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REPORT

on the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism
(COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Roselyne Lefrançois

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind 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 amending Framework Decision 2002/475/JHA on combating terrorism (COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2007)0650)
 - having regard to the Council guideline of 18 April 2008¹,
 - having regard to Article 29, Article 31(1)(e) and 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 (C6-0466/2007),
 - having regard to Rules 93 and 51 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 (A6-0323/2008),
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 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 Commission proposal substantially;
 5. Calls upon the Council and the Commission, following the entry into force of the Lisbon Treaty, to treat as a priority any subsequent proposal designed to amend this text pursuant to Article 10 of the Protocol on the transitional provisions to be annexed to the Treaty on European Union, to the Treaty on the functioning of the European Union, to the Treaty establishing the European Atomic Energy Community and to Declaration No 50 relating thereto;
 6. Declares itself already prepared – once the Lisbon Treaty comes into force – to consider any such proposal if necessary in accordance with the urgency procedure and in close cooperation with Member States' parliaments; should the new proposal reflect the substance of this opinion, the procedure laid down in the interinstitutional agreement as regards codification could apply;

¹ See the Council's public register: <http://register.consilium.europa.eu/pdf/fr/08/st08707.fr08.pdf>

7. Instructs its President to forward this opinion to the Council and Commission.

Amendment 1

Proposal for a framework decision – amending act Recital 6a (new)

Text proposed by the Commission

Amendment

(6a) EU action to combat terrorism should be undertaken in close cooperation with local and regional authorities who have a key role to play, particularly in relation to prevention, in so far as the instigators and perpetrators of terrorist acts live within local communities with whose population they interact, and whose services and instruments of democracy they employ.

Justification

In an area which so directly affects citizens' rights, local and regional authorities should have an enhanced role to play, not only because they constitute the administrative level which is closest to those citizens but also because the instigators and perpetrators of terrorist acts go about their daily business within the communities concerned.

Amendment 2

Proposal for a framework decision – amending act Recital 7

Text proposed by the Commission

Amendment

(7) The current proposal foresees the criminalisation of terrorist linked offences in order to contribute to the more general policy objective of prevention of terrorism through reducing the dissemination of those materials ***which might*** incite persons to commit terrorist attacks.

(7) The current proposal foresees the criminalisation of terrorist linked offences in order to contribute to the more general policy objective of prevention of terrorism through reducing the dissemination of those materials ***with the intention and the likelihood to*** incite persons to commit terrorist attacks.

Amendment 3

Proposal for a framework decision – amending act Recital 10

Text proposed by the Commission

(10) The definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it will cover public **provocation** to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally.

Amendment

(10) The definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it will cover public **incitement** to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally.

(This amendment applies to the entire legislative text under consideration, with the exception of Recital 9; if it is adopted, technical adjustments will have to be made throughout the text.)

Justification

The term ‘provocation’ should be replaced by the term ‘incitement’, since the latter is a clearer concept and it is more frequently used in legal language. Furthermore, the term ‘incitement’ is the one which has been adopted in the proposal for a framework decision on combating racism and xenophobia.

Amendment 4

Proposal for a framework decision – amending act Recital 11

Text proposed by the Commission

(11) Penalties and sanctions should be provided for natural and legal persons having committed **or being liable for** public **provocation** to commit terrorist offences, recruitment for terrorism and training for terrorism, when committed intentionally. These forms of behaviour should be equally punishable in all Member States irrespective of whether they are committed through the Internet or not.

Amendment

(11) Penalties and sanctions should be provided for natural and legal persons having committed public **incitement** to commit terrorist offences, recruitment for terrorism and training for terrorism, when committed intentionally. These forms of behaviour should be equally punishable in all Member States irrespective of whether they are committed through the Internet or not.

Amendment 5

Proposal for a framework decision – amending act Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The failure of the Council to agree on procedural rights in criminal proceedings hampers European judicial cooperation; this deadlock urgently needs to be overcome.

Amendment 6

Proposal for a framework decision – amending act Recital 12

Text proposed by the Commission

Amendment

(12) Additional jurisdictional rules should be established to ensure that public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism may be effectively prosecuted when they are directed towards or resulted in the commission of a terrorist offence which is subject to the jurisdiction of a Member State. ***deleted***

Justification

This recital echoes the new paragraph 1a which the Commission is proposing to add to Article 9 of the framework decision. The rapporteur suggests that the substance of that new paragraph should not form part of this draft report, since she considers that the jurisdictional rules laid down in that paragraph go much too far - hence it makes sense to request deletion of this recital.

Amendment 7

Proposal for a decision – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) This Framework Decision is

complementary to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005, and it is therefore essential, in parallel with the entry into force of this Framework Decision, that all Member States ratify that Convention.

Justification

Including the offences set out in the Council of Europe Convention within the Union's legal framework, and more specifically Framework Decision 2002 475/JHA, is unquestionably of added value since this would insert those offences into a more comprehensive legal regime. There is nevertheless a need for Member States to ratify that Convention, since the Framework Decision is not intended to replace it. The parallel implementation of both instruments will provide even greater protection against terrorism, both in the EU and in third countries that are members of the Council of Europe.

Amendment 8

Proposal for a framework decision – amending act

Recital 14

Text proposed by the Commission

(14) The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapters II and VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as freedom of expression, assembly, or of association, the right to respect for private and family life, including the right to respect of the confidentiality of correspondence.

Amendment

(14) The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapters II and VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as freedom of expression, assembly, or of association, ***freedom of the press and freedom of expression of other media, or*** the right to respect for private and family life, including the right to respect of the confidentiality of correspondence, ***which also covers the content of e-mail and other kinds of electronic correspondence.***

Amendment 9

Proposal for a framework decision – amending act Recital 15

Text proposed by the Commission

(15) Public **provocation** to commit terrorist offences, recruitment for terrorism and training for terrorism are intentional crimes. Therefore, nothing in this Framework Decision may be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Framework Decision and, in particular, of the definition of public **provocation** to commit terrorist offences,

Amendment

(15) Public **incitement** to commit terrorist offences, recruitment for terrorism and training for terrorism are intentional crimes. Therefore, nothing in this Framework Decision may be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic, **artistic** or reporting purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Framework Decision and, in particular, of the definition of public **incitement** to commit terrorist offences,

Justification

Same justification as for Amendment 2.

Furthermore, the dissemination of artists' products must enjoy the same protection as the dissemination of information for scientific, academic or reporting purposes.

Amendment 10

Proposal for a framework decision – amending act Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The criminalisation of the acts listed in this Framework Decision should be effected in such a way as to be proportionate to the legitimate aims pursued, necessary and appropriate in a democratic society, and non-discriminatory; they should, in particular, be compatible with the Charter of Fundamental Rights of the European Union and with the European Convention

Amendment 11

Proposal for a framework decision – amending act

Article 1 – point -1 (new)

Framework Decision 2002/475/JHA

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

(-1) Article 1(2) is amended as follows:

"2. This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights."

Amendment 12

Proposal for a framework decision – amending act

Article 1 – point 1

Framework Decision 2002/475/JHA

Article 3 – paragraph 1 – point (a)

Text proposed by the Commission

Amendment

(a) "public **provocation** to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, **with the intent to incite** the commission of one of the **acts** listed in Article 1(1)(a) to (h), where such conduct, **whether or not directly advocating terrorist offences**, causes a danger that one or more such offences may be committed;

(a) "public **incitement** to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public **clearly and intentionally advocating** the commission of one of the **offences** listed in Article 1(1)(a) to (h), where such conduct **manifestly** causes a danger that one or more such offences may be committed;

Amendment 13

Proposal for a framework decision – amending act

Article 1 – point 1

Framework Decision 2002/475/JHA

Article 3 – paragraph 1 – point (b)

Text proposed by the Commission

(b) "recruitment for terrorism" means to solicit another person to commit one of the **acts** listed in Article 1(1), or in Article 2(2);

Amendment

(b) "recruitment for terrorism" means **intentionally** to solicit another person to commit one of the **offences** listed in Article 1(1)(a) to (h), or in Article 2(2);

Justification

It would seem logical to exclude point (i) from Article 1(1) (and consequently to refer only to points (a) to (h)), since it is very difficult to conceive that the purpose of recruiting for terrorism would be the threat to commit a terrorist offence.

Amendment 14

Proposal for a framework decision – amending act

Article 1 - point 1

Framework decision 2002/475/JHA

Article 3 - paragraph 1 - point (c)

Text proposed by the Commission

(c) "training for terrorism" means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the **acts** listed in Article 1(1), knowing that the skills provided are intended to be used for this purpose.

Amendment

(c) "training for terrorism" means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the **offences** listed in Article 1(1)(a) to (h), knowing that the skills provided are intended to be used for this purpose.

Justification

It would seem logical to exclude point (i) from Article 1(1) (and consequently to refer only to points (a) to (h)), since it is very difficult to conceive that the purpose of training for terrorism would be the threat to commit a terrorist offence.

Amendment 15

Proposal for a framework decision – amending act

Article 1 - point 1

Framework decision 2002/475/JHA

Article 3 - paragraph 2 - point (d)

Text proposed by the Commission

(d) aggravated theft with a view to committing one of the **acts** listed in Article 1(1);

Amendment

(d) aggravated theft with a view to committing one of the **offences** listed in Article 1(1);

Amendment 16

Proposal for a framework decision – amending act

Article 1 - point 1

Framework decision 2002/475/JHA

Article 3 - paragraph 2 - point (e)

Text proposed by the Commission

(e) extortion with a view to the perpetration of one of the **acts** listed in Article 1(1);

Amendment

(e) extortion with a view to the perpetration of one of the **offences** listed in Article 1(1);

Amendment 17

Proposal for a framework decision – amending act

Article 1 - point 1

Framework decision 2002/475/JHA

Article 3 - paragraph 2 - point (f)

Text proposed by the Commission

(f) drawing up false administrative documents with a view to committing one of the **acts** listed in Article 1(1)(a) to (h) and Article 2(2)(b).

Amendment

(f) drawing up false administrative documents with a view to committing one of the **offences** listed in Article 1(1)(a) to (h) and Article 2(2)(b).

Amendment 18

Proposal for a framework decision – amending act

Article 1 - point 1

Framework decision 2002/475/JHA

Article 3 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that the acts referred to in paragraph 2(a) to (c) of this Article are criminalised with due respect for the obligations relating to freedom of speech and freedom of association by which those States are bound, in particular the obligations relating to freedom of the press and freedom of speech in other media, and with due respect for the confidentiality of correspondence, including the content of e-mail and other kinds of electronic correspondence. The criminalisation of the acts covered in paragraph 2(a) to (c) shall not have the effect of reducing or restricting the dissemination of information for scientific, academic, artistic or reporting purposes, the expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism.

Amendment 19

Proposal for a framework decision – amending act

Article 1 - point 1

Framework decision 2002/475/JHA

Article 3 - paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Member States shall also ensure that the criminalisation of the acts referred to in paragraph 2(a) to (c) of this Article is effected in a way which is proportionate to the nature and the circumstances of the offence, having regard to the legitimate

aims pursued and the necessity thereof in a democratic society, and excludes any form of arbitrariness and discriminatory or racist treatment.

Justification

In order to ensure balance in the text, a specific reference must be made to the basic principles of proportionality, necessity and non-discrimination.

Amendment 20

Proposal for a framework decision – amending act

Article 1 - point 3

Framework decision 2002/475/JHA

Article 9 - paragraph 1 a

Text proposed by the Commission

Amendment

"1a. *Each* Member State *shall also establish its jurisdiction over* the offences referred to in Article 3(2)(a) to (c) *where the offence was directed towards or resulted in the carrying out of an offence referred to in Article 1 and such offence is subject to the jurisdiction of the Member State under any of the criteria set out in paragraph 1(a) to (e) of this Article.*"

"1a. A Member State *may decide not to apply, or to apply only in specific cases or under specific circumstances, the jurisdictional provisions in paragraph 1(d) and (e) in respect of* the offences referred to in Article 3(2)(a) to (c) *and in Article 4, in so far as they are linked to the offences referred to in Article 3(2)(a) to (c).*"

Justification

Member States should not be required to establish their jurisdiction extra-territorially as regards the three new offences, since this is a highly sensitive matter, the perception of which varies greatly from one Member State to another. The Member States should thus be allowed to choose whether or not to apply the jurisdictional rules laid down in Article 9(d) and (e).

EXPLANATORY STATEMENT

Background

The attacks which took place on 11 September 2001 were not the first-ever manifestation of terrorism but they *did* make the world aware of the extent of the threat and they prompted further consideration as to how terrorism should be prevented.

The European Union (EU) - which has set out to provide its citizens with a high level of security in an area of freedom, security and justice - reacted without delay, since the safety of its 500 million inhabitants was at stake and the basic values and principles on which the EU is founded had to be protected. Hence a whole series of measures was adopted over the months following the attacks in New York, including Framework Decision 2002/475/JHA on action to combat terrorism (the purpose of which is to further approximate the definitions of terrorist offences in the various Member States and to ensure that suitable sanctions can be imposed on natural or legal persons who perpetrate or who are responsible for such offences).

Since then the EU has repeatedly experienced tragedy on its territory as a result of terrorist activity (in Madrid in March 2004, in London in July 2005). This has prompted it to step up its efforts to combat and prevent such activity.

This task is rendered all the more difficult on account of the fact that the tools and the methods used by terrorists have been redesigned and diversified.

The development of information and communication technologies (in particular the Internet), provides terrorists with a genuine world platform from which to disseminate (at minimum cost and risk) propaganda messages and on-line instructions and training manuals.

With a view to enabling the EU and its Member States to respond more effectively to modern terrorism and the latter's new *modus operandi*, the Commission has proposed revising the 2002 framework decision¹ and bringing it into line with the Council of Europe's 2005 Convention on the Prevention of Terrorism,² namely the inclusion of the concept of terrorism in certain specific preparatory acts: public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism.

Rapporteur's position

The rapporteur welcomes the Commission's intention to step up EU action to combat recruitment and training for terrorism and considers that there is genuine added value to be derived from incorporating such action into the EU's integrated institutional framework (no lengthy signing and ratification procedures), from providing for those specific preparatory acts a uniform legal framework as regards the nature and the level of penal sanctions, and from enabling the EU's cooperation mechanisms relating to the 2002 framework decision³ to

¹ OJ L 164, 22.6.2002, p. 3-7

² <http://conventions.coe.int/Treaty/EN/Treaties/Html/196.htm>

³ For example, Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and

be applied to those acts.

The rapporteur considers, however, that the Commission proposal (which provides for 'public provocation to commit a terrorist offence' to be criminalised) could pose a threat to fundamental rights and freedoms, since penalties would no longer be imposed solely on terrorist offences themselves but also on words (either spoken or written) which are deemed to have caused a terrorist offence to be committed or may simply have that effect.

In the rapporteur's view the proposal does not enable the types of behaviour which are to be criminalised to be defined clearly and precisely enough or a clear, precise response to be given to the two indissoluble objectives constituted by the fight against terrorism and the upholding of human rights and basic freedoms. And since the dividing line between freedom of speech and law-breaking is in practice sometimes rather blurred, the rapporteur fears that such shortcomings may open the door to abuse.

Hence she suggests in this draft report that a number of changes should be made in order to shift the balance within the Commission text and to increase the level of legal certainty therein. This mainly concerns the following points: the concept of 'public provocation' and the definition thereof, safeguards relating to the protection of fundamental freedoms, the criminalisation of any attempt to commit one of the three new offences and the jurisdictional rules applicable thereto.

The concept of 'public provocation to commit a terrorist offence'

The rapporteur considers that the definition of 'public provocation to commit a terrorist offence' should be tightened up. Firstly, she believes the very term 'provocation' may create confusion on account of its imprecision and that it should therefore be replaced by the term 'incitement', which is more commonly used in legal language. Furthermore, the Commission includes the concept of 'public incitement to violence or hatred' in its proposal¹ for a framework decision on combating racism and xenophobia (a choice also made by the Council in its 26 February 2008 guideline²).

Concerning the substance of the definition, the rapporteur thinks that the range of behaviour which may be criminalised should be more strictly delineated. Hence she considers that the behaviour in question must constitute a 'genuine' danger - and not just a hypothetical one - that a terrorist offence would be committed (in other words, there must be a sufficiently close link between incitement and the possibility that a terrorist act will be perpetrated).

Safeguards relating to the protection of human rights and fundamental freedoms

The rapporteur firmly supports the incorporation into the text of safeguard clauses equivalent to those laid down in Article 12 of the Council of Europe Convention on the Prevention of Terrorism.

cooperation in respect of terrorist offences (OJ L 253, 29.9.2005, p. 22-24).

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0664:FIN:FR:PDF>

² <http://register.consilium.europa.eu/pdf/fr/07/st16/st16771.fr07.pdf>

Although in its proposal the Commission has incorporated almost word for word the definitions of 'public provocation', 'recruitment' and 'training' which are contained in that convention, it has omitted the safeguards provided for in Article 12 which the Council of Europe itself regards as indissociable from those concepts, since they have an essential role to play in interpreting them.

The rapporteur wishes to remedy this omission and the resulting imbalance by incorporating into the text new provisions intended to remind the Member States on the one hand of the need for them to uphold the EU Charter of Fundamental Rights and to meet their obligations as regards freedom of speech and freedom of association, and on the other hand of the fact that penalties must be proportionate 'having regard to the legitimate aims pursued and the necessity thereof in a democratic society' and exclude 'any form of arbitrariness or of discriminatory or racist treatment'.

In the rapporteur's opinion, such safeguard clauses are essential both in terms of legal certainty for European citizens and in terms of consistency with the Council of Europe's position.

Criminalisation of attempts

In this respect the rapporteur is in agreement with the Commission which, in Article 4(2) of its proposal, excludes any obligation to criminalise an attempt to commit one of the three new offences listed in Article 3(2)(a) to (c).

Within the Council, criminalising an attempt at 'recruitment' and an attempt at 'training' has nonetheless been discussed – some of the Member States being in favour and the others opposed. (An attempt at 'public provocation' is difficult to conceive, hence the possibility of making it a criminal offence was eliminated straight away.) The arrangement finally adopted by the Council in its 18 April 2008 guideline (and also by the Council of Europe in the Convention on the Prevention of Terrorism) is that of optional criminalisation of attempted recruitment and training.

Although the rapporteur regards this arrangement as more reasonable than the mandatory criminalisation proposed by certain Member States, the rapporteur considers that it would be better to accept the Commission's wording and hence not to table an amendment on this point.

The jurisdictional rules applicable to the new offences

Like the Council the rapporteur considers that the new paragraph 1a incorporated by the Commission into Article 9 of the framework decision goes much too far and should thus be dropped.

She also disagrees with the idea of requiring the Member States to establish their jurisdiction extraterritorially as regards the three new offences, since this is a highly sensitive matter, the perception of which varies greatly from one Member State to another. Hence she proposes that the Member States should be allowed to choose whether or not to apply the jurisdictional rules laid down in Article 9(d) and (e). This is in any case what had initially been proposed by

a number of delegations within the Council.

Conclusion

The rapporteur takes the terrorist threat very seriously and is concerned at the huge increase over the last few years in the number of terrorist-propaganda sites (of which there are currently approximately 5000) and at the impact which those sites may have, particularly in terms of the radicalisation of behaviour and of recruitment to the terrorist cause.

She nonetheless considers that, although tackling the problem is essential, particular care should be taken over how this is done, since in such a sensitive area the risk is that efforts to increase the security of European citizens will in practice result in restrictions on those citizens' rights and freedoms. Her first concern is thus to draw up a balanced and legally clear text which will enable greater effectiveness in the fight against terrorism to be combined with a high level of protection for human rights and basic freedoms.

3.6.2008

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council framework decision amending Framework Decision 2002/475/JHA on combating terrorism (COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS))

Draftsman: Luis de Grandes Pascual

SHORT JUSTIFICATION

Framework Decision 2002/475/JHA was a landmark in the combating of terrorism in the EU. It enabled the definition of terrorism, and the penalties for it, to be harmonised across the Member States. The Commission has submitted a proposal for the amendment of that Framework Decision with the aim of updating that legal arsenal and, above all, with the clear intention of establishing an appropriate legal framework against cyberterrorism. The Commission proposal adds three further criminal offences to the original text:

- public provocation to commit terrorist offences;
- recruitment for terrorism, and
- training for terrorism.

The Commission has to a large extent based its proposal on the Council of Europe Convention on the Prevention of Terrorism, which, *inter alia*, recognises those three types of criminal offence. Despite appearances, the inclusion of those three offences is unquestionably of added value since it broadens the scope of the Framework Decision:

- Firstly, the definition of ‘terrorist activity’ established by the Framework Decision is broader and more complete than the one deriving from the Council of Europe Convention. For example, none of the UN Conventions to which it refers covers the death of civilians caused by firearms (not simply explosives¹), and
- Secondly, the legal regime established by the Framework Decision is very comprehensive, including, for example, a system of penalties that would apply automatically to the three offences mentioned.

Nevertheless, it is essential for the Member States to ratify the Council of Europe Convention

¹ See the Annex to the Council of Europe Convention.

on the prevention of terrorism as quickly as possible, since the parallel and combined implementation of both those instruments would provide maximum guarantees for citizens of the Union and nationals of the member states of the Council of Europe.

As regards the protection of human rights and fundamental freedoms, it is vital to make it clear from the outset that, under the current legal framework, those rights, and particularly the freedom of expression and of association, are fully guaranteed at the level both of the Framework Decision (Article 1(2)) and of the European Union (Article 6 TEU and the EU Charter of Fundamental Rights), as well as in the European Convention for the Protection of Human Rights and Fundamental Freedoms, to whose principles and relevant case law the EU is subject. There is nothing superfluous in making clarifications to the Framework Decision that lay the emphasis on freedom of expression and association or refer to the Charter of Fundamental Rights. Nevertheless, it is vital to make it clear that the EU legal system, per se, fully protects human rights. Any attempt to counterpose the combating of terrorism and the protection of human rights (implying that terrorism can only be combated to the detriment of human rights) should be emphatically discarded: far from being mutually incompatible objectives, the protection of human rights is the main justification for the combating of terrorism. Any notion of a dichotomy is artificial, legally flawed and politically dangerous.

Lastly, with regard to training for terrorism, it is suggested that attempting to provide training should also be qualified an offence, since there is a real possibility of training facilities being discovered and dismantled before they have been used, and this must be taken into consideration.

In short, and although it could be improved upon, the Commission proposal is an appropriate one, as it constitutes a major step towards a more effective combating of terrorism in the EU. It should be highlighted that the Commission proposal would enable the Member States not only to counteract cyberterrorism, but also to neutralise any publicity that constitutes public provocation to commit terrorism, or apologies for it, via any medium and in any place.

For the reasons stated above, the Commission proposal should be supported, subject solely to the amendments proposed in this report.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a decision – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) While the combating of cyberterrorism is a priority, the relevance of criminalising public provocation in all the EU Member States also stems from the need to neutralise any type of publicity that constitutes public provocation to commit terrorism, or apologies for it, via any medium and in any place.

Amendment 2

Proposal for a decision – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The amendments contained in this proposal are complementary to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005, and it is therefore essential, in parallel with the entry into force of this Decision, that all Member States ratify that Convention.

Justification

Including the offences set out in the Council of Europe Convention within the Union's legal framework, and more specifically Framework Decision 2002 475/JHA, is unquestionably of added value since this would insert those offences into a more comprehensive legal regime. There is nevertheless a need for Member States to ratify that Convention, since the Framework Decision is not intended to replace it. The parallel implementation of both instruments will provide even greater protection against terrorism, both in the EU and in third countries that are members of the Council of Europe.

Amendment 3

Proposal for a decision – amending act

Article 1 – point -1 (new)

Decision 2002/475/JHA

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

Article 1, paragraph 2, is replaced by the following:

"2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union or the rights recognised in the Charter of Fundamental Rights of the European Union, especially the freedom of association and the freedom of expression."

Justification

Article 1(2) of the Framework Decision should be updated with a reference to the EU Charter of Fundamental Rights. Similarly, it would be appropriate to emphasise the two fundamental freedoms liable to be prejudiced by erroneous interpretation of the Framework Decision: freedom of association and freedom of expression.

Amendment 4

Proposal for a decision – amending act

Article 1 – point 2

Decision 2002/475/JHA

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

"Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offences referred to in Article 1(1)(i) and Article 3(2)(a) **to (c)**, is made punishable."

"Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offences referred to in Article 1(1)(i) and Article 3(2)(a) **and (b)**, is made punishable."

Justification

It is necessary for attempted training to be considered an offence in all the EU Member States. There is a very real possibility of training facilities being discovered and dismantled before they have been used, and this is something that must be taken into consideration.

PROCEDURE

Title	Combating terrorism
References	COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 11.12.2007
Drafts(wo)man Date appointed	Luis de Grandes Pascual 19.12.2007
Discussed in committee	8.4.2008 28.5.2008
Date adopted	29.5.2008
Result of final vote	+: 20 -: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon

PROCEDURE

Title	Combating terrorism		
References	08707/2008 – C6-0211/2008 – COM(2007)0650 – C6-0466/2007 – 2007/0236(CNS)		
Date of consulting Parliament	10.12.2007		
Committee responsible Date announced in plenary	LIBE 11.12.2007		
Committee(s) asked for opinion(s) Date announced in plenary	AFET 11.12.2007	JURI 11.12.2007	
Not delivering opinions Date of decision	AFET 27.11.2007		
Rapporteur(s) Date appointed	Roselyne Lefrançois 29.11.2007		
Discussed in committee	27.2.2008	29.5.2008	15.7.2008
Date adopted	15.7.2008		
Result of final vote	+: 35	–: 4	0: 1
Members present for the final vote	Alexander Alvaro, Catherine Boursier, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Giuseppe Castiglione, Giusto Catania, Carlos Coelho, Esther De Lange, Gérard Deprez, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Jeanine Hennis-Plasschaert, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Baroness Sarah Ludford, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Martine Roure, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka		
Substitute(s) present for the final vote	Edit Bauer, Simon Busuttil, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Bill Newton Dunn, Maria Grazia Pagano, Eva-Britt Svensson		
Substitute(s) under Rule 178(2) present for the final vote	Ioannis Kasoulides		