Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 19/07/2007 - Amended legislative proposal for reconsultation

Following the examination of the Commission's initial proposal, the Council adopted a new version of the draft Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.

Background: the Commission's initial proposal was presented in November 2001. However, following in-depth discussions, the "Justice and Home Affairs" Council was not able to reach an agreement on this proposal. The European Parliament gave its opinion on the proposal on 4 July 2002.

In February 2005, the "Justice and Home Affairs" Council requested its preparatory bodies to examine the draft Framework Decision. A draft compromise text was adopted in June 2005 however the Council was still not able to reach an agreement on the text.

Finally, in February 2007, the "Justice and Home Affairs" Council held a general discussion on the Council Framework Decision and it reached a general approach on the text in April 2007.

This is the compromise text which is being submitted to the European Parliament for "**reconsultation**" given that the original text from 2001 was subject to major amendments.

Main amendments of the draft Framework Decision:

The new proposal establishes that the following intentional conduct will be punishable in all EU Member States:

- publicly inciting to violence or hatred, even by dissemination or distribution of tracts, pictures or other material, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
- publicly condoning, denying or grossly trivialising;

I. crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin,

II. crimes defined by the Tribunal of Nuremberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 1945) directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

Member States may choose **to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting**. The reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.

Member States will ensure that these conducts are punishable by criminal penalties of **a maximum of at least between 1 and 3 years of imprisonment**.

Member States acknowledge that combating racism and xenophobia require various kinds of measures in a comprehensive framework and may not be limited to criminal matters.

This Framework Decision is limited to combating **particularly serious forms** of racism and xenophobia by means of criminal law.

Other specifications brought about by the revised text include :

-“Descent”: this term refers mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred or violence.

-"Religion": this term broadly refers to persons defined by reference to their religious convictions or beliefs;

-"Hatred" refers to hatred based on race, colour, religion, descent or national or ethnic origin.

Two years after adoption of this Framework Decision, Member States shall take the necessary measures to comply with it.

Controversial issues:

- Article 7, paragraph 2: this Article stipulates that the Framework Decision shall not have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability. This Article caused concern to the Commission which issued a legal order reserve on this Article. It feared that this Article may be interpreted as authorising certain Member States to secure national law on the right of the Union. It th erefore specified in a declaration annexed to the text, the rule of the law of the Union. The text of this measure was however maintained in the draft Framework Decision as it was considered of utmost importance for some Member States.

- Article 1, paragraph 1, points c) and d): the extension of the measure to crimes not motivated by racism or xenophobia : some delegations requested the extension to behaviour not motivated by racism or xenophobia, from hatred and violence and publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes. A new recital was added stating that the Framework Decision does not prevent a Member State from adopting provisions in national law which extend Article 1 (c) and (d) to crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin, such as social status or **political convictions**.