

# International cooperation on combating organised crime

## Participation in a criminal organisation

**JOINT ACTION of 21 December 1998**

**on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union**

**(98/733/JHA)**

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# International cooperation on combating organised crime

## Definition of a criminal organisation

- Within the meaning of this joint action:

*A criminal organisation shall mean 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 (Article 1)*

# International cooperation on combating organised crime

## CRIMINAL OFFENCE

OPTION for MS/ One or both of the types of conduct described below are punishable:

- 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, actively takes part in:
  - the organisation's criminal activities, even where that person does not take part in the actual execution of the offences concerned and, 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;

# International cooperation on combating organised crime



- 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, even if that person does not take part in the actual execution of the activity

# International cooperation on combating organised crime

## Liability of legal persons

Member States must ensure that legal persons may be held criminally or, failing that, otherwise liable for these offences falling which are committed by that legal person, in accordance with procedures to be laid down in national law. Such liability of the legal person shall be without prejudice to the criminal liability of the natural persons who were the perpetrators of the offences or their accomplices.

# International cooperation on combating organised crime

## **Proposal for a COUNCIL FRAMEWORK DECISION on the fight against organised crime [COM(2005) 6]**

Objective:

It is now necessary to provide the Union with a more powerful and ambitious instrument to approximate more closely Member States' criminal legislation and improve cooperation in order to combat organised crime more effectively, inter alia by harmonising the minimum thresholds of criminal penalties.

# International cooperation on combating organised crime

## **Communication of 29 March 2004 on measures to be taken to combat terrorism and other forms of serious crime:**

The Commission considered that the facilities available for combating crime in the EU should be reinforced. It stated that it would draw up a framework decision to replace Joint Action 98/733/JHA which should in particular:

# International cooperation on combating organised crime

- harmonise effectively the definition of offences and penalties as regards individuals and legal persons;
- provide for a specific offence of “directing a criminal organisation”;
- where necessary, determine specific aggravating circumstances (commission of an offence in association with a criminal organisation) and mitigating circumstances (reduced penalties available for those who assist the police with their inquiries);
- include provisions to facilitate cooperation between judicial authorities and coordinate their activities.



# International cooperation on combating organised crime

## Some parameters that have changed since 1998

1. The Treaty of Amsterdam, which succeeded the Maastricht Treaty, introduced new types of legal instruments, more effective than the "joint action"; the framework decision is now the proper instrument for approximating criminal law in the Union in this area;
2. the United Nations Convention against Transnational Organised Crime, known as the "Palermo Convention" , now provides an international framework which details the offences connected with participation in an organised criminal group; the Convention was approved by the European Community on 21 May 2004;

# International cooperation on combating organised crime

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

# International cooperation on combating organised crime

## On 19 January the European Commission adopted a proposal for a Framework Decision on the fight against organised crime

- The text defines offences committed by persons taking part in a criminal organisation, covering not only the criminal activities of the organisation as such, but also other acts ranging from the provision of material assistance to a criminal organisation to the recruitment of new members.
- The proposal approximates criminal penalties. The maximum term of imprisonment for directing a criminal organisation may not be less than ten years, while for other offences the maximum term may not be less than five years.

# International cooperation on combating organised crime

- Provision is made for reduced sentences for persons who have taken part in criminal organisations but are willing to cooperate with the judicial process, for example by supplying information that is useful for investigations.
- The proposal also contains provisions to make easier for judicial authorities to cooperate with one another and to coordinate their action via Eurojust. If a number of Member States are called on to deal with a particular case, they must cooperate and consult each other in order to coordinate their activities and decide which of them will prosecute the alleged offenders.
- Finally, provision is to be made to ensure that all cases can be prosecuted even if the victim has not filed a complaint or statement. This means that criminal cases will not be brought to a halt because victims are afraid of reprisals by mafia-type organisations