

P5_TA(2002)0363

Combating racism and xenophobia *

European Parliament legislative resolution on the proposal for a Council framework decision on combating racism and xenophobia (COM(2001) 664 – C5-0689/2001 – 2001/0270(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2001) 664¹),
 - having been consulted by the Council pursuant to Article 39 of the EU Treaty (C5-0689/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0189/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 75 E, 26.3.2002, p. 269.

Amendment 1
Recital 6

(6) Racist or xenophobic motivation **should** be taken into account as an aggravating factor when imposing penalties for ordinary offences. This would constitute a direct response to perpetrators of such offences and have a deterrent effect.

(6) Racist or xenophobic motivation **may** be taken into account as an aggravating factor when imposing penalties for ordinary offences. This would constitute a direct response to perpetrators of such offences and have a deterrent effect.

Amendment 2
Recital 7

(7) An offence concerning racism and xenophobia committed in the exercise of a professional activity, should be considered as an aggravating circumstance since it entails an abuse and is particularly reprehensible.

(7) An offence concerning racism and xenophobia committed **by means of mass communication or** in the exercise of a professional activity, should be considered as an aggravating circumstance since it entails an abuse and is particularly reprehensible.

Amendment 3
Recital 8

(8) **It should be ensured** that investigations and prosecutions of offences involving racism and xenophobia are not dependent on reports or accusation made by victims, who are often particularly vulnerable and reluctant to initiate legal proceedings;

(8) **Member States may take measures so** that investigations and prosecutions of offences involving racism and xenophobia are not **exclusively** dependent on reports or accusation made by victims, who are often particularly vulnerable and reluctant to initiate legal proceedings;

Amendment 4
Recital 11 a (new)

(11a) The International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified by all Member States, defines an act of racism or racial discrimination as 'any distinction,

exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. This Framework Decision is consistent with Article 4 of the Convention, which requires states to show vigilance and bring to justice any organisations which propagate ideas based on the concept of racial superiority or hatred, or engage in acts of violence or incitement to such acts.

Amendment 5
Recital 15

(15) This Framework Decision *respects* the fundamental rights and *observes* the principles recognised in particular by the European Convention on Human Rights, in particular Articles 10 and 11 thereof, and by the Charter of Fundamental Rights of the European Union, and notably Chapters II and VI thereof.

(15) ***In implementing*** this Framework Decision, ***Member States should respect*** the fundamental rights and *observe* the principles recognised in particular by the European Convention on Human Rights, in particular Articles 9, 10 and 11 thereof, and by the Charter of Fundamental Rights of the European Union, and notably Chapters II and VI thereof. ***Accordingly and having regard to the principle of subsidiarity, Member States should have a wide margin of appreciation in implementing and applying this Framework Decision.***

Amendment 6
Recital 15 a (new)

(15a) This Framework Directive is without prejudice to the provisions of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market⁽¹⁾, as regards the liability of internet service providers.

(¹) OJ L 178, 17.7.2000, p. 1.

Amendment 7
Article 1

This Framework Decision lays down provisions for approximation of laws and regulations of the Member States and for closer co-operation between judicial and other authorities of the Member States regarding offences involving racism and xenophobia.

This Framework Decision lays down provisions for approximation of laws and regulations of the Member States and for closer co-operation between judicial and other authorities of the Member States regarding offences involving racism and xenophobia. ***It does not preclude Member States from adopting or maintaining legislation affording a higher degree of protection against racism and xenophobia under criminal law.***

Amendment 8
Article 2

Scope

This Framework Decision applies to offences ***involving racism and xenophobia*** committed:

- (a) within the territory of the Member States, or***
- (b) by nationals of a Member State where the act affects individuals or groups of that State, or***
- (c) for the benefit of a legal person established in a Member State.***

Territorial scope

This Framework Decision applies to offences ***as defined in Article 4*** committed within the territory of a Member State.

Amendment 9
Article 2 a (new)

Article 2a

Scope as regards persons

The Framework Decision also applies to offences as defined in Article 4 irrespective of where the offence is committed, if it is committed by a national of a Member State, for purposes of prosecution in that Member State.

Amendment 10
Article 3, point (a)

(a) "racism and xenophobia" shall mean the belief in race, colour, descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals or groups;

(a) "racism and xenophobia" shall mean the belief in race, colour, descent, religion or belief, national or ethnic origin as ***even a partial*** factor determining aversion to individuals or groups;

Amendment 11
Article 3, point (c)

(c) "legal person" shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for ***public international*** organisations.

(c) "legal person" shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for organisations ***governed by public international law***.

Amendment 12
Article 4, points (a) to (f)

(a) public incitement to violence or hatred ***for a racist or xenophobic purpose*** or to any other ***racist or xenophobic*** behaviour which may cause substantial damage to individuals or groups concerned;

(a) public incitement to violence or hatred ***motivated by racism or xenophobia*** or to any other behaviour ***motivated by racism or xenophobia*** which may cause substantial damage to individuals or groups concerned;

(b) public insults or threats towards individuals or groups ***for a racist or xenophobic purpose***;

(b) public ***abuse***, insults or threats towards individuals or groups ***with a racist or xenophobic motive***;

(c) public condoning ***for a racist or xenophobic purpose*** of 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;

(c) public condoning of 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 ***where the words or behaviour in question are abusive, insulting or threatening and motivated by racism or xenophobia***;

(d) public denial or trivialisation of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 in a manner liable to disturb ***the***

(d) public denial or trivialisation of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 ***where such denial or***

public *peace*;

(e) public *dissemination or* distribution of tracts, pictures or other material containing expressions of racism and xenophobia;

(f) directing, supporting of or participating in the activities of a racist or xenophobic group, with the intention of contributing to *the organisation's criminal* activities.

trivialisation is motivated by racism or xenophobia and is abusive, insulting or threatening or effected in a manner liable to disturb public *order*;

(e) *production with the intent to distribute, public dissemination, unsolicited sending, including via internet service providers, or* public distribution of tracts, pictures or other material containing expressions of racism and xenophobia *with racist or xenophobic intent*;

(f) directing, supporting of or participating in the activities of a racist or xenophobic group, with the intention of contributing to activities *which constitute an offence within the meaning of this Framework Decision*.

Internet service providers shall be criminally liable under the conditions of Articles 12 to 15 of Directive 2000/31/EC.

Amendment 14
Article 6, paragraph 5

5. Member States shall ensure that fines can be imposed or payment for charitable purposes accepted in respect of the offences referred to in Articles 4 and 5.

5. Member States shall ensure that fines can be imposed or, *where provision is made in national law for payments for charitable purposes*, payment for charitable purposes accepted in respect of the offences referred to in Articles 4 and 5.

Amendment 15
Article 7

Member States shall ensure that in cases where the perpetrator of the offences referred to in Articles 4 and 5 is acting in *the exercise of a professional activity* and the victim *is depending on this activity*, the sentence can be *aggravated*.

Member States shall ensure that in cases where the perpetrator of the offences referred to in Articles 4 and 5 is acting in *an official or professional capacity* and *owes a duty of care to the victim or to minors, as well as in cases where the victim of the offence is a child, within the meaning of the Convention on the Rights of the Child, and cases where the perpetrator of an offence is addressing an audience which is very easily influenced, such as children*, the sentence can be

increased.

Amendment 16

Article 11

Each Member State ***shall ensure*** that investigations into or prosecution of offences referred to in ***Articles 4 and 5*** shall not be dependent on the report or accusation made by a victim of the offence, ***at least in cases where offences referred to in Article 4, paragraphs (a), (e) and (f) have been committed in its territory.***

Each Member State ***may provide*** that investigations into or prosecution of offences referred to, ***in particular, in Article 4(a), (e) and (f), in conjunction with Article 2,*** shall not be ***exclusively*** dependent on the report or accusation made by a victim of the offence.

Each Member State shall ensure that victims of racist or xenophobic offences have full access to information, aid facilities, effective protection, appropriate legal remedies and legal assistance.

Amendment 17

Article 12, paragraph 1

1. Each Member State shall establish its jurisdiction ***with regard to*** the offences referred to in Articles 4 and 5 ***where the offence has been committed:***

(a) in whole or in part within its territory;
or

(b) by one of its nationals and the act affects individuals or groups of that State;
or

(c) for the benefit of a legal person that has its head office in the territory of that Member State.

1. Each Member State shall establish its jurisdiction ***for*** the offences referred to in Articles 4 and 5.

Amendment 18

Article 12, paragraph 2

2. When establishing jurisdiction in accordance with ***paragraph 1(a),*** each Member State shall ensure that its jurisdiction extends to cases where the offence is committed through an information system and:

(a) the offender commits the offence when

2. When establishing jurisdiction in accordance with ***Article 2,*** each Member State shall ensure that its jurisdiction extends to cases where the offence is committed through an information system and ***either:***

(a) the offender commits the offence when

physically present in its territory, whether or not the offence involves racist material hosted on an information system in its territory;

(b) the offence involves racist material hosted on an information system in its territory, ***whether or not the offender commits the offence when physically present in its territory.***

on its territory, or

(b) the offence involves racist material hosted on an information system in its territory.

Amendment 19
Article 12, paragraph 3

3. A Member State may decide not to apply, or to apply only in specific cases or circumstances, the jurisdiction rule set out in ***paragraphs 1 (b) and (c).***

3. A Member State may decide not to apply, or to apply only in specific cases or circumstances, the jurisdiction rule set out in ***Article 2a. It shall inform the General Secretariat of the Council and the Commission accordingly.***

Amendment 20
Article 12, paragraph 4

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 3, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Deleted

Amendment 21
Article 15, paragraph 1

1. Member States shall designate operational contact points or may use existing operational structures for the exchange of information and for other contacts between Member States for the purposes of applying this Framework Decision.

1. Member States shall designate operational contact points or may use existing operational structures ***such as Europol and Eurojust*** for the exchange of information and for other contacts between Member States for the purposes of applying this Framework Decision.

Amendment 22

Article 15, paragraph 3 a (new)

3a. The national contact points shall provide a detailed report to the European Monitoring Centre on Racism and Xenophobia of any incident of racism and xenophobia, police reports, prosecutions and convictions. The particulars supplied to the Monitoring Centre for registration and monitoring purposes shall include details of the ethnic and cultural background of both the perpetrator and the victim.

Amendment 23
Article 16, paragraph 3

3. On that basis, the Commission shall, by 30 June 2005, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied where necessary by legislative proposals.

3. On that basis, the Commission shall, by 30 June 2005, submit a ***first*** report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied where necessary by legislative proposals. ***It shall submit subsequent reports at regular intervals of no more than two years.***