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## **REPORT**

containing a proposal for a European Parliament recommendation to the Council concerning the progress of the negotiations on the framework decision on action to combat racism and xenophobia (2007/2067(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Martine Roure

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## PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

### concerning the progress of the negotiations on the framework decision on action to combat racism and xenophobia (2007/2067(INI))

*The European Parliament,*

- having regard to the proposal for a recommendation to the Council which has been tabled by Martine Roure on behalf of the PSE Group concerning the progress of the negotiations on the framework decision on action to combat racism and xenophobia (B6-0076/2007),
  - having regard to its 4 July 2002 position on the combating of racism and xenophobia<sup>1</sup>,
  - having regard to Joint Action 96/443/JHA concerning action to combat racism and xenophobia,
  - having regard to the proposal for a Council framework decision on the combating of racism and xenophobia (COM(2001)0664)<sup>2</sup>,
  - having regard to the Council's 2005 proposal entitled 'Luxembourg Compromise'<sup>3</sup>,
  - having regard to the Council's January 2007 proposal<sup>4</sup>,
  - having regard to the 16 December 1966 International Covenant on Civil and Political Rights and, in particular, Article 20(2) thereof,
  - having regard to the 21 December 1965 International Convention on the Elimination of All Forms of Racial Discrimination,
  - having regard to the 28 January 2003 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>5</sup>,
  - having regard to Rule 114(3) and Rule 94 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0151/2007),
- A. whereas the annual reports issued by the EUMC (European Monitoring Centre on Racism and Xenophobia), the EUMC's comparative reports on racist crime and the two recent reports on anti-Semitism and islamophobia demonstrate that racist crime is a constant and persistent problem in all the Member States: it is estimated that over 9 million people were

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<sup>1</sup> OJ C 271 E, 12.11.2003, p. 558.

<sup>2</sup> OJ C 75 E, 26.3.2002, p. 269.

<sup>3</sup> Documents 8994/1/05 REV 1 DROIPEN 24; 8994/1/05 REV ADD 1 DROIPEN 24.

<sup>4</sup> Document 5118/07 DROIPEN 1.

<sup>5</sup> Council of Europe Treaties Series, ETS No 189.

victims of a racist crime in 2004,

- B. whereas 2007 has been declared the European Year of Equal Opportunities for All and whereas particular emphasis should be placed in the course of that year on combating all forms of discrimination,
- C. whereas it is necessary to maintain a balance between respect for freedom of expression and the fight against racism and xenophobia,
- D. whereas, although a criminal policy in this area is desirable but it must take into account the fact that within a culture based on rights and freedoms, criminal law is always the least and the last recourse; whereas, also, legislative policy in this area must be weighted in the light of all the values at stake and in particular in the light of the conflict between freedom of expression and the right of every human being to equal consideration and respect,
- E. whereas freedom of expression and association should be protected, unless it is exercised in order to advocate the use of force, violence or hatred, is intended to incite or give rise to unlawful acts and is likely to give rise to such acts,
- F. whereas although all the Member States have legislation designed to combat racism and xenophobia, there are major differences between the laws applicable in the various Member States; whereas such diversity points to the need for a certain degree of harmonisation at European level in order to ensure that effective action can be taken against cross-border and Europe-wide racism and xenophobia,
- G. whereas racism and xenophobia must be vigorously combated throughout the European Union, primarily through education and through unrelenting social and political discourse exposing and isolating the arguments and advocates thereof,
- H. whereas, despite a number of years of negotiation within the Council, no agreement on the proposal for a framework decision has yet been reached,
- I. whereas the German Presidency has expressed its intention to resume negotiations on the framework decision on the combating of racism and xenophobia (following a series of consultations which have convinced it that all the Member-State delegations wish to reach an agreement), and whereas the adoption of the framework decision is one of its priorities,
- J. whereas the text which is currently under discussion is the fruit of several years of negotiation and it must serve as the starting point for the introduction of more substantial EU legislation in the field,
- K. whereas the European Parliament adopted its position on 4 July 2002, whereas that position was, however, based on the Commission's initial 2001 proposal and whereas the text currently being discussed by the Council is the outcome of laborious negotiation and has consequently been substantially changed; considering, therefore, that Parliament should be consulted again on the basis of the text currently being discussed by the Council,
- L. whereas the adoption of the framework decision will result in the repeal of Joint Action

96/443/JHA, and whereas the framework decision should not be any less substantial than the Joint Action,

1. In view of the fact that the German Presidency has proposed to the Council that the negotiations be continued on the basis of a text submitted on 15 January 2007, addresses the following recommendations to the Council:
  - (a) send out a strong political message in support of a Citizens' Europe and provide a high level of protection for fundamental rights through the avoidance of a third failure in respect of the proposal for a framework decision,
  - (b) make education towards peace, non-violence and respect for fundamental rights, and an interfaith and intercultural dialogue at EU level the main instruments of the fight against racism and xenophobia,
  - (c) ensure that the framework decision contributes European added value over and above the 1996 Joint Action and does not merely combine the various Member-State positions,
  - (d) together with the Commission, apply more actively existing anti-discrimination and anti-racist legislation and Treaty provisions, and monitor closely the future transposition and implementation of the framework decision in each Member State, and report back to the European Parliament; ensure that the Commission starts infringement proceedings against those Member States which fail to implement the legislation,
  - (e) recognise that some Member States have criminalised the denial or flagrant trivialisation of genocide, crimes against humanity or war crimes,
  - (f) insert in the final text of the framework decision the definition of racist and xenophobic offences which is already included in the Commission proposal for a framework decision on combating racism and xenophobia,<sup>1</sup> pursuant to which "directing, supporting or participating in the activities of a racist or xenophobic group with the intention of contributing to the organisation's criminal activities" is punishable as a criminal offence,
  - (g) define more closely and more clearly derogations and the options for excluding certain types of behaviour from criminal responsibility (with particular reference to behaviour towards a group of people or a member of such a group defined by reference to its religion),
  - (h) exclude from the derogations the notion of a public order offence, since it is not based on a precise definition of that concept,
  - (i) leave intact the possibility of derogating from the principle of dual criminal liability in order to enable the Member States to provide mutual support in judicial matters for the purpose of prosecuting those who behave in a racist and xenophobic fashion and in

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<sup>1</sup> COM(2001)0664.

order to enable cross-border racist movements to be combated as an essential part of the compromise achieved,

- (j) incorporate a non-regression clause such as the one contained in Article 6 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>1</sup>, in order to ensure that the implementation of the framework decision does not lead to a weakening of existing forms of protection,
  - (k) ensure that implementation of the framework decision will not undermine any obligation imposed pursuant to the abovementioned 21 December 1965 International Convention on the Elimination of All Forms of Racial Discrimination,
  - (l) set up, under the aegis of the European Union Agency for Fundamental Rights, a unit for the purpose of monitoring similar offences in the Member States, its task being to record, store and classify data,
  - (m) ensure that the framework decision is satisfactorily implemented by allowing the Commission report to take account of the opinions of the Fundamental Rights Agency and the non-governmental organisations concerned, in accordance with the model established in Directive 2000/43/EC,
  - (n) introduce a comprehensive legal framework enabling discrimination to be combated in all its forms, through the swift adoption of a comprehensive directive on the fight against discrimination (pursuant to Article 13 of the Treaty) which should provide for effective, proportionate and deterrent penal sanctions for all forms of discrimination, as well as administrative sanctions, rehabilitative sanctions such as mandatory education and community service, or fines, which, in the case of public figures and representatives of the authorities, should be more severe owing to the fact that their status should be considered to be an aggravating circumstance,
  - (o) take into account the fact that there should be no hierarchy among the grounds for discrimination listed in Article 13 of the Treaty and that, accordingly, these forms of discrimination deserve equal attention from the Council; include within the scope of criminal liability hate crimes and violent crimes based on those grounds or a combination of those grounds (multiple discrimination),
2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and to the parliaments and governments of the Member States.

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<sup>1</sup> OJ L 180, 19.7.2000, p. 22.

2.3.2007

## **PROPOSAL FOR A RECOMMENDATION (B6-0076/2007)**

tabled pursuant to Rule 114(1) of the Rules of Procedure

by Martine Roure

on behalf of the PSE Group

on progress in the negotiations concerning the framework decision on combating racism and xenophobia

*The European Parliament,*

- having regard to its report of 4 July 2002<sup>1</sup>,
  - having regard to Joint Action 96/443/JHA concerning action to combat racism and xenophobia,
  - having regard to the Commission proposal for a Council framework decision on combating racism and xenophobia COM(2001)664<sup>2</sup>,
  - having regard to Rule 114(1) of its Rules of Procedure,
- A. whereas the annual reports of the European Monitoring Centre on Racism and Xenophobia (EUMC), its comparative reports on racist crime and the two recent reports on anti-Semitism and Islamophobia have shown that racist crimes are a persistent and constant problem in all the Member States and that an estimated 9 million people were victims of racist crime in 2004,
- B. whereas although all the Member States have laws to combat racism and xenophobia there are substantial differences between them; whereas these disparities highlight the need for European harmonisation in order to ensure effective action to combat racism and xenophobia across borders and in Europe as a whole;
- C. whereas despite several years of negotiation in the Council no agreement has yet been reached on the proposal for a framework decision,
- D. whereas the German Presidency has signalled its intention to resume negotiations on the framework decision on combating racism and xenophobia and the adoption of the proposal is one of its priorities;
- E. whereas the text currently under discussion is the outcome of several years of negotiation and should be the starting-point for more substantial European legislation in this area,

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<sup>1</sup> Ceyhun report - T5-363/2002, OJ C 271 E, 12.11.2003, p. 379.

<sup>2</sup> OJ C75 E, 26.3.2002, p.269.

- F. whereas the European Parliament delivered its opinion on 4 July 2002, but it was based on the Commission's initial proposal of 2001 and hence Parliament should be reconsulted on the basis of the current text under discussion in the Council,
- G. pointing out that the adoption of the framework decision will result in the annulment of Joint Action 96/443/JHA and the decision should therefore not offer a lower degree of protection than the Joint Action,
1. Addresses the following recommendations to the Council:
    - a) send out a strong political signal in favour of a citizens' Europe and ensure a high level of protection for fundamental rights by adopting the framework decision,
    - b) ensure that the framework decision constitutes European added value compared with the Joint Action of 1996,
    - c) define more clearly the derogations and the possibilities for excluding certain forms of behaviour,
    - d) maintain the possibility of derogation from the principle of double incrimination in order to facilitate mutual judicial assistance between the Member States in the prosecution of racist and xenophobic behaviour,
    - e) incorporate a non-regression clause so as to try to ensure that the implementation of the framework decision does not lead to a weakening of existing forms of protection,
    - f) set up a complete legal framework to promote the fight against racism and xenophobia, by allowing the rapid adoption of a horizontal directive on combating discrimination pursuant to Article 13 of the EC Treaty and establishing effective penal sanctions that are proportionate and dissuasive;
  2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the parliaments and governments of the Member States.

## PROCEDURE

<b>Title</b>	Proposal for a European Parliament recommendation to the Council concerning the progress of the negotiations on the framework decision on action to combat racism and xenophobia
<b>Procedure number</b>	2007/2067(INI)
<b>Original proposal for a recommendation</b>	B6-0076/2007
<b>Committee responsible</b> Date announced in plenary	LIBE 26.4.2007
<b>Date of decision to draw up a report</b>	20.3.2007
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	
<b>Not delivering opinion(s)</b> Date of decision	
<b>Enhanced cooperation</b> Date announced in plenary	
<b>Rapporteur(s)</b> Date appointed	Martine Roure 20.3.2007
<b>Previous rapporteur(s)</b>	
<b>Discussed in committee</b>	20.3.2007 11.4.2007
<b>Date adopted</b>	11.4.2007
<b>Result of final vote</b>	+: 47 -: 0 0: 1
<b>Members present for the final vote</b>	Alexander Alvaro, Roberta Angelilli, Alfredo Antoniozzi, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giuseppe Castiglione, Giusto Catania, Mladen Petrov Chervenjakov, Carlos Coelho, Fausto Correia, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Giovanni Claudio Fava, Kinga Gál, Patrick Gaubert, Roland Gewalt, Elly de Groen-Kouwenhoven, Adeline Hazan, Lívia Járóka, Ewa Klamt, Magda Kósáné Kovács, Stavros Lambrinidis, Jaime Mayor Oreja, Dan Mihalache, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Martine Roure, Inger Segelström, Søren Bo Søndergaard, Károly Ferenc Szabó, Adina-Ioana Vălean, Ioannis Varvitsiotis, Manfred Weber
<b>Substitutes present for final vote</b>	Inés Ayala Sender, Edit Bauer, Gérard Deprez, Maria da Assunção Esteves, Luis Herrero-Tejedor, Sophia in 't Veld, Ona Juknevičienė, Sylvia-Yvonne Kaufmann, Jean Lambert, Jörg Leichtfried, Marian-Jean Marinescu, Witold Tomczak
<b>Substitutes under Rule 178(2) present for final vote</b>	
<b>Date tabled</b>	19.4.2007
<b>Comments (available in one language only)</b>	