

Combating terrorism: criminalisation of offences linked to terrorist activities. Framework Decision

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The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Roselyne **LEFRANCOIS** (PES, FR) and amended the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism. A number of changes have been made in order to shift the balance within the Commission text and to increase the level of legal certainty therein.

The main amendments are as follows :

Definitions: the term 'provocation' should be replaced by the term 'incitement', since the latter is a clearer concept and it is more frequently used in legal language. The definitions of "public incitement to commit a terrorist offence", "recruitment for terrorism" and "training for terrorism" have been tightened up with a greater emphasis on the element of intent.

The words 'whether or not directly advocating terrorist offences' have been dropped from the definition of 'public incitement to commit a terrorist offence'.

The jurisdictional rules applicable to the new offences: the committee felt that the new paragraph 1a incorporated by the Commission into Article 9 of the framework decision goes much too far and should be deleted. The Commission's text had stated that each Member State shall also establish its jurisdiction over the offences referred to in Article 3(2)(a) to (c) where the offence was directed towards or resulted in the carrying out of an offence referred to in Article 1 and such offence is subject to the jurisdiction of the Member State under any of the criteria set out in paragraph 1(a) to (e) of this Article.

Members felt that Member States should not be required to establish their jurisdiction extra-territorially as regards the three new offences, since this is a highly sensitive matter, the perception of which varies greatly from one Member State to another. Member States should instead be allowed to choose whether or not to apply the jurisdictional rules laid down in Article 9(d) and (e).

Criminalisation of acts: Member States must ensure that the three acts referred to in the text are criminalised with due respect for the obligations relating to freedom of speech and freedom of association by which those States are bound, in particular the obligations relating to freedom of the press and **freedom of speech in other media**, and with due respect for the confidentiality of correspondence, including the content of e-mail and other kinds of electronic correspondence. The criminalisation of the acts shall not have the effect of reducing or restricting the dissemination of information for scientific, academic, artistic or reporting purposes, the expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism.

Member States shall also ensure that the criminalisation of the acts referred to is effected in a way which is proportionate to the nature and the circumstances of the offence, having regard to the legitimate aims pursued and the necessity thereof in a democratic society, and excludes any form of arbitrariness and discriminatory or racist treatment.

Proportionality and safeguards relating to the protection of human rights and fundamental freedoms: the criminalisation of the three new acts listed in this Framework Decision should be effected in such a way as to be **proportionate** to the legitimate aims pursued, necessary and appropriate in a democratic society and exclude any form of arbitrariness and discriminatory or racist treatment. The text

states that the Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights.

Council of Europe Convention on the prevention of terrorism: lastly, MEPs recall that this Framework Decision is complementary to the Council of Europe Convention on the Prevention of Terrorism. They state that it is therefore essential, in parallel with the entry into force of this Framework Decision, that all Member States ratify that Convention.