



ENAR final amendments

regarding the report of the Rapporteur Ozan Ceyhun on the

Proposal for a

Council Framework Decision on combating racism and xenophobia

COM (2001) 664 – C5-0689/2001 – 2001/0270(CNS)

‘Racism is not an opinion - It’s a crime’

A unique opportunity to develop legal measures to make this slogan true

ENAR, the European Network Against Racism, is an EU-wide network of about 600 non-governmental organisations active in the fight against Racism. The main focus of ENAR is to inform its constituency about EU initiatives concerning racism to support networking amongst its members and to influence political and legal initiatives with the aim to fight racism.

ENAR welcomes the proposal for a framework decision which will complement the Council Directive 2000/43/EC of 29 June 2000 ‘implementing the principle of equal treatment between persons irrespective of racial or ethnic origin’ in the area of criminal law.

We would like to formulate our appreciation concerning:

- The fact that racist motivation may be regarded as an aggravating circumstance for all offences
- The fact that legal persons may be held liable
- The concern regarding the combating of crimes of a racist nature perpetrated through the medium of the internet
- The importance of making illegal organisations and propaganda activities which incite discrimination, hatred or violence on racist grounds. The Committee on the Elimination of Racial Discrimination also recalls this in its recommendations of 22 March last¹.

The inclusion of these Articles will allow racism to be tackled in a comprehensive and meaningful way.

¹ In its recommendations of 22 March last, the Committee on the Elimination of Racial Discrimination expresses concerns about legislation in certain states “which does not make provision for the prohibition of propaganda activities which promote racism and incitement to racial hostility” as stipulated by Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination of 7 March 1966

However, we also wish to draw attention to the following points, which we would like to propose for strengthening the Proposal to be presented to the European Parliament for adoption of the Framework Decision:

Amendment 1

Recital 6

In order not to leave too much space for interpretation we would like to suggest that the original text should be used (...motivation *should* be taken into account instead of ... *may* be taken into account).

Amendment 3

Recital 8

As mentioned above we feel that the Framework Decision on Racism should give clear guidelines for national Governments to adjust legislation. We would strongly recommend keeping the original text (*It should be ensured that...*) instead of the amendment presented by the Rapporteur (*Member States may take measures so that...*)

Amendment 5

Recital 15

The Rapporteur has suggested including a phrase at the end of this Amendment referring to the subsidiarity of the Member States.

ENAR generally supports the principle of subsidiarity but we would like to recommend deleting the last sentence (*Accordingly and having regard to the principle of subsidiarity, Member States must have a wide margin of appreciation in implementing and applying this Framework Decision*). We feel that the text would be much clearer and stronger without this reference.

Amendment 10

Article 3(a)

In order to guarantee the effectiveness of such legal measure we suggest deleting the word ‘*determining*’ in the original text, to read as follows:

(a) “racism and xenophobia” shall mean the belief in race, colour, descent, religion or belief, national or ethnic origin as an aversion to individuals or groups:

Amendment 12

Article 4

Experience shows that it is almost impossible in working on cases determine proof of racist or xenophobic intention. Judges would have to assess racist intention during a trial on the basis of evidence, which can often not be produced and would need to be proven by the victim.

We strongly recommend deleting the words ...*with racist or xenophobic intent*... in order to avoid obstacles in the penal law system and double punishment for victims of racism.

Amendment 16

Article 11

As stated before we support the intention to strengthen the document.

We would support the original text of this paragraph saying: *Each Member State shall ensure that ... instead of Each Member State may provide that...*

European Network against Racism
25 June 2002