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 processional.

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 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.