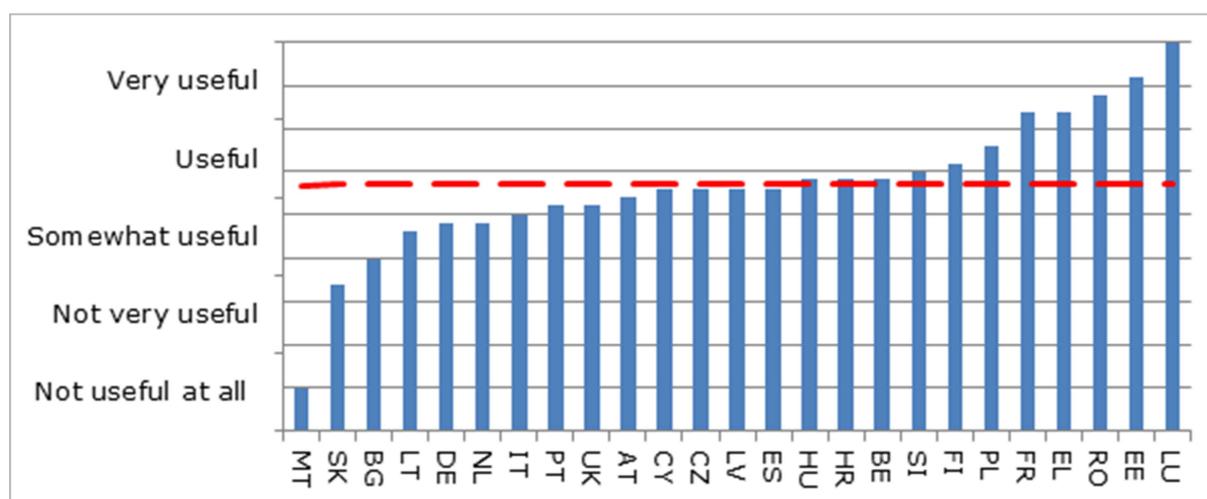
In Greece, the high frequency of use was reported by academics and public prosecutors to partly be due to the overuse of the provisions, especially in cases where there is not strong evidence of participation in a criminal organisation. As a result many such cases lead to conviction for predicate offences and acquittal for participation charges.

¹⁰⁶ As explained in Chapter 3, Member State experts were requested to respond to these questions based on their own judgement, and based on the views of the people they interviewed within their Member State.

6.2. Perceived usefulness of offences relating to participation in a criminal organisation

National experts were asked: 'Against which organised criminal activities would you say criminal law offences relating to participation in a criminal organisation are most useful?'. Respondents were asked about a number of specified offences and to indicate their response on a scale ranging from 'very useful' to 'not at all useful.' Figure 6.2 groups responses, country by country, across all criminal activities.

Figure 6.2: Perceived usefulness of criminal law offences relating to participation in a criminal organisation



Source: information provided by MS experts

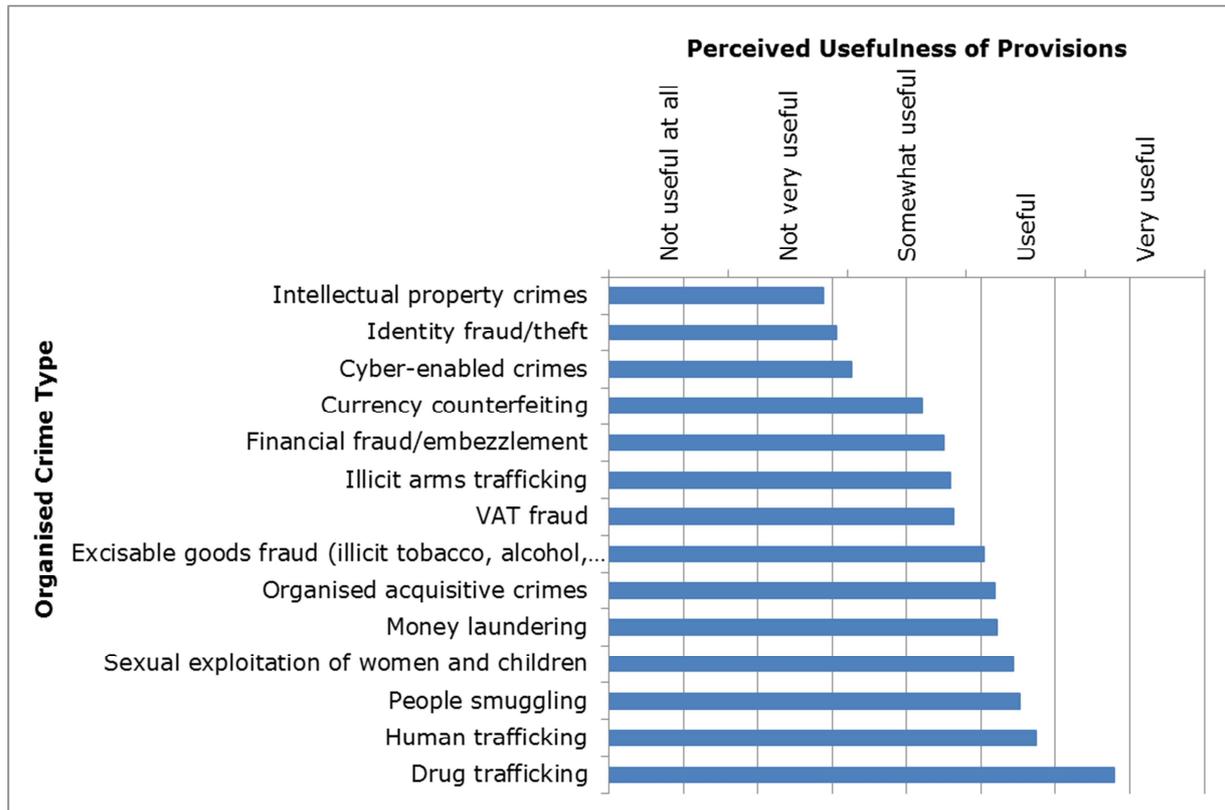
Such offences are, on average, regarded as useful by stakeholders in the vast majority of MS. The reasons why included:

- Making it possible to punish a broad spectrum of individuals that support criminal organisations in a variety of roles, irrespective of their direct involvement in the actual commission of predicate offences (LT, SK, BG), also via legal activities (LU), who would have otherwise escaped investigation/punishment (ES).
- The possibility of using special and effective investigative tools, such as informants and collaborators (AT, BE, DE, FI, FR, IT, LT).
- The possibility of investigating individuals who in the early investigative phases do not seem directly involved in the predicate crimes (ES).
- The possibility of also applying these provisions to legal persons (BE).
- The possibility of imposing increased penalties/other penalties (e.g. confiscation) (BE, EL, HU, LV).
- The possibility of members of criminal organisations who fear harsh penalties collaborating with investigations (SK).
- The possibility of law enforcement agencies bringing together and linking otherwise geographically scattered and apparently unrelated conducts, especially in transnational cases (HU, PL).
- The possibility of punishing preparatory acts, even if the planned crime does not take place – acts that cannot be prosecuted and punished otherwise (EE),

(RO).

Figure 6.3 shows the perceived usefulness of the provisions in relation to criminal organisations dealing with different types of crime, grouping together responses from all MS.

Figure 6.3: Perceived usefulness of the provisions in relation to criminal organisations involved in different types of crime



Source: information provided by MS experts

As shown in Figure 6.3, provisions in relation to participation in organised crime were perceived to be most useful in the case of organisations involved in drug trafficking, human trafficking and people smuggling, while they were reported to be less useful for cyber-enabled crimes, identity fraud/theft and intellectual property crimes.

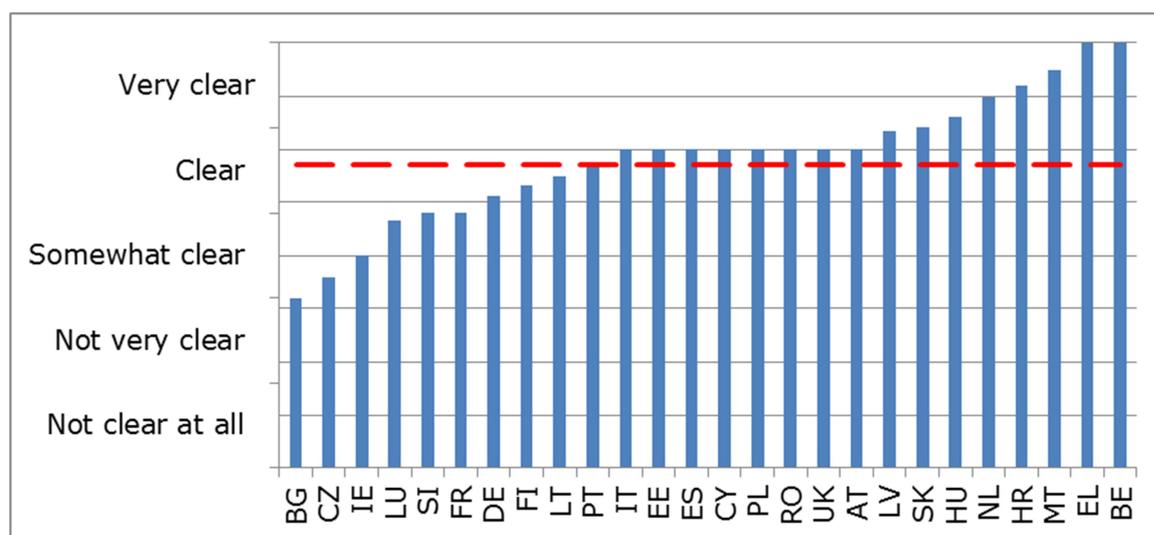
Interviewed stakeholders highlighted that in general the more 'intellectual' the crime was, the more difficult it was to prove participation and therefore such offences became less useful. (It is also possible that such offenders are not monitored actively: many of them are not 'the usual suspects' and they may fall outside policing priorities. In addition they may not be in a position to have sufficient knowledge about the activities of the organisations to which they had links.) Also, respondents stressed that the usefulness was highest for offences whose commission in practice required some sort of criminal organisation behind it. It was argued that low usefulness for Internet-related crimes was likely to be based on the fact that current criminal procedural measures are tailored towards more traditional offences and designed to respond to traditional forms of telecommunication. Therefore the legal instruments as well as the personnel and equipment (including training) of law enforcement agencies are not always adequate.

It was also noted that regulations were most useful in cases where the focus of law enforcement activities was the destruction of the criminal structures rather than the sanctioning and detection of individual offences. Targeting the structures is a priority when groups engaged in weapons and drug trafficking and money laundering are concerned (especially groups working across borders).

6.3. Clarity

Figure 6.4 shows, country by country, responses to the question: 'Do you think the wording of criminal law offences relating to participation in a criminal organisation is sufficiently clear', on a scale from 'not clear at all' to 'very clear'.

Figure 6.4: Perceived clarity of criminal law offences relating to participation in a criminal organisation



Source: information provided by MS experts

The wording of such offences at the EU level was on average, according to national experts and interviewees, regarded as clear. 10 MS are below this average (BG, CZ, IE, LU, SI, FR, DE, FI, LT, PT). Eight are very close to the EU average value (IT, EE, ES, CY, PL, RO, UK, AT), and the remaining 8 are above it, with 2 of them (BE, EL) reaching the highest score. Below is an overview of the key problems arising in terms of clarity of offences relating to participation in a criminal organisation, as reported by national experts.

Too vague/unclear concepts in definitions

Experts from various MS highlighted problems related to use of vague/unclear concepts in the wording of criminal law offences relating to participation in a criminal organisation. Nevertheless, experts regarded this broad scope as 'the price to pay' for having at their disposal a text that allowed a range of situations to be covered.

Some examples of concepts which were said to be unclear are:

- In **Austria**, concepts such as 'longer period of time' and 'serious acts of violence' are quite vague.
- All **Belgian** experts stressed that Art. 324bis is very broad, leaving judges a

strong leeway.

- In **Bulgaria** the wording regarding the requirements of continuity and structure, although taken directly from the UN Convention and the EU Framework Decision, were regarded as unclear. Experts noted that there were no criteria for assessing when a certain association became permanent and structured. Moreover, following the UN Convention and the Framework Decision, the Bulgarian Criminal Code expressly specified that the association was structured even without formally defined functions for participants, continuity of participation or a developed structure. However, it did not include the further specification, contained within the above international instruments, that is, the association was structured where it was not randomly formed for the immediate commission of an offence.
- In **Cyprus** interpretation problems were discussed in relation to the structure element.
- **Czech** respondents commented on the vagueness of the organised crime legal definition in terms of its wording and formulation. In particular, experts noted the lack of precision in the concept of 'aim at systematic commission of criminal activities', which was very difficult to prove.
- In **Estonia**, the wording was perceived as generally clear but there were doubts about how 'permanent' the organisation should be.
- In **Finland** concerns were expressed in relation to the definition of criminal organisation, as well as in relation to defining 'participation' and 'membership'. In Finland there was also said to be confusion regarding the temporal and spatial consequences of a verdict concerning participation/membership: a typical interpretation is that the verdict can only be linked to the concrete case for which it was passed. Thus, 'membership' or 'participation' need to be proven separately in each new case.
- Also, legal practice shows lack of uniformity in terms of whether and to what extent mafia groups are organised crime groups. In **Italy** the key problem was said to be the lack of precision of the concept of association (which is partially overcome by case law).

One consequence of the various problems related to interpretation is that if the aim is to produce national uniformity in order to aid cross-border prosecutions in the EU, the different criteria used across different MS would undermine this effort. A defendant might argue that what he was doing was below the threshold for participation in a criminal organisation in one MS, even if the same conduct might have led to conviction in another.

Differential breadth of definitions

In Bulgaria the definition of criminal organisation is broad and therefore covers a large spectrum of concerted criminal consortia, which may include criminal associations of a relatively low degree of social danger. Also, the Criminal Code considers as predicate offences those punishable by imprisonment for more than 3 years, thus broadening the scope of application of the definition, compared to the Framework Decision.

In Germany the laws in question were perceived as sufficiently clear and precise, but the interpretation of individual elements of these offences is left to jurisprudence and legal reasoning, since the legal wording does not suffice. For example:

- The number of members necessary to form a criminal organisation is left to jurisprudence.
- It is questionable whether hierarchically structured groups are criminal organisations under Article 129 c.c.
- It is not clear or if significant threats to public safety are a necessary element of the crime.
- A further question is whether supporting criminal offences committed by a third party – a classic ‘enabler’ role – is sufficient as a purpose of the organisation and whether a merely passive membership can justify prosecution under Article 129 c.c.

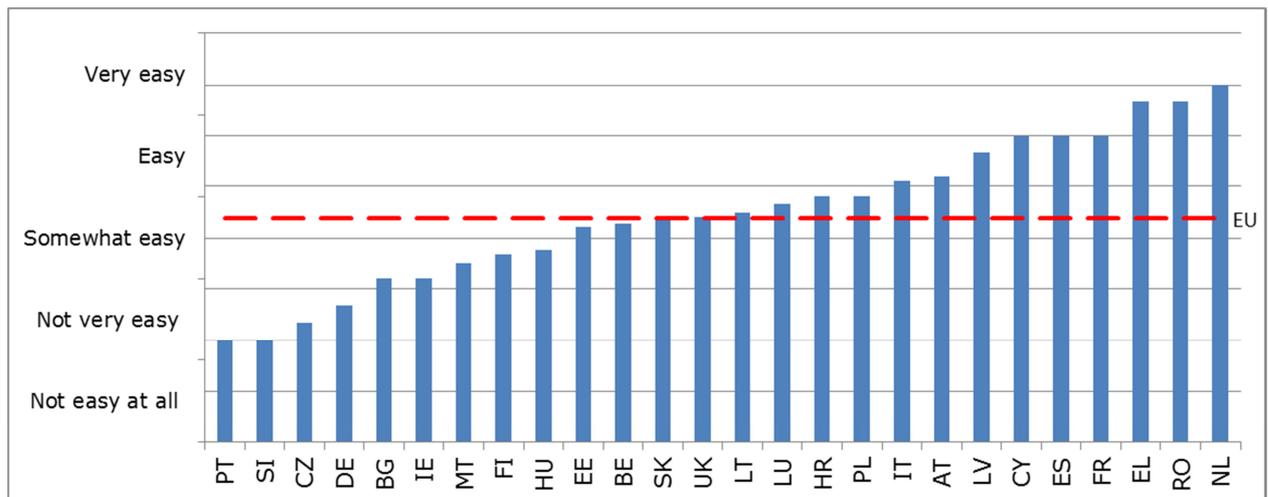
There were several examples provided by national experts of very broad offences:

- In Ireland legislation is broader compared with international standards, therefore giving rise to constitutional issues (especially in relation to legal certainty).
- Similarly, in the Netherlands legislation virtually encompasses all forms of criminal cooperation of more than two persons, unless undertaken for a very short term and on an ad hoc basis. It is commonplace to charge individuals with the basic offence ‘committed jointly’, instead of using the ‘participation’ offence.
- In Spain, provisions on ‘Organización criminal’ (Art. 570 bis) and ‘Grupo criminal’ (Art. 570 ter) cover a large number of crimes (theoretically all crimes) and thus do not differentiate between more serious and less serious crimes.

6.4. Ease of use, barriers and facilitators to implementation

Figure 6.5 shows, country by country and at the aggregate EU level, answers to the question ‘How easy is it to enforce or put into practice offences relating to participation in a criminal organisation in your country?’ (on a scale of ‘not easy at all’ to ‘very easy’).

Figure 6.5: Ease of enforcing offences relating to participation in a criminal organisation



Source: information provided by MS experts

Enforcing such offences in practice is, on average, regarded as somewhat easy at the EU level. 11 MS are below this average (PT, SI, CZ, DE, BG, IE, MT, FI, HU, EE, BE), 2 have a value equal to the EU average (SK, UK), and the remaining MS are above it, with three of them (EL, RO, NL) reaching the highest scores.

National experts were invited to further explain their answers regarding ease of use. The following sub-sections set out what MS experts reported as barriers and facilitators to the use of offences relating to participation in a criminal organisation.

6.4.1. Barriers

The points raised by national experts as possible challenges and facilitators were as follows:

- **Extent (degree and nature) of participation:** in Belgium, the proof of participation is critical. It was reported by national experts that changes made to Article 324bis c.c. in 2005 have improved the situation, but there are still problems in proving the degree of participation.
- **High burden of proof:** the burden of proof was reported to be high in Belgium and Croatia. The nature of organised crime (and especially the degree of secrecy of these organisations and/or their activities) makes it difficult to collect sufficient evidence. In Germany a high standard of evidence was also said to be needed, especially in relation to 'participation' and 'criminal organisation' (jurisprudence requires that the aim of the participants is to form a solid organisation resting on a collective will to commit crimes). It is difficult to prove that a criminal organisation seeks to commit crimes, due to, amongst other things, the use of modern means of telecommunication (with or without encryption) by criminals and constraints in terms of human and material resources on the part of law enforcement agencies. In Estonia, too, evidence is needed in relation to the communications inside the criminal organisation and it depends on the willingness of individuals from the organisation to testify. In Hungary, the problems of application lie in the general high standard of proof in criminal proceedings ('without reasonable doubt'). Therefore, even if there is evidence hinting at the presence of a criminal organisation, this threshold might not be met, as shown by the significantly lower conviction rate for participation in criminal organisation compared to other offences. In Portugal the expert reported that in many cases it has been relatively difficult to succeed in court using the participation in a criminal organisation offence, due to the high standards of proof: interviewees explained that judges tend to be very demanding regarding the evidence.
- **Participation in a criminal organisation vs. conspiracy:** In Cyprus, which is influenced by the common law of England and Wales, interviewees suggested that cases could be prosecuted more easily using the conspiracy offence rather than the participation offence, since the evidential requirements for the former were lower. Also, the preference for conspiracy over participation may reflect the greater familiarity with the use of the former by law enforcement personnel.
- **Unduly broad scope:** in Bulgaria, according to judges, the provisions relating to participation in a criminal organisation were too easily used, and this is a problem rather than an advantage. The unduly broad scope of these provisions

makes it easier to apply them even to cases beyond organised crime (less structured and less lasting associations). This can lead to overuse of the offences in relation to participation in a criminal organisation.

- **Unclear definitions:** in Bulgaria lack of clarity causes problems when collecting evidence on the permanence and structure of the group. Also, due to inconsistencies in the use of terminology in the Criminal Code, the provisions on criminal organisations can often overlap with those regarding other types of criminal groups. This makes the practical implementation of the provisions difficult and may also lead to the imposition of different sanctions for similar criminal acts. In Poland, a problem mentioned by national experts is how to interpret 'taking part in' the criminal organisation, i.e. the role of people involved in committing the crime.
- **Restricted scope of practical application of the offence:** in Lithuania the offence is usually applied to typical traditional criminal organisations, whose number is quite low. These criminal organisations are normally involved in more traditional organised criminal activities, such as drug trafficking and smuggling, trafficking in human beings, extortion and car theft. The provision is not frequently used for criminal organisations involved in white collar crimes, such as financial fraud, VAT fraud and intellectual property crimes. One reason for this is that these crimes are usually committed by relatively smaller criminal organisations created solely for their commission, rather than by generalist criminals. Also in Poland the offence is more easily enforced in relation to more traditional criminal organisations that use violence or threats, while it is more difficult to apply it to organisations involved in economic crimes (also because criminals involved in the latter are well prepared, qualified or specialised).
- **Difficulty of proving criminal conduct (participation in a criminal organisation) going beyond the predicate offences:** in Finland, the participation offence is sometimes useful in the first stages of the investigation (as it provides an offence which can be used to arrest and investigate); however, its criteria are in practice rather difficult to prove, and participation offences tend not to be pursued in prosecution and sentencing. A reason for this reported by the national expert is that after the evidence concerning the substantial serious offence has been obtained, it was often thought to be not very useful to invest resources to prosecute for 'participation' on top of the substantial offences committed. In Germany there is a very high standard of proof regarding criminal organisations, which makes convictions under § 129 and 129b c.c. very rare and prosecutions tend to focus on accompanying offences. In Hungary, during criminal proceedings the initial charge for participation in a criminal organisation was usually said to be replaced by related predicate crimes, because the organised and coordinated commission is hard to prove. A similar issue was reported to arise in Portugal. In Ireland, 'participation' offences in relation to criminal organisations were said to be seldom used and one reason is that, in practice, prosecutors usually prefer to use the predicate offences. In Italy it is unusual/rare that criminal proceedings start for Art. 416 c.c. only, partly because it would be difficult to gather the necessary evidence without investigating the specific crimes committed by the organisation. For this reason, the crimes committed by the criminal

organisation are typically investigated and prosecuted first; then, the evidence gathered during the investigation process is used to prove participation in a criminal organisation under Art. 416 c.c. In Slovenia the law is not applied often, because prosecutors pursue only the criminal acts and not participation in a criminal organisation. In the Netherlands, problems may arise due to the need to prove participation in a criminal organisation by proving the underlying predicate offence. The ease or difficulty of prosecution and conviction depends on this. So, for example, (organised) fraud is always more difficult to prove than drug trafficking/transportation.

- **MS having a conspiracy offence only (England, Wales and Northern Ireland).** The UK government has proposed the creation of a new offence of criminal participation. One reason given for this in official documents is that it was felt that 'enablers' and those on the periphery of organised crime currently evade liability under the conspiracy approach. According to the UK Home Office, the current offence of conspiracy 'makes it difficult to pursue people in the wider criminal group. The participation offence should 'reflect how "modern" organised criminal groups facilitate their criminal enterprises'.¹⁰⁷ Lawmakers expect that the participation offence will increase the risk to a higher proportion of those involved in organised crime. (See the UK case study in Chapter 10 for further details.)
- Conflicts over the use of the self-standing offence of participation in a criminal organisation and of aggravating circumstances: in Lithuania low funding of police and other enforcement agencies is conducive to taking the 'easiest' way, that is, the prosecution pursue the predicate offence aggravated by the 'organised group', rather than the offence of participation in a criminal organisation (or participation in a criminal organisation as an aggravating circumstance). In Romania interviewees suggested that it was often difficult to prove all elements related to criminal organisation (structure, hierarchy, purpose, duration, role of each member) because of their covert nature. Accordingly, in some cases investigators would choose to use the aggravating circumstance rather than the standalone offence. This is the practice also in Slovenia. In Spain offences regarding participation in a criminal organisation entered into force in December 2010 and were put into practice soon after. The transition from the more cumbersome previous system (based on the 'illicit association' crime) and the current legislation was easy, according to respondents, because of the very broad wording of the provisions in Articles 570 bis and 570 ter c.c. All interviewees in Spain also shared the opinion that the weakest point in terms of implementation was the relation of Articles 570 bis and 570 ter c.c. with the aggravating circumstances in relation to participation in a criminal organisation provided for certain offences. Does the application of the aggravating circumstance have precedence over the standalone offence of participation in a criminal organisation or can they concur? The legislator tried to answer this question in Article 570 quater.2: 'whenever a conduct is foreseen in two different provisions and there are no overriding criteria to decide which one to apply, the provision with the most serious punishment must be chosen'.

¹⁰⁷ UK Home Office (2014b), 2.

- **Low penalties for participation in a criminal organisation**, especially if compared to penalties for predicate offences. In Germany there is comparatively little threat of punishment (imprisonment up to 5 years or a fine). In the Netherlands many of the underlying offences have a higher punishment maximum than 'participation in a criminal organisation' itself (6 years). Accordingly, in terms of sentencing, if the predicate offence can be proved against each individual, there is little incentive to prosecute for 'participation'. In Italy imprisonment penalties issued for Art. 416 c.c. are often lenient in practice.
- **Prioritisation:** it is worth noting also that policymaking has an impact on the way offences are given priority in relation to enforcement.
- **Practical obstacles linked to the sophisticated nature of criminal organisations.** In Greece the main perceived obstacle which police officers and the Financial and Economic Crime Unit face is the lack of evidence in organised crime cases. According to interviewees, members of criminal organisations are usually very experienced and they know how to conceal their activities. Law enforcement agencies have to deal with an organisation which acts 'professionally and sometimes scientifically', as reported by one stakeholder. In Poland experts suggested that codes of silence, good insulation between the different levels within the criminal group, and penalties for predicate offences that do not stimulate defendants to cooperate with law enforcement agencies and give evidence make it difficult to prove participation. Similarly in Slovakia difficulties were reported in relation to gathering sufficient evidence to prove membership in a criminal organisation.
- **Limited scope of predicate offences:** In Greece various offences are regarded by Article 187 c.c. as predicate offences committed by a criminal organisation. It is therefore not possible to use this criminal tool to combat criminal groups involved in the commission of other offences which are not listed by the article (e.g. corruption). This was not reported to be a problem in other MS that have adopted similar approach, but it may become so.
- **(Frequent) legislative amendments:** In Bulgaria, according to respondents, the frequent changes in substantive criminal law prevent the development of consistent practice, and have a negative impact on pending cases. In Ireland it was noted that authorities were 'still working through' the new provisions. There is a time-lag before such offences are picked up and used regularly.

6.4.2. Factors that facilitate the implementation of participation offences

The following section discusses the factors that facilitate the implementation of criminal law offences relating to participation in a criminal organisation, as described by national experts and stakeholders.

Specialist agencies

In **France** the Perben laws have enabled a significant level of specialisation and centralisation in investigating and prosecuting organised crime. In particular, there is a consensus about the fact that the setting up of the Juridictions inter-régionales specialisees (JIRS) has considerably changed the working relations between judges and police officers. This has facilitated not only organised crime investigations, but also the

enforcement of offences relating to participation in a criminal organisation, as cases are more robust when being examined. The JIRS work as special judicial panels that gather public prosecutors (Magistrats du Parquet) and investigating judges (Juges d'instruction). These panels are specialised in organised crime and 'complex' cases, such as financial crimes, homicides committed by organised gangs, etc. Currently, there are eight JIRS: in Paris, Lyon, Marseille, Lille, Rennes, Bordeaux, Nancy and Fort de France. According to interviewees, the JIRS have contributed to the building of a professional shared culture around organised crime-related work, which facilitates investigations and the search for evidence. These investigative structures are deemed to be effective according to the vast majority of interviewees. This is less the case at the end of the spectrum, when cases are brought to trial.

In **Belgium** the existence of a national (federal) prosecutor specialised in the fight against organised crime received a very positive evaluation, especially regarding its coordinating role.

In **Italy** stakeholders stressed the key role in coordination played by the National Anti-Mafia Directorate (DNA) and by Anti-Mafia District Directorates (DDAs). DNA is tasked with the coordination, at the national level, of all mafia-related investigations and prosecutions. It comprises a General Attorney (Procuratore nazionale antimafia, PNA) and 20 magistrates (sostituti procuratori antimafia), chosen from among those with relevant expertise in proceedings against organised crime. The PNA coordinates investigations by the 26 DDAs, so as to ensure that relevant information is made available to the offices involved in a given case, and well as to connect them. (For further information on the Italian DNA, see the Italian case study in Chapter 9).

In **Croatia** USKOK is a special part of the State Attorney's Office. The Deputy Directors of USKOK are specialised in working on cases of organised crime. This increases their effectiveness. They are also subject to additional checks in order to prevent conflicts of interest and corruption. Specialisation is embedded in the criminal justice system as a whole: from the USKOK police department specialised in organised crime and corruption, to USKOK Courts (special departments of the judiciary – with selected judges – that deal with this type of cases). Such a structure allows preservation of expertise and also saves time and resources in investigations and prosecutions.

In **Romania** the existence of a specialised prosecutorial body that deals exclusively with organised crime offences has also been reported as a good practice that could be exported to other EU countries. The experience of the organised crime directorate (DIICOT) in prosecuting cybercrime and trafficking of persons has been praised at the international level. Also in Romania, the anticorruption directorate (DNA) was said to facilitate better management of cases and prioritisation of resources. It is a fully integrated structure that includes police officers, specialists and prosecutors under one command belonging to the head prosecutor of the DNA. DNA works together with other law enforcement bodies and intelligence units, but it is not dependent on them because it has its own group of police officers inside the institution.

Advanced information systems in Italy

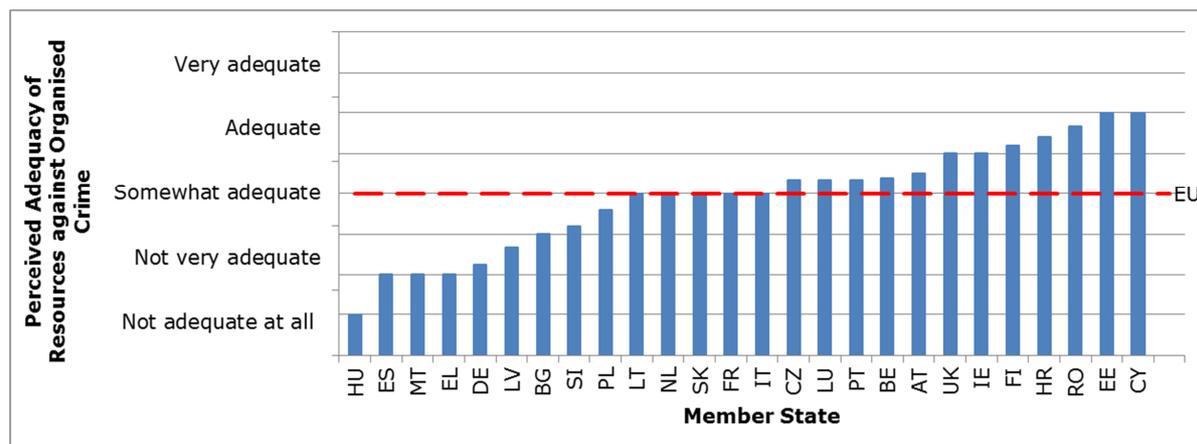
In **Italy** each of the 26 Anti-Mafia District Directorates has an information system (SIDDA) connected with a central information system (SIDNA) at DNA. SIDNA gathers, manages and shares information on all investigations and proceedings on organised

crime through secure communication channels. SIDDA includes a textual database and a relational database. The textual database includes, as a file, all the acts related to a given proceeding (or the most relevant ones). Simple searches (e.g. names, family names, phone numbers, car plates, nicknames, etc.) can be performed. An Oracle relational database (named Fulcrum) allows one to locate, retrieve and display contents. SIDNA includes not only information coming from DDAs, but also from data of other judiciary and non-judiciary databases. Some of the external databases connected with SIDNA are: the Court Records Office; the Tax Registry; the Social Security Service (INPS); the Department of Motor Vehicles; the Income Revenue Authority; the Surveillance Authority on Public Procurements; and the Department of Prison Administration.

6.5. Resources

Figure 6.6 shows responses to the question 'How adequate are the resources (financial, staff, organisational) allocated to implement criminal law offences relating to participation in a criminal organisation?'. The graph shows the views of the MS experts, country by country and at the aggregate EU level.

Figure 6.6: Perceived adequacy of resources allocated to implement criminal law offences relating to participation in a criminal organisation



Source: information provided by MS experts

Offences relating to participation in a criminal organisation are perceived to receive, on average, modest resources. 8 MS are below this average (HU, ES, MT, DE, LV, BG, SI, PL), 5 are equal to the EU average (LT, NL, SK, FR, IT) and the resources in the remaining MS were evaluated to be above the average but do not reach the highest score (i.e. very adequate). Below is an overview of the key problems arising in terms of resources.

In some cases respondents stated that no special budget was available for combating organised crime (AT, DE, LT, ES). In other cases dedicated offices have been set up at the Federal level, but not at the State level (AT). Even when resources were perceived to be somewhat adequate (BE), it has to be taken into account that criminal procedures and the use of special investigative tools can be extremely expensive.

Also, according to respondents, when the work of the police and special agencies is evaluated, there was a tendency to look for immediate results – but organised crime cases are often very complex and time-consuming. Accordingly, prosecutors tend to prefer prosecution and conviction of a few offenders for predicate offences over the more costly and time-consuming investigations in relation to participation in organised crime. This choice prevents magistrates, investigators and judges from getting a wider understanding of organised crime activities, and also from undertaking more complex enquiries, such as financial investigations (FR).

Another perceived weakness is the allocation of resources without any preliminary need assessment and impact assessment analyses (BG).

A number of MS also stated that they suffer from:

- Understaffing (BG, DE, EL, HU, LU, SK, ES) – though it is not clear what ‘proper staffing levels’ would look like.
- Lack of specialised/technical equipment (BG, EL, LV, LT, MT, RO, SK).
- Lack of dedicated training and specialised officers (FI, LV, LU, PL, PT, RO).
- Lack of specialised public prosecutor services in charge of organised crime cases. For example HU does not have a dedicated prosecutor or judge to handle organised crime (this was also mentioned in PL).
- High staff turnover/rotation (IT, LV, PL, SK), with the related loss of institutional memory and expertise (SK).

6.6. Key findings

This chapter has presented findings relating to MS experts’ perceptions of how offences under the Framework Decision are used in practice, along with common barriers and facilitators. Key findings drawn from the above analysis are as follows:

- *Frequency*: criminal law offences relating to participation in a criminal organisation were reported to be used in organised crime cases, at the EU aggregate level, **somewhat often**.
- *Usefulness*: criminal law offences relating to participation in a criminal organisation and alternative offences are regarded as **useful** by stakeholders in the vast majority of the MS.
- *Clarity*: the wording of criminal law offences relating to participation in a criminal organisation, and alternative offences, is on average regarded as **clear**.
- *implementation of participation offences*: putting such offences into practice was, on average, regarded as ‘**somewhat easy**’ when all responses are grouped together.

MS experts were asked to explain the barriers and facilitators to using criminal law offences relating to participation. The issues reported can be categorised as follows:

- **Issues relating to the wording of national legislation**. For example, in some MS a limited range of predicate offences was specified.
- **Issues relating to standards of proof**. In other words, it was difficult to prove elements of the offence such as ‘participation’ and ‘criminal organisation’.

- **Issues relating to staffing and resources.** Examples included too few specialist staff to deal with organised crime, and lack of specialist databases and centralised information.
- **Issues relating to how the legislation tends to be used in MS,** due to the knowledge and experience of practitioners and cultural reasons. For example: a preference to only use the participation offence for a limited number of typical, traditional, criminal organisations; lack of motivation and resources to prosecute offences linked to a criminal organisation on the top of predicate offences; choosing to prosecute for predicate offences where the available sentence for those predicate offences was higher than the sentence for the participation offence; preferring to use the participation element as an aggravating circumstance rather than prosecuting it as an offence in its own right; preferring to use conspiracy rather than the participation offence.

Experts highlighted some examples where the Framework Decision is not used enough – for example, where, in practice, offences under the Framework Decision are not used in the fight against the most serious types of criminal organisation. Experts also highlight examples where it is used too much. For example, it is used against associations that do not appear to meet the traditional definition of a cross-border organised crime group. While it is not possible for this study to draw firm conclusions on this matter, based on the views collected, experts have highlighted the risk of over criminalisation, which in part stems from the fact that the Framework Decision specifies minimum standards, but permits MS to go beyond those standards.

The factors that were reported to facilitate the use of the participation offence were related more to procedures, and specialised and knowledgeable staff, and not the legislative measures. For this reason greater training and awareness raising could be beneficial.

6.7. Recommendations

It is recommended that practitioners should be guided in relation to the interpretation of national provisions. This could be done by:

- Ensuring that the national transpositions of the EU legal instruments 'translate' the concepts included in the EU legislation in a way which is useful and clear for national authorities.
- Ensuring that the practical application of this legislation will be accompanied by the necessary measures, e.g. procedural.
- Issuing guidelines of interpretation at the national level on how to understand certain concepts.
- Ensuring training of the MS judiciary and law enforcement in this regard.
- Issuing EU interpretation guidelines to gather various concepts of interpretation.
- Ensuring sufficient awareness raising of the threat caused by criminal organisations in the EU in order to encourage MS to consider adjusting existing legal measures.
- Ensuring exchanges of best practices regarding the prosecution of the offences relating to organised crime.
- Ensuring that fundamental rights are being observed in relation to the

application of offences of Article 2 at the national level, especially in relation to avoiding over criminalisation.

- It is recommended that MS explore the possibility of adopting solutions similar to those envisaged in the best practices identified above. Coordination mechanisms, integration of knowledge, ways to promote a self-financing approach in the fight against criminal organisations and advanced information systems are key instruments to make these offences more effective in reaching their intended outputs and outcomes.