Basic information

2001/0270(CNS) CNS - Consultation procedure Decision	Procedure completed
Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision **Subject** 7.30.08 Action to combat racism and xenophobia 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	ROURE Martine (PSE)	21/02/2005

Former committee responsible	Former rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CEYHUN Ozan (PSE)	22/01/2002

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	The committee decided not to give an opinion.	

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	MCCARTHY Arlene (PSE)	24/01/2002
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2423	2002-04-25
Justice and Home Affairs (JHA)	2908	2008-11-27
Justice and Home Affairs (JHA)	2794	2007-04-19
Justice and Home Affairs (JHA)	2469	2002-11-28
Justice and Home Affairs (JHA)	2489	2003-02-27

	Justice and Home Affairs (JHA)	2642	2005-02-24
	Justice and Home Affairs (JHA)	2664	2005-06-02
	Justice and Home Affairs (JHA)	2781	2007-02-15

	Commission DG	Commissioner
European Commission	Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
29/11/2001	Legislative proposal published	COM(2001)0664	Summary
16/01/2002	Committee referral announced in Parliament		
25/04/2002	Resolution/conclusions adopted by Council		
23/05/2002	Vote in committee		Summary
23/05/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0189/2002	
03/07/2002	Debate in Parliament		
04/07/2002	Decision by Parliament	T5-0363/2002	Summary
28/11/2002	Debate in Council		Summary
27/02/2003	Debate in Council		Summary
24/02/2005	Debate in Council		Summary
02/06/2005	Debate in Council		
15/02/2007	Debate in Council		
19/04/2007	Debate in Council		Summary
19/07/2007	Amended legislative proposal for reconsultation published	11522/2007	Summary
27/07/2007	Formal reconsultation of Parliament		
12/11/2007	Vote in committee		Summary
14/11/2007	Committee report tabled for plenary, reconsultation	A6-0444/2007	
29/11/2007	Decision by Parliament	T6-0552/2007	Summary
29/11/2007	Results of vote in Parliament		
27/11/2008	Act adopted by Council after consultation of Parliament		
27/11/2008	End of procedure in Parliament		
06/12/2008	Final act published in Official Journal		

Technical information

Procedure reference	2001/0270(CNS)

Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on European Union (after Amsterdam) M 029 Treaty on European Union (after Amsterdam) M 034-p2 Treaty on European Union (after Amsterdam) M 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/52599 LIBE/5/15609

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0189/2002	23/05/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0363/2002 OJ C 271 12.11.2003, p. 0379-0558 E	04/07/2002	Summary
Committee draft report		PE394.026	18/09/2007	
Amendments tabled in committee		PE396.537	08/11/2007	
Committee final report tabled for plenary, reconsultation		A6-0444/2007	14/11/2007	
Text adopted by Parliament after reconsultation		T6-0552/2007	29/11/2007	Summary

Council of the EU

Document type	Reference	Date	Summary
Amended legislative proposal for reconsultation	11522/2007	19/07/2007	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2001)0664 OJ C 075 26.03.2002, p. 0269 E	29/11/2001	Summary
Commission response to text adopted in plenary	SP(2007)6527	18/12/2007	
Document attached to the procedure	COM(2010)0783	22/12/2010	
Follow-up document	COM(2014)0027	27/01/2014	Summary
Follow-up document	SWD(2014)0027	27/01/2014	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_SENATE	COM(2010)0783	09/05/2011	
Contribution	IT_SENATE	COM(2014)0027	06/08/2014	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act	
Justice and Home Affairs act 2008/0913 OJ L 328 06.12.2008, p. 0055	Summary

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 28/11/2008 - Final act

PURPOSE: to combat particularly serious forms of racism and xenophobia through a common minimum set of criminal law penalties European level.

LEGISLATIVE ACT: Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

CONTENT: according to the evaluation of Council Joint Action 96/443/JHA of 15 July 1996 concerning action to combat racism and xenophobia, and work carried out by the Council of Europe, some difficulties have still been experienced regarding judicial cooperation aimed at combating racist offences. There is, therefore, a need for further approximation of Member States' criminal laws in order to ensure the effective implementation of comprehensive and clear legislation to combat racism and xenophobia.

Moreover, given that racism and xenophobia are direct violations of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law - principles upon which the European Union is founded -, it has become necessary to define a common criminal law approach in the European Union to this phenomenon.

The overall objective is to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences. In particular, the Framework Decision aims at combating particularly serious forms of racism and xenophobia by means of criminal law but, 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.

Scope and objectives of the Framework Decision: the Framework Decision has the following objectives:

(1) to ensure that offences concerning racism and xenophobia are punishable: to this end, each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

publicly inciting to violence or hatred 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;

the commission of such an act by public dissemination or distribution of tracts, pictures or other material;

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

Note that 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.

(2) to ensure that instigating offences related to publicly condoning or denying genocide, as well as aiding and betting in the commission of such conduct, is punishable.

Criminal penalties: to make the provision more effective, it is provided that each Member State shall take the necessary measures to ensure that such conduct is punishable by effective, proportionate and dissuasive criminal penalties, by providing for criminal penalties of a maximum of at least between one and three years of imprisonment.

Aggravating circumstance: Member States shall also take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance.

Liability of legal persons: there are also provisions to punish legal persons deemed liable for racist or xenophobic offences referred to in the Framework Decision. Legal persons shall also be held liable for racist offences simply for a lack of supervision or control. Liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators or accessories in the conduct of a racist offence.

Penalties for legal persons: the Framework Decision provides for penalties for natural persons deemed liable for racist acts referred to in the Framework Decision. Likewise, provisions are made to ensure that offences committed by legal person are punishable by criminal law. Such penalties shall be effective, proportionate and dissuasive (including criminal or non-criminal fines) and may include other penalties, such as:

exclusion from entitlement to public benefits or aid;

temporary or permanent disqualification from the practice of commercial activities;

placing under judicial supervision;

a judicial winding-up order.

Initiation of investigation or prosecution: each Member State shall take the necessary measures to ensure that investigations into or prosecution of offences involving racism and xenophobia shall not be dependent on a report or an accusation made by a victim of the conduct (who is often vulnerable and reluctant to initiate legal proceedings), at least in the most serious cases where the conduct has been committed in its territory.

Extraterritorial jurisdiction: the Framework Decision provides for the principle of extraterritorial jurisdiction to bring proceedings against those who commit offences involving racism and xenophobia. In particular, this means covering cases where offences involving racism are committed through an information system (for example, on the Internet). In this case, the material used does not have to be present in the territory of the Member State where the offence is committed and the offender does not have to be physically present in that Member State, if the material used is hosted in that Member State. However, the provision on extraterritorial jurisdiction is optional.

Constitutional rules and fundamental principles: specific provisions are made to clarify that the Framework Decision shall not be incompatible with the principles of freedom of expression and association, as enshrined in the Treaty on European Union. Moreover, it 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).

Report and review clause: the Council shall, by 28 November 2013, assess the extent to which Member States have complied with the provisions of this Framework Decision. Before that date, it shall review this Framework Decision, based on information provided by Member States on difficulties encountered with regard to its implementation.

Territorial application: this Framework Decision shall apply to Gibraltar.

ENTRY INTO FORCE: 06/12/2008. Joint Action 96/443/JHA is repealed.

TRANSPOSITION: Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 28/11/2010.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 27/01/2014 - Follow-up document

The Commission presented a report on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

General framework of the Framework Decision: the text was adopted unanimously on 28 November 2008, **after seven years of negotiations**. The complicated nature of these negotiations was mainly due to the disparity of the Member States' legal systems and traditions as regards protection of the right to freedom of expression and its limits, and yet there was enough common ground to define a Union-wide criminal-law approach to the phenomenon of racism and xenophobia in order to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences.

All forms and manifestations of racism and xenophobia are incompatible with the values upon which the EU is founded. The Lisbon Treaty provides that the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia.

The fight against racism and xenophobia must be framed within a fundamental rights context: the Framework Decision is based on the need to **protect** the rights of individuals, groups and society at large by penalising particularly serious forms of racism and xenophobia while respecting the fundamental rights of freedom of expression and association. It thereby embodies 'the vital importance of combating racial discrimination in all its forms and manifestations', as underlined by the European Court of Human Rights, which has upheld that it may be necessary in 'democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance'.

In accordance with the Framework Decision, the Commission is now required to draw up a written report assessing the extent to which Member States have implemented all provisions of this legislation. This report is based on the transposition measures notified by Member States and technical information requested from them by the Commission during its analysis (including national case law, preparatory work, guidelines, etc.), as well as on information gathered from five governmental expert group meetings and a study contracted by the Commission.

Member States were obliged to transmit the text of the provisions transposing into their national law the obligations imposed on them under the Framework Decision by 28 November 2010. **All Member States have notified the national measures** taken to comply with the Framework Decision.

Suggested practices to strengthen the implementation of the Framework Decision: following the analysis of the implementation of the main provisions of the text, the Commission stated that the implementation of the Framework Decision could be improved.

The information obtained from Member States has shown that the authorities responsible for investigation and prosecution need practical tools and skills to be able to identify and deal with the offences covered by the Framework Decision, and to interact and communicate with victims.

They should have **sufficient knowledge** of relevant legislation and clear guidelines:

- the existence of special police hate crime units,
- special prosecutors' offices for hate speech and crime,
- detailed guidelines,
- specific training for police,
- prosecutors and judges

are good practices which may support the implementation of this legislation.

The **exchange of information** and good practices by bringing together law enforcement officials, prosecutors and judges, civil society organisations and other stakeholders can also contribute to better implementation.

Due to its special character, including the difficulty of identifying the authors of **illegal online content** and removing such content, hate speech on the internet creates special demands on law enforcement and judicial authorities in terms of expertise, resources and the need for cross-border cooperation.

Underreporting is common for hate speech and hate crime. Due to the nature of these crimes, victims often resort to victim-support services, rather than reporting the crime to the police. **Speedy implementation of the Victims' Directive** is thus essential in order to protect victims of hate speech and crime.

The existence of reliable, comparable and systematically collected data can contribute to more effective implementation of the Framework Decision. Reported incidents of hate speech and hate crime should always be registered, as well as their case history, in order to assess the level of prosecutions and sentences. Data collection on hate speech and hate crime is not uniform across the EU and consequently does not allow for reliable cross-country comparisons.

The Commission has asked all Member States to provide it with **figures** about the incidence and the criminal response to hate speech and hate crime.

The Commission stated that racist and xenophobic attitudes expressed by **opinion leaders** may contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of conduct, such as racist violence. Public condemnation of racism and xenophobia by authorities, political parties and civil society contributes to acknowledging the seriousness of these phenomena and to actively fighting against racist and xenophobic speech and behaviour.

Conclusions: at present it appears that a number of Member States have not transposed fully and/or correctly all the provisions of the Framework Decision, namely in relation to the **offences of denying, condoning and grossly trivialising certain crimes**.

The majority of Member States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the Framework Decision. Some gaps have also been observed in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction.

The Commission therefore considers that the **full and correct legal transposition of the existing Framework Decision** constitutes a first step towards effectively combating racism and xenophobia by means of criminal law in a coherent manner across the EU.

The Commission will engage in bilateral dialogues with Member States during 2014 with a view to ensuring full and correct transposition of the Framework Decision, giving due consideration to the Charter of Fundamental Rights and, in particular, to freedom of expression and association.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 27/02/2003

The Council examined some outstanding issues of the proposal for a Framework Decision for combating racism and xenophobia. Discussions focused on the introduction in a Framework Decision of references to national constitutional rules and on the implementation of mutual legal assistance with regard to double criminality. The Council instructed its relevant bodies to further examine these points with a view to reaching an agreement oat one of its forthcoming meetings.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 29/11/2007 - Text adopted by Parliament after reconsultation

The European Parliament adopted a report drawn up by Martine **ROURE** (PES, FR) and made some amendments to the proposal on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The main amendments are as follows:

Recitals: new recitals state that 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. The commission of a racist or xenophobic offence by an office holder should be treated as an aggravating circumstance.

Minimum level: a further new recital states that the Framework Decision establishes a minimum level of harmonisation and its effectiveness is limited by the derogations which it provides.

Scope: a Member State shall not exempt from criminal liability speeches or behaviour liable to stir up hatred. Respect for freedom of religion shall not hinder the effectiveness of the Framework Decision.

Public order: MEPs suggest that Member States may choose to punish only conduct which is either carried out in a manner which is threatening, abusive or insulting (and not include the element ‘likely to disturb public order’ which was proposed by the Commission).

Liability of instigators: liability of a legal person will not exclude criminal proceedings against natural persons who are instigators, as well as perpetrators or accessories.

Non-regression clause: the report includes a new Article 7a which provides for a non-regression clause to ensure that the implementation of the Framework Directive does not lead to a weakening of the existing levels of protection under Article 6 of the ‘race’ directive (Directive 2000/43/EC). 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. Implementation of the 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 the Framework Decision. Nothing in the 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 the Framework Decision in line with those obligations.

Review clause: the report calls for the Parliament to be consulted over the review of the Framework Decision, and the opinions of the NGOs and of the European Agency for Fundamental Rights.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 24/02/2005

In view of the importance and the added value of the instrument, the Council decided to resume examination of the Framework Decision on combating racism and xenophobia as a matter of urgency.

To give the new Member States time to examine the text, the Council requested its preparatory bodies to examine the draft Framework Decision on the basis of the text put before the JHA Council at its meeting on 27 and 28 February 2003. The JHA Council will return to this Framework Decision at its next meeting.

It is recalled that in July 1996, the Council adopted Joint Action 96/443/JHA concerning action to combat racism and xenophobia. This instrument contains provisions to harmonise the criminal law of Member States and to improve mutual assistance in combating racism and xenophobia.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 19/04/2007

Pending the lifting of some Parliamentary reservations, the Council reached a general approach on this Framework Decision.

The text establishes that the following intentional conduct will be punishable in all EU Member States:

- publicly inciting to violence or hatred, even by dissemination or distribution of tracts, pictures or other material, 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;
- publicly condoning, denying or grossly trivialising;
- crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) 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, and
- crimes defined by the Tribunal of Nuremberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 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.

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. 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. Member States will ensure that these conducts are punishable by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment.

The Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty of the EU. Member States will not have to modify their constitutional rules and fundamental principles relating to freedom of association, freedom of the press and the freedom of expression. After its adoption, Member States will have 2 years to comply with the Framework Decision.

Statement to be inserted in the minutes of the Council at the time of the adoption of the Framework Decision:

- The Council invites the Commission to examine and to report to the Council within two years after the entry into force of the Framework Decision, whether an additional instrument is needed, to cover publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin such as social status or political convictions.

- The Berlin declaration adopted on 25 March 2007 stated that "European integration shows that we have learnt the painful lessons of a history marked by bloody conflict". In that light the Commission will organise a public European hearing on crimes of genocide, crimes against humanity and war

crimes committed by totalitarian regimes as well as those who publicly condone, deny, grossly distort or trivialise them, and emphasises the need for appropriate redress of injustice and – if appropriate - submit a proposal for a framework decision on these crimes.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 19/07/2007 - Amended legislative proposal for reconsultation

Following the examination of the Commission's initial proposal, the Council adopted a new version of the draft Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.

Background: the Commission's initial proposal was presented in November 2001. However, following in-depth discussions, the "Justice and Home Affairs" Council was not able to reach an agreement on this proposal. The European Parliament gave its opinion on the proposal on 4 July 2002.

In February 2005, the "Justice and Home Affairs" Council requested its preparatory bodies to examine the draft Framework Decision. A draft compromise text was adopted in June 2005 however the Council was still not able to reach an agreement on the text.

Finally, in February 2007, the "Justice and Home Affairs" Council held a general discussion on the Council Framework Decision and it reached a general approach on the text in April 2007.

This is the compromise text which is being submitted to the European Parliament for "**reconsultation**" given that the original text from 2001 was subject to major amendments.

Main amendments of the draft Framework Decision:

The new proposal establishes that the following intentional conduct will be punishable in all EU Member States:

- publicly inciting to violence or hatred, even by dissemination or distribution of tracts, pictures or other material, 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;
- publicly condoning, denying or grossly trivialising;

I. crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) 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,

II. crimes defined by the Tribunal of Nuremberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 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.

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**. 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.

Member States will ensure that these conducts are punishable by criminal penalties of **a maximum of at least between 1 and 3 years of imprisonment**.

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.

Other specifications brought about by the revised text include :

-“Descent”: this term refers mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred or violence.

-"Religion": this term broadly refers to persons defined by reference to their religious convictions or beliefs;

-"Hatred" refers to hatred based on race, colour, religion, descent or national or ethnic origin.

Two years after adoption of this Framework Decision, Member States shall take the necessary measures to comply with it.

Controversial issues:

- Article 7, paragraph 2: this Article stipulates that the 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. This Article caused concern to the Commission which issued a legal order reserve on this Article. It feared that this Article may be interpreted as authorising certain Member States to secure national law on the right of the Union. It th erefore specified in a declaration annexed to the text, the rule of the law of the Union. The text of this measure was however maintained in the draft Framework Decision as it was considered of utmost importance for some Member States.

- Article 1, paragraph 1, points c) and d): the extension of the measure to crimes not motivated by racism or xenophobia : some delegations requested the extension to behaviour not motivated by racism or xenophobia, from hatred and violence and publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes. A new recital was added stating that the Framework Decision does not prevent a Member State from adopting provisions in national law which extend Article 1 (c) and (d) to crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin, such as social status or **political convictions**.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 28/11/2002

The Council held an in-depth debate, based on a Presidency global compromise which was broadly welcomed, on the draft Council Framework Decision on combating racism and xenophobia. The debate focused on the key provisions which define offences concerning racism and xenophobia conduct. The main concern expressed by several delegations was how to find a balanced approach between, on the one hand, the scope of criminal liability and, on the other hand, constitutional rules and fundamental principles relating to respect for the freedom of association, freedom of the press and freedom of expression. In the light of the discussion and bearing in mind a number of reservations, the Presidency proposed to amend its compromise. In particular, it decided to broad the scope of the text and to recall on it that this Framework Decision shall respect Article 6 of the Treaty and will not compromise constitutional principles and values of the Member States. On that basis, the Council instructed its relevant bodies to examine the draft Framework Decision with a view to reaching a political agreement at one of its forthcoming sessions.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 29/11/2001 - Legislative proposal

PURPOSE : to establish a Framework Decision for the approximation of laws relating to offences involving racism and xenophobia. CONTENT : Racism and xenophobia are direct violations of the principles of liberty, democracy, respect for human rights and the rule of law upon which the EU is founded. Some difficulties have been encountered regarding judicial cooperation in this area and there is a need for further improvement of Member States' criminal laws in order to ensure the implementation of comprehensive legislation to fight racism and xenophobia. The Framework Decision: - defines a common criminal approach in the EU in order to ensure that the same behaviour constitutes an offence in all Member States and that there are effective penalties for natural and legal persons having committed or being liable for such offences. - states that sanctions for legal persons may include exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; a judicial winding-up order, or closure of establishments which have been used for committing the offence. - provides that racist or xenophobic motivation is considered an aggravating factor when imposing penalties for ordinary offences. - provides that an offence concerning racism and xenophobia committed in the exercise of a professional activity is regarded as an aggravating circumstance, since it entails an abuse and is particularly reprehensible. - ensures that investigations of offences involving racism and xenophobia are not dependent on reports or accusations made by victims, who are often reluctant to initiate legal proceedings. - contains procedural provisions on jurisdiction, as well as extradition and prosecution. The provisions on the latter will no longer be applicable as soon as the Commission's proposal for a European arrest warrant is adopted, which will replace extradition in the EU. For the moment, the relevant article provides that a Member State which does not extradite its own nationals must take the necessary measures to establish its jurisdiction over and, where appropriate, prosecute the offences concerned when committed by its own nationals on the territory of another Member State.

Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 04/07/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Ozan CEYHUN (Greens/EFA, Germany) on the Commission's proposal for a framework decision. (Please refer to the document dated 23/05/02.) Parliament made it clear that the proposal does not preclude Member States from adopting or maintaining legislation affording a higher degree of protection against racism and xenophobia under criminal law. It also specified that each Member State must ensure that victims of racist or xenophobic offences have full access to information, aid facilities, effective protection, appropriate legal remedies and legal assistance.