

SENATE OF THE ITALIAN REPUBLIC

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RESOLUTION OF STANDING COMMITTEE 14

(European Union Policies)

(Rapporteur: GINETTI)

adopted at the sitting of 9 July 2014

CONCERNING

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT
AND TO THE COUNCIL 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 (COM(2014) 27) (COMMUNITY ACT No 19)**

pursuant to Article 144(1), (5) and (6) of the Rules of Procedure

Communicated to the President's Office on 23 July 2014

The Committee, whereas

Article 67(3) of the Treaty on the Functioning of the European Union (TFEU) grants the Union the power to endeavour to 'ensure a high level of security through measures to ... combat ... racism and xenophobia, ... if necessary, through the approximation of criminal laws';

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law sets itself the objective of ensuring that racist and xenophobic offences are sanctioned in all Member States by at least a minimum level of effective, proportionate and dissuasive criminal penalties. The common criminal law approach is envisaged for two types of crimes: incitement to hatred and crimes based on hatred;

in particular, the following are established as crimes: public incitement to violence or hatred 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; the commission of such acts by public dissemination or distribution of tracts, pictures or other material; publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as set out in Articles 6, 7 and 8 of the Statute of the International Criminal Court, and the crimes set out in Article 6 of the Charter of the International Military Tribunal, directed against a group of persons or a member of such a group for the above reasons, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or a member of such a group. To these ends, 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 Framework Decision also requires Member States to make the behaviour referred to in Article 1 a punishable offence and to ensure that racist and xenophobic motivation is considered an aggravating circumstance when determining the penalties for any other crimes;

under the Decision, legal persons should also be punishable on the basis of indirect liability on the part of individuals with a leading position within the legal person for conduct that benefits the organisation;

Constitutional protection of fundamental principles must ensure that these rights do not contradict freedom of association, freedom of expression and freedom of the press;

prosecution of offences must not be dependent on reports, but must proceed automatically;

Article 10 of the Framework Decision asserts that Member States must take the necessary measures to comply with the Framework Decision by 28 November 2010;

according to Article 10 of Protocol 36 on transitional provisions, annexed to the TFEU, for five years from the date of entry into force of the Lisbon Treaty (thus by 1 December 2014), with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the Commission under Article 258 of the TFEU (and hence those relating to the initiation of infringement procedures) are not applicable;

Framework Decision 2008/913/JHA comes under the acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon; therefore, from 1 December 2014, any non-compliance by Member States will be subject to infringement procedures;

considering that:

the report must state the measures adopted by Member States to implement the provisions in the Decision, and must be based on the transposition measures notified by Member States and on other sources;

the transposition measures notified by Italy are set out in the annex to report No SWD(2014) 27 and comprise: Law No 962 of 9 October 1967 (preventing and combating crimes of genocide); Law No 654 of 13 October 1975 (ratifying and implementing the International Convention on the elimination of all forms of racial discrimination); Decree-Law No 122 of 26 April 1993, converted with amendments into Law No 97 of 25 June 1993 (urgent measures relating to racial, ethnic and religious discrimination); the Criminal Code;

having taken note of the European Commission's criticism of Italy concerning:

the absence of detailed information concerning the way in which victims of public incitement to violence or hatred directed against a group of persons or a member of such a group (Article 1(1)(a) of the Framework Decision) are classified as such;

the absence of references to skin colour and descent in relation to victims of such incitement, which are defined in the Framework Decision as references to 'race, colour, religion, descent or national or ethnic origin' (Article 1(1)(a) of the Decision);

failure to provide sanctions for denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, 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 (Article (1)(1)(c) of the Framework Decision);

the absence of specific provisions stating that the following are crimes: publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945. This refers to crimes against peace, war crimes and crimes against humanity committed by major war criminals of the European Axis countries. Such behaviour can be regarded as a specific display of anti-Semitism if intended to instigate violence or hatred (Article 1(1)(d) of the Framework Decision);

the absence of provisions concerning the liability of legal persons and the relevant sanctions for incitement to hatred by a person who has a leading position within the legal person, or where the lack of supervision or control by such a person has made possible incitement to hatred by a person under its authority (Articles 5 and 6 of the Framework Decision);

the failure to transpose the rules fully: they assert that Member States, when establishing jurisdiction with regard to conduct on their own territory, must ensure that their jurisdiction extends to cases where incitement to hatred is committed through an information system and where the offender or the material hosted on an information system is situated in its territory (Article 9(2) of the Framework Decision);

given that, as stated in the final paragraph of the report, the European Commission will hold bilateral talks with Member States to ensure that the Framework Decision is fully and properly transposed,

issues a favourable opinion, within its area of competence, with the following comments:

the Committee concerned is considering whether it would be appropriate, before the end of the transitional period referred to in the introduction, and thus before 1 December 2014, to adopt any measures to implement the Framework Decision that are necessary to comply with the instructions that the European Commission listed in its report. In this respect, it might be advisable to draw up a single transposition act covering the obligations arising from Framework Decision 2008/913/JHA.