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

2001/0270(CNS) - 19/04/2007

Pending the lifting of some Parliamentary reservations, the Council reached a general approach on this Framework Decision.

The text 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;

- 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, and

- 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.

The Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty of the EU. Member States will not have to modify their constitutional rules and fundamental principles relating to freedom of association, freedom of the press and the freedom of expression. After its adoption, Member States will have 2 years to comply with the Framework Decision.

Statement to be inserted in the minutes of the Council at the time of the adoption of the Framework Decision:

- The Council invites the Commission to examine and to report to the Council within two years after the entry into force of the Framework Decision, whether an additional instrument is needed, to cover publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war 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.

- The Berlin declaration adopted on 25 March 2007 stated that "European integration shows that we have learnt the painful lessons of a history marked by bloody conflict". In that light the Commission will organise a public European hearing on crimes of genocide, crimes against humanity and war

crimes committed by totalitarian regimes as well as those who publicly condone, deny, grossly distort or trivialise them, and emphasises the need for appropriate redress of injustice and – if appropriate - submit a proposal for a framework decision on these crimes.