

***Fighting against organised crime at the EU level:***

***the legal way forward***

Uniting our efforts at the European level to fight against organised crime is of the utmost importance, taking into consideration its cross-border nature. This fight of course takes many roads, one of which is striving to have up-to-date legal instruments at our disposal, enabling us to address organised crime comprehensively and effectively.

We, [X, X, France, X, Netherlands, X and X], consider the following points in the announced revision of the Council Framework Decision 2008/841/JHA on the fight against organised crime:

- ***Harmonising the penalties for participation in a criminal organisation to ensure efficient cross-border criminal cooperation***

The fight against organised crime must be based on effective cross-border judicial cooperation, including by ensuring the full mobilisation of mutual recognition instruments.

We therefore consider necessary to provide for a minimum threshold for the maximum prison sentence incurred, of at least 3 years, regarding participation in a criminal organisation, and this in order to ensure the full applicability of the European arrest warrant and the European investigation order without the need to verify double criminality.

- ***Taking into consideration the level of dangerousness of persons directing organised criminal groups to fight more effectively against their impunity***

It appears necessary to distinguish between the direction of an organised crime group and all the other roles such as those currently referred to in article 2 par. (a) of the Framework Decision in order to ensure that group leaders can be punished more severely.

- ***Allowing for reduced penalties or exemption from penalties for organised crime offences for individuals who collaborate during the justice proceedings***

We believe that individuals who cooperate during the justice proceedings play a vital role in the fight against serious crime, as they can be a crucial source of information for prosecution services and to dismantle criminal structures.

Article 4 of the Council Framework Decision 2008/841/JHA states that each Member State may provide for reductions in penalties or exemption from penalties when the offender renounced criminal activity and provided the administrative or judicial authorities with specific listed relevant information.

We are in favor of a provision that clearly expresses the importance of the matter and urges the Member States to take the necessary measures, while allowing for flexibility when implementing the provision in national law, in line with provision on mitigating circumstances of the Council conclusions on Model provisions on EU substantive criminal law of December, 9<sup>th</sup> 2025..

- ***Exclude the harmonisation of the special investigation techniques and of the admissibility of evidence***

We are opposed to any harmonisation of special investigation techniques, both in terms of the conditions for using such measures and the rules governing them, as this might disrupt our

procedural systems and thus go against the objective of an efficient fight against criminal organisation.

We risk losing the flexibility and efficiency offered by our national legal systems, as these are today tailored and fine-tuned to our national conditions and therefore are more effective than those that could be imposed by even minimal harmonisation..

We also wonder if this would first require the adoption of a unanimous decision of the Council identifying investigative measures as specific elements of criminal procedure that may be subject to minimum harmonisation, in accordance with article 82(2) (d) TFEU.

It could ultimately pave the way for harmonising the admissibility of evidence at EU level, which we believe has no added value and would complicate the work of investigators and judicial authorities.

Therefore, we can only support the mention of the necessity for Member States to provide for special investigation measures where appropriate, and could give examples of these tools – such as controlled deliveries and cross-border surveillance – in the recitals.

This statement does not concern international judicial cooperation instruments, such as the European Investigation Order, in so far as those instruments do not result in harmonisation of conditions for use of special investigation techniques in national procedures.