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SECRETARIAT GENERAL

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**12TH MEETING OF THE COMMISSIONERS GROUP ON FUNDAMENTAL RIGHTS,
ANTI-DISCRIMINATION AND EQUAL OPPORTUNITIES**

*Tuesday 19 February 2008, 16h30 – 18h00
Strasbourg 7th floor, room WIC 700, WIC (IP1)*

CRIMES COMMITTED BY TOTALITARIAN REGIMES

Information note prepared under the authority of Vice-President Frattini

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Organization of a Public European Hearing on crimes committed by totalitarian regimes

1. This note aims to inform the Group of Commissioners on the state of play of the preparation of the hearing concerning totalitarian crimes.

Background

2. At the meeting of the Justice and Home Affairs Council on 19 April 2007, Member States reached a political agreement on the draft Framework Decision on Combating certain forms and expressions of racism and xenophobia by means of criminal law.
3. The Framework Decision aims to ensure that the same type of racist and xenophobic conduct is punished in every Member State. The Framework Decision covers crimes committed on the grounds of race, colour, religion, descent and national or ethnic origin. Towards the end of the negotiations in the Council the question was raised of crimes perpetrated by totalitarian regimes and committed on other grounds.
4. In that respect, the Council made a statement (attached) according to which the Framework Decision "*does not cover crimes committed on other grounds for example by totalitarian regimes. However, the Council deplores all of these crimes*".
5. The statement makes two requests to 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 trivializing crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions*".
 - *to organize "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 trivialize them, and emphasizes the need for appropriate redress of injustice and-if appropriate-submits a proposal for a framework decision on these crimes"*.
6. This statement was a *conditio sine qua non* for Lithuania (and, to a lesser extent, Latvia) in return for their agreement not to insist on the insertion of a provision on Stalinist crimes in the Framework Decision.

November Seminar of experts

7. A seminar with independent experts (most of them historians) from various Member States and Russia was organised in Brussels on 28 November 2007. The aim of the seminar was to assist the Commission to attain a better knowledge of the multiple aspects of this issue, and to identify the subjects to be discussed at the hearing. The debate was structured around the following sessions:
 - What is the meaning of "totalitarian crimes"? Is there a common understanding?

- How has this issue been treated in the Member States concerned? What lessons can be drawn from these experiences?
 - What role can the EU play given the limits of its powers and the principle of subsidiarity?
8. The discussion at the seminar was constructive and confirmed the importance of recognition of the victims and of reconciliation. Many interventions concentrated on the need to address the lack of awareness of these issues in Western Europe.

Preparation of the Hearing

9. The hearing is currently being organised jointly by the Slovenian Presidency and the Commission. The hearing will be held in Brussels on 8 April 2008.
10. The hearing will enable an exchange of views between independent experts and representatives of national institutes and NGOs dealing with these issues. Member States, the European Parliament and the Council of Europe will also be invited.
11. The hearing will be organised around the two key issues of recognition and reconciliation. There will be four sessions: (i) How to improve knowledge about totalitarian crimes? (ii) How to promote public awareness about totalitarian crimes? (iii) What lessons can be drawn from successful experiences? (iv) How to achieve reconciliation?
12. Written contributions will be published after the hearing. The outcome of the hearing will help the Commission to prepare its report to the Council. The report must be presented two years after the entry into force of the Framework Decision.

Conclusion

13. Dealing with totalitarian crimes is a complex and sensitive issue. Each Member State has different ways of managing its historical memory and has to find its own way to achieve reconciliation with its past. The European Union is in itself an example of reconciliation. The EU has limited powers to deal with these issues, and its role can only be to facilitate this process as much as possible by promoting discussions and by providing opportunities for mutual exchange.
14. The successful organisation of the hearing implies the active involvement and close cooperation of all the Commission's departments concerned, in particular BEPA, DG RELEX and DG EAC, since educational issues appear to be crucial in this matter.

ANNEX

Statements by the Council to be inserted in the minutes of the Council at the time of adoption of the Framework Decision

On (date) the Council of Ministers of the European Union, adopted a Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. The aim of the Framework Decision is to approximate criminal law provisions and to combat racist and xenophobic offences more effectively by promoting full and effective judicial cooperation between Member States.

The Framework Decision deals with such crimes as incitement to hatred and violence and publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes. The Framework Decision is limited to crimes committed on the grounds of race, colour, religion, descent and national or ethnic origin. It does not cover crimes committed on other grounds for example by totalitarian regimes. However, the Council deplores all of these crimes.

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 trivializing crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other 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 conflicts." In that light, the Commission will organize 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 trivialize them, and emphasizes the need for appropriate redress of injustice and-if appropriate-submits a proposal for a framework decision on these crimes.