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

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The Commission presented a report on the implementation of Council Framework Decision 2008/913 /JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

General framework of the Framework Decision: the text was adopted unanimously on 28 November 2008, **after seven years of negotiations**. The complicated nature of these negotiations was mainly due to the disparity of the Member States' legal systems and traditions as regards protection of the right to freedom of expression and its limits, and yet there was enough common ground to define a Union-wide criminal-law approach to the phenomenon of racism and xenophobia in order to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences.

All forms and manifestations of racism and xenophobia are incompatible with the values upon which the EU is founded. The Lisbon Treaty provides that the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia.

The fight against racism and xenophobia must be framed within a fundamental rights context: the Framework Decision is based on the need to **protect** the rights of individuals, groups and society at large by penalising particularly serious forms of racism and xenophobia while respecting the fundamental rights of freedom of expression and association. It thereby embodies 'the vital importance of combating racial discrimination in all its forms and manifestations', as underlined by the European Court of Human Rights, which has upheld that it may be necessary in 'democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance'.

In accordance with the Framework Decision, the Commission is now required to draw up a written report assessing the extent to which Member States have implemented all provisions of this legislation. This report is based on the transposition measures notified by Member States and technical information requested from them by the Commission during its analysis (including national case law, preparatory work, guidelines, etc.), as well as on information gathered from five governmental expert group meetings and a study contracted by the Commission.

Member States were obliged to transmit the text of the provisions transposing into their national law the obligations imposed on them under the Framework Decision by 28 November 2010. **All Member States have notified the national measures** taken to comply with the Framework Decision.

Suggested practices to strengthen the implementation of the Framework Decision: following the analysis of the implementation of the main provisions of the text, the Commission stated that the implementation of the Framework Decision could be improved.

The information obtained from Member States has shown that the authorities responsible for investigation and prosecution need practical tools and skills to be able to identify and deal with the offences covered by the Framework Decision, and to interact and communicate with victims.

They should have **sufficient knowledge** of relevant legislation and clear guidelines:

- the existence of special police hate crime units,
- special prosecutors' offices for hate speech and crime,
- detailed guidelines,
- specific training for police,
- prosecutors and judges

are good practices which may support the implementation of this legislation.

The **exchange of information** and good practices by bringing together law enforcement officials, prosecutors and judges, civil society organisations and other stakeholders can also contribute to better implementation.

Due to its special character, including the difficulty of identifying the authors of **illegal online content** and removing such content, hate speech on the internet creates special demands on law enforcement and judicial authorities in terms of expertise, resources and the need for cross-border cooperation.

Underreporting is common for hate speech and hate crime. Due to the nature of these crimes, victims often resort to victim-support services, rather than reporting the crime to the police. **Speedy implementation of the Victims' Directive** is thus essential in order to protect victims of hate speech and crime.

The existence of reliable, comparable and systematically collected data can contribute to more effective implementation of the Framework Decision. Reported incidents of hate speech and hate crime should always be registered, as well as their case history, in order to assess the level of prosecutions and sentences. Data collection on hate speech and hate crime is not uniform across the EU and consequently does not allow for reliable cross-country comparisons.

The Commission has asked all Member States to provide it with **figures** about the incidence and the criminal response to hate speech and hate crime.

The Commission stated that racist and xenophobic attitudes expressed by **opinion leaders** may contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of conduct, such as racist violence. Public condemnation of racism and xenophobia by authorities, political parties and civil society contributes to acknowledging the seriousness of these phenomena and to actively fighting against racist and xenophobic speech and behaviour.

Conclusions: at present it appears that a number of Member States have not transposed fully and/or correctly all the provisions of the Framework Decision, namely in relation to the **offences of denying, condoning and grossly trivialising certain crimes**.

The majority of Member States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the Framework Decision. Some gaps have also been observed in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction.

The Commission therefore considers that the **full and correct legal transposition of the existing Framework Decision** constitutes a first step towards effectively combating racism and xenophobia by means of criminal law in a coherent manner across the EU.

The Commission will engage in bilateral dialogues with Member States during 2014 with a view to ensuring full and correct transposition of the Framework Decision, giving due consideration to the Charter of Fundamental Rights and, in particular, to freedom of expression and association.