EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

2001/0270(CNS)

19.9.2007

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DRAFT REPORT

on the proposal for a Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law
(11522/2007 – C6-0246/2007 – 2001/0270(CNS))

(Renewed consultation)

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Martine Roure

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (COM11522/2007 – C6-0246/2007 – 2001/0270(CNS))

(Consultation procedure - Renewed consultation)

The European Parliament,

– having regard to the Council proposal (11522/2007),

– having regard to the Commission proposal to the Council (COM(2001)0664)[1],

– having regard to its position of 4 July 2002[2],

– having regard to Article 34(2)(b) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council again consulted Parliament (C6-0246/2007),

– having regard to Articles 93, 51 and 55(3) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0000/2007),

1. Approves the Council proposal as amended;

2. Calls on the Council to alter its proposal accordingly;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament again if it intends to amend the draft substantially or replace it with another text;

5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Council	Amendments by Parliament
	Amendment 1 Recital 9 a (new)
	(9a) An offence concerning racism and xenophobia committed in the exercise of a professional activity, should be considered

[1] OJ C 75 E, 26.3.2002, p. 269.
[2] OJ C 271 E, 12.11.2003, p. 558.

	as an aggravating circumstance since it entails an abuse and is particularly reprehensible.

Justification

This recital, which appeared in the Commission's original proposal, should be reintroduced. It is often very difficult for the victims of racism and xenophobia to affirm their rights, and the aggravating circumstance arising from professional activity is the route most often used to facilitate matters.

Amendment 2
Article 1, paragraph 1, point (c)

(c) publicly condoning, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;	(c) publicly condoning, 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 ***or*** when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;

Justification

It should also be possible to take out action over the intentional acts defined in this paragraph even where they do not constitute incitement to hatred or violence, since the denial or gross trivialisation of crimes of genocide is also a form of racism.

Amendment 3
Article 1, paragraph 1, point (d)

(d) 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, 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 when the conduct is carried out in a manner likely to incite to violence	(d) 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, 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 ***or*** when the conduct is carried out in a manner likely to incite to violence

or hatred against such a group or a member of such a group.	or hatred against such a group or a member of such a group.

Justification

See previous justification.

Amendment 4
Article 1, paragraph 1, point (e)

(e) For the purpose of paragraph 1 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.	(e) For the purpose of paragraph 1 Member States may choose to punish only conduct which is either carried out in a manner which is threatening, abusive or insulting.

Justification

The concept of something 'likely to disturb public order' is too vague and should be removed.

Amendment 5
Article 1, paragraph 1, point (f)

(f) For the purpose of paragraph 1, 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.	(f) For the purpose of paragraph 1, 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. ***A Member State may not, however, exclude from criminal liability any speech or behaviour by a person that is liable to stir up racial hatred.***

Justification

This paragraph places a significant restriction on the measures taken to combat racism based on religious belief. It should be ensured, as a minimum, that speech or actions liable to stir up racial hatred are in all cases subject to possible criminal penalties.

Amendment 6
Article 1, paragraph 2

2. Any Member State may, at the time of	2. Any Member State may, at the time of

the adoption of this Framework Decision by the Council, make a statement that it will make punishable denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d), ***only*** if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court or by a final decision of an international court only.	the adoption of this Framework Decision by the Council, make a statement that it will ***not*** make punishable denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) if the crimes referred to in these paragraphs have been ***defined as such by legislation at national level or have been*** established by a final decision of a national court of this Member State and/or an international court or by a final decision of an international court only. ***The Member State concerned shall inform the Commission***.

Justification

The operational articles should be aligned with recital 10, which states that a Member State may adopt internal legal measures, such as national legislation, in order to combat the intentional acts referred to in paragraph 1(c) and (d).

Amendment 7
Article 7 a (new)

	Article 7a
	Minimum provisions
	1. Member States may adopt or maintain a higher level of protection in the fight against racism and xenophobia than that arising from the provisions of this framework directive.
	2. Implementation of this framework decision shall in no circumstances constitute grounds for lowering the level of protection already ensured by the Member States in the areas governed by this framework directive.
	3. Nothing in this framework decision may be interpreted as affecting any obligations incumbent on the Member States under the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966. The Member States shall implement this framework directive in line with those obligations.

Justification

The framework decision should include a non-regression clause, so as to ensure that its implementation does not lead to a weakening of the existing level of protection under Article 6 of Directive 2000/43/EC (paragraphs 1 and 2). It should also include a provision to the effect that its implementation will not affect any obligation arising from the International Convention on the Elimination of All Forms of Racial Discrimination (paragraph 3).

Amendment 8
Article 10, paragraph 3

3. Before the expiry of three years after the deadline referred to in Article 10(1), the Council shall review this Framework Decision. For the preparation of this review, the Council shall ask Member States whether they have experienced difficulties in judicial cooperation with regard to the offences under Article 1 paragraph 1. In addition, the Council may request Eurojust to submit a report, on whether differences between national legislations have resulted in any problems regarding judicial cooperation between the Member States in this area.	3. Before the expiry of three years after the deadline referred to in Article 10(1), the Council shall review this Framework Decision. For the preparation of this review, the Council shall ask Member States whether they have experienced difficulties in judicial cooperation with regard to the offences under Article 1 paragraph 1 ***and shall consult the European Parliament***. ***When conducting the review, the Council shall take account of the opinion of the European Agency for Fundamental Rights and of the NGOs active in the field.*** In addition, the Council may request Eurojust to submit a report, on whether differences between national legislations have resulted in any problems regarding judicial cooperation between the Member States in this area.

Justification

Parliament should be consulted over the review of the framework decision, and the opinions of the NGOs and of the European Agency for Fundamental Rights should also be examined.

EXPLANATORY STATEMENT

Introduction

The first report of the European Agency for Fundamental Rights of August 2007 shows that racist crimes are on the rise in at least eight EU Member States. The report states that 'racist violence and crime remains a serious social ill across the EU'. This highlights once again the urgent need for action to combat, at European level, the evils of racism, intolerance and xenophobia.

All the EU Member States have, at least to some extent, legislation against racism and xenophobia, but divergences exist. These variations point up the need for harmonisation at European level, in the interests of effective action to fight racism and xenophobia in the crossborder context and in Europe in general.

Background

In 1996, the Council adopted joint action 96/443/JAI on the fight against racism and xenophobia. This instrument sets out provisions aimed at harmonising Member States' criminal law and improving mutual assistance in the fight against racism and xenophobia.

In November 2001, the Commission submitted a proposal for a framework decision on the fight against racism and xenophobia[1], with a two-pronged objective, namely: to ensure that the same racist and xenophobic acts are subject to the same penalties in all Member States; and to improve judicial cooperation in the matter. This proposal marked an advance on the joint action insofar as it no longer allows Member States to choose between criminalising such behaviour and derogating on the grounds of avoiding double jeopardy, but, instead, obliges them to take measures to punish such behaviour as a criminal offence.

Despite numerous discussions in Council, it had proved impossible to reach agreement on this text. In 2006, the Italian delegation, which had until then consistently opposed the proposal (putting forward an alternative text in March 2003), withdrew its reservations. This made it possible to relaunch the debate on the basis of a compromise formula proposed by the Luxembourg presidency in 2005. Thanks to the efforts of the German presidency, on 19 April 2007 the Council reached a political agreement[2].

The European Parliament adopted an initial opinion on 4 July 2002 (Ceyhun report - T5-363/2002[3]). This opinion, however, was based on the Commission's initial proposal of 2001. The Council text is the fruit of several years' negotiations, and hence introduces substantial changes; it follows that Parliament should be reconsulted.

[1] COM(2001)664, OJ C 75 E, 26.3.2002, p 269.
[2] Document 5118/07 DROIPEN 1.
[3] OJ C 271 E, 12.11.2003, p 379.

Rapporteur's position

Your rapporteur welcomes the fact that the Council has finally reached agreement on a proposal for a framework decision on the fight against racism and xenophobia. The protection and promotion of the fundamental rights of European citizens, and the fight against racism and xenophobia in particular, constitute, indeed, one of the EU's major priorities. It was therefore extremely worrying that the Council had not managed to reach an agreement on such a proposal. The Union needs to send out a firm political message on behalf of fundamental rights and to adopt this text.

Nonetheless, your rapporteur regrets the failure of the Council's text to move strongly forward and rise to the political challenge posed by the fight against racism and xenophobia. Unfortunately, only a few elements remain of the Commission's 2001 proposal, which Parliament's aim was to strengthen in its first report. Your rapporteur is aware of both the need and the difficulty of finding a compromise, but regrets that such a compromise has been reached to the detriment of the legal quality of the proposal for a framework decision. In particular, she is concerned at what is a substantial restriction of its scope. It is also regrettable that the list of offences doe not, by contrast with the Commission's proposal, include insults or being a leader of a racist group.

Further, the additional limit placed on the scope of Article 1(1) - i.e. the removal of certain elements of racism based on religious belief - is, in your rapporteur's view, excessive, and requires modification so as to ensure that this form of racism is subject to prosecution as the others are. The same applies to the added requirement that the behaviour criminalised in Article 1(1)(c) and (d) should be 'likely to incite to violence or hatred'. Trivialisation of the crime of genocide is a form of racism, and Member States should be able to punish it even where incitement to hatred or violence is not involved.

Nonetheless, your rapporteur feels that this framework decision marks a significant first move towards stepping up the fight against racism and xenophobia at European level and achieving a minimum of harmonisation on the matter. It remains vital to adopt it. Your rapporteur, despite this, insists that the Union will need to go further when the framework decision is reviewed after three years. She also proposes adding a paragraph (new Article 7a) providing for a non-regression clause to ensure that the framework directive does not reduce existing levels of protection under Article 6 of the 'race directive' (Directive 2000/43/EC) and a guarantee that it will not permit lower levels of protection than that ensured by the International Convention on the Elimination of All Forms of Racial Discrimination.

Your rapporteur recalls that, in order to ensure the effectiveness of the fight against racism, the framework decision needs to be part of an overall system of European instruments for combating all forms of discrimination. The most recent report of the Agency for Fundamental Rights has shown that racial discrimination persists, in particular, in the areas of employment, education and housing. It follows that this framework decision on racism will need to be complemented by the adoption of a general directive on the fight against all the forms of discrimination referred to in Article 13 of the Treaty.

Finally, your rapporteur regrets the circumstance that the scope of this framework decision on the fight against racism and xenophobia has been limited by the fact of its being subject to

unanimity in Council and the mere consultation of Parliament. She stresses the need to move towards qualified majority voting and codecision for all third-pillar matters.