

**European Parliament legislative resolution of 29 November 2007 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))**

**(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**)<sup>(1)</sup>,
  - having regard to its position of 4 July 2002<sup>(2)</sup>,
  - 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 consulted Parliament again (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 (**A6-0444/2007**),
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 proposal substantially or replace it with another text;
  5. Instructs its President to forward its position to the Council and the Commission.

**Text proposed by the Council**

**Amendments by Parliament**

**Amendment 1**  
**Recital 6**

(6) Member States acknowledge that combating racism and xenophobia require various kinds of measures in a comprehensive framework and may not be limited to criminal matters. This Framework Decision is limited to combating particularly serious forms of racism and xenophobia by means of criminal law. Since the Member States' cultural and

(6) Member States acknowledge that combating racism and xenophobia require various kinds of measures in a comprehensive framework and may not be limited to criminal matters. ***It is necessary to ensure a culture of tolerance embracing both State and society.*** This Framework Decision is limited to combating particularly serious forms of

legal traditions are, to some extent, different, particularly in this field, full harmonisation of criminal laws is currently not possible.

racism and xenophobia by means of criminal law. Since the Member States' cultural and legal traditions are, to some extent, different, particularly in this field, full harmonisation of criminal laws is currently not possible.

---

**Amendment 2**  
**Recital 6 a (new)**

---

***(6a) This Framework Decision establishes a minimum level of harmonisation and its effectiveness is limited by the derogations which it provides, including those in Article 1(2).***

---

**Amendment 3**  
**Recital 6 b (new)**

---

***(6b) Legislative policy should reflect the fact that in a democratic society the criminal law is always a last resort, and should take into account all the values at stake, including the right to free expression and the right of all individuals to equal consideration and respect.***

---

**Amendment 4**  
**Recital 9 a (new)**

---

***(9a) The commission of a racist or xenophobic offence by an office holder should be treated as an aggravating circumstance.***

---

**Amendment 5**  
**Article 1, paragraph 1, point (b)**

---

(b) the ***commission of an act***

(b) the public dissemination or

*referred to in point a)* by public dissemination or distribution of tracts, pictures or other material;

distribution of tracts, pictures or other material ***whose content constitutes an act within the meaning of points (a), (c) or (d)*** ;

---

**Amendment 6**  
**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 *this* paragraph, Member States may choose to punish only conduct which is either carried out in a manner which is threatening, abusive or insulting.

---

**Amendment 7**  
**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 *this paragraph* , 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 should not, however, exempt from criminal liability speeches or behaviour liable to stir up hatred. Respect for freedom of religion shall not hinder the effectiveness of this Framework Decision.***

---

**Amendment 8**  
**Article 1, paragraph 2**

---

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

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**.

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.

---

#### Amendment 9 Article 2, paragraph 2

---

2. Each Member State shall take the measures necessary to ensure that instigating the conduct referred to in Article 1(c) **and (d)** is punishable.

2. Each Member State shall take the measures necessary to ensure that instigating the conduct referred to in Article 1 is punishable.

---

#### Amendment 10 Article 5, paragraph 1

---

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the conduct referred to in Articles 1 and 2, committed **for their benefit** by any person, **acting either individually or as part of an organ of the legal person**, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the conduct referred to in Articles 1 and 2, committed by any person who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.

**and who has acted in that capacity.**

---

#### Amendment 11 Article 5, paragraph 2

---

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the conduct referred to in Articles 1 and 2 **for the benefit of that legal person** by a person under its authority.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the conduct referred to in Articles 1 and 2 by a person under its authority **for whose actions the legal person may be held liable under national law**.

---

#### Amendment 12 Article 5, paragraph 3

---

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or accessories in the conduct referred to in Articles 1 and 2.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, **instigators** or accessories in the conduct referred to in Articles 1 and 2.

---

#### Amendment 13 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 Decision.**

**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 Decision.**

**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 Decision in line with those obligations.**

---

**Amendment 15**  
**Article 7, paragraph 2**

---

2. This Framework Decision shall not have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

2. This Framework Decision shall not have the effect of requiring Member States to take measures in contradiction **with the common** fundamental principles **of the Member States** relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

---

**Amendment 16**  
**Article 9, paragraph 1, point (c)**

---

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the conduct referred to in Articles 1 and 2 where **the conduct has been committed** :  
(a) in whole or in part within its territory; or

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the conduct referred to in Articles 1 and 2 where :  
(a) **the conduct has been committed** in whole or in part within its territory; or

(b) by one of its nationals; or  
(c) **for the benefit of a** legal person **that has its head office** in the territory of that Member State.

(b) **the conduct has been committed** by one of its nationals; or  
(c) **the head office of the** legal person that **may be held liable is situated** in the territory of that Member State.

---

### Amendment 17 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.

---

### Amendment 18 Article 12

---

12. This Framework Decision shall apply to Gibraltar.

12. This Framework Decision shall **also** apply to Gibraltar.

---

(1) OJ C 75 E, 26.3.2002, p. 269.

(2) OJ C 271 E, 12.11.2003, p. 558.