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Committee on Legal Affairs

2007/0236(CNS)

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OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council framework decision amending Framework
Decision 2002/475/JHA on combating terrorism
(COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS))

Draftsman: Luis de Grandes Pascual

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SHORT JUSTIFICATION

Framework Decision 2002/475/JHA was a landmark in the combating of terrorism in the EU. It enabled the definition of terrorism, and the penalties for it, to be harmonised across the Member States. The Commission has submitted a proposal for the amendment of that Framework Decision with the aim of updating that legal arsenal and, above all, with the clear intention of establishing an appropriate legal framework against cyberterrorism. The Commission proposal adds three further criminal offences to the original text:

- public provocation to commit terrorist offences;
- recruitment for terrorism, and
- training for terrorism.

The Commission has to a large extent based its proposal on the Council of Europe Convention on the Prevention of Terrorism, which, *inter alia*, recognises those three types of criminal offence. Despite appearances, the inclusion of those three offences is unquestionably of added value since it broadens the scope of the Framework Decision:

- Firstly, the definition of ‘terrorist activity’ established by the Framework Decision is broader and more complete than the one deriving from the Council of Europe Convention. For example, none of the UN Conventions to which it refers covers the death of civilians caused by firearms (not simply explosives¹), and
- Secondly, the legal regime established by the Framework Decision is very comprehensive, including, for example, a system of penalties that would apply automatically to the three offences mentioned.

Nevertheless, it is essential for the Member States to ratify the Council of Europe Convention on the prevention of terrorism as quickly as possible, since the parallel and combined implementation of both those instruments would provide maximum guarantees for citizens of the Union and nationals of the member states of the Council of Europe.

As regards the protection of human rights and fundamental freedoms, it is vital to make it clear from the outset that, under the current legal framework, those rights, and particularly the freedom of expression and of association, are fully guaranteed at the level both of the Framework Decision (Article 1(2)) and of the European Union (Article 6 TEU and the EU Charter of Fundamental Rights), as well as in the European Convention for the Protection of Human Rights and Fundamental Freedoms, to whose principles and relevant case law the EU is subject. There is nothing superfluous in making clarifications to the Framework Decision that lay the emphasis on freedom of expression and association or refer to the Charter of Fundamental Rights. Nevertheless, it is vital to make it clear that the EU legal system, per se, fully protects human rights. Any attempt to counterpose the combating of terrorism and the protection of human rights (implying that terrorism can only be combated to the detriment of human rights) should be emphatically discarded: far from being mutually incompatible objectives, the protection of human rights is the main justification for the combating of

¹ See the Annex to the Council of Europe Convention.

terrorism. Any notion of a dichotomy is artificial, legally flawed and politically dangerous.

Lastly, with regard to training for terrorism, it is suggested that attempting to provide training should also be qualified an offence, since there is a real possibility of training facilities being discovered and dismantled before they have been used, and this must be taken into consideration.

In short, and although it could be improved upon, the Commission proposal is an appropriate one, as it constitutes a major step towards a more effective combating of terrorism in the EU. It should be highlighted that the Commission proposal would enable the Member States not only to counteract cyberterrorism, but also to neutralise any publicity that constitutes public provocation to commit terrorism, or apologies for it, via any medium and in any place.

For the reasons stated above, the Commission proposal should be supported, subject solely to the amendments proposed in this report.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a decision – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) While the combating of cyberterrorism is a priority, the relevance of criminalising public provocation in all the EU Member States also stems from the need to neutralise any type of publicity that constitutes public provocation to commit terrorism, or apologies for it, via any medium and in any place.

Amendment 2

Proposal for a decision – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The amendments contained in this proposal are complementary to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005, and it is therefore essential, in parallel with the entry into force of this Decision, that all Member States ratify that Convention.

Justification

Including the offences set out in the Council of Europe Convention within the Union's legal framework, and more specifically Framework Decision 2002 475/JHA, is unquestionably of added value since this would insert those offences into a more comprehensive legal regime. There is nevertheless a need for Member States to ratify that Convention, since the Framework Decision is not intended to replace it. The parallel implementation of both instruments will provide even greater protection against terrorism, both in the EU and in third countries that are members of the Council of Europe.

Amendment 3

Proposal for a decision – amending act Article 1 – point -1 (new) Decision 2002/475/JHA Article 1 – paragraph 2

Text proposed by the Commission

Amendment

Article 1, paragraph 2, is replaced by the following:

"2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union or the rights recognised in the Charter of Fundamental Rights of the European Union, especially the freedom of association and the freedom of

expression."

Justification

Article 1(2) of the Framework Decision should be updated with a reference to the EU Charter of Fundamental Rights. Similarly, it would be appropriate to emphasise the two fundamental freedoms liable to be prejudiced by erroneous interpretation of the Framework Decision: freedom of association and freedom of expression.

Amendment 4

Proposal for a decision – amending act

Article 1 – point 2

Decision 2002/475/JHA

Article 4 – paragraph 2

Text proposed by the Commission

"Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offences referred to in Article 1(1)(i) and Article 3(2)(a) **to (c)**, is made punishable."

Amendment

"Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offences referred to in Article 1(1)(i) and Article 3(2)(a) **and (b)**, is made punishable."

Justification

It is necessary for attempted training to be considered an offence in all the EU Member States. There is a very real possibility of training facilities being discovered and dismantled before they have been used, and this is something that must be taken into consideration.

PROCEDURE

Title	Combating terrorism
References	COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 11.12.2007
Drafts(wo)man Date appointed	Luis de Grandes Pascual 19.12.2007
Discussed in committee	8.4.2008 28.5.2008
Date adopted	29.5.2008
Result of final vote	+ : 20 - : 0 0 : 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon