



**COUNCIL OF
THE EUROPEAN UNION**



Council conclusions on combating hate crime in the European Union

*JUSTICE and HOME AFFAIRS Council meeting
Bruxelles, 5 and 6 December 2013*

The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION

EMPHASISING that in accordance with Article 2 of the Treaty on European Union (TEU), the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail;

BEARING IN MIND the strong commitment expressed in the Stockholm Programme¹: "*Since diversity enriches the Union, the Union and its Member States must provide a safe environment where differences are respected and the most vulnerable protected. Measures to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia must be vigorously pursued*".

RECOGNISING the clear link between promoting equality and fighting discrimination on the one hand and tackling hate crimes on the other;

¹ The Stockholm Programme - An open and secure Europe serving and protecting citizens (point 2.3), (OJ C 115, 4.5.2010, p 1).

P R E S S

TAKING INTO ACCOUNT existing Union legislation in the field of racism and xenophobia, in particular Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, that defines a common EU-wide criminal law and criminal justice approach to combating racism and xenophobia, as well as the anti-discrimination directives²;

RECALLING the Statement by the Council inserted in the minutes of the Council at the time of the adoption of Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law³, in which the Council deplores all crimes of genocide, crimes against humanity and war crimes, including those committed by totalitarian regimes;

RECALLING the Council conclusions of 25 February 2011 on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union,⁴ its conclusions of 23 May 2011 on the Council's actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union⁵, and its conclusions of 6 June 2013 on fundamental rights and rule of law and on the Commission 2012 report on the application of the Charter of Fundamental Rights of the European Union⁶;

BEARING IN MIND the Stockholm Programme underlining that "*The Union is an area of shared values, values which are incompatible with crimes against humanity, genocide and war crimes, including crimes committed by totalitarian regimes. Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator*";

RECALLING the Council conclusions of 9 June 2011 on the memory of the crimes committed by totalitarian regimes in Europe, and REAFFIRMING the importance of raising awareness of the crimes committed by totalitarian regimes by promoting a shared memory of these crimes across the Union and underlining the significant role that this can play in preventing the rehabilitation or rebirth of totalitarian ideologies, underlined by the establishment of the Europe-wide Day of Remembrance (23 August) of the victims of all totalitarian and authoritarian regimes;

² E.g. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

³ OJ L 328, 6.12.2008, p. 55.

⁴ 6387/11 FREMP 13 JAI 101 COHOM 44 JUSTCIV 19 JURINFO 5.

⁵ 10139/1/11 FREMP 53 JAI 318 COHOM 131 JUSTCIV 128 JURINFO 30.

⁶ 10168/13 FREMP 73 JAI 430 COHOM 99 JUSTCIV 139 EJUSTICE 53 SOC 386 CULT 65 DROIPEN 63.

WELCOMING the important role the European Union Agency for Fundamental Rights has in providing expert and independent analysis relating to fundamental rights within the remit of its mandate in this area, and DIRECTING ATTENTION to the recent reports by the Fundamental Rights Agency documenting the extent and impacts of hate crimes in Europe, recommending action to make hate crimes more visible and acknowledging the rights of victims at three levels: legislation, policy and practice;

UNDERLINING the importance of the work done by other international organisations, in particular the Council of Europe (CoE) and its central role in the promotion and development of human rights, democracy and rule of law, HAVING REGARD to the European Convention on Human Rights (ECHR), notably its Article 14 and the case law relating thereto, and the work done by the European Commission against Racism and Intolerance (ECRI) and STRESSING the importance of creating synergies;

In this regard NOTING the case law of the European Court of Human Rights (ECtHR) and the requirement to render visible - to "unmask" - racist and bias motives leading to criminal offences⁷, which is reflected in Article 4 of the Framework Decision, that calls on EU Member States to take into consideration any racist or xenophobic motivation leading to a criminal offences in the determination of penalties;

EMPHASISING the vital importance of freedom of expression (Article 11 of the Charter on Fundamental Rights), also referred to in Article 7 of the Framework Decision, while recognising the relevant case law of the ECtHR according to which some particular forms of expression, including those constituting hate speech, are not protected by Article 10 of the European Convention on Human Rights⁸;

TAKING INTO ACCOUNT that the internet is a commonly used "instrument" for spreading hate speech and that many of the most serious incidents of harassment are happening on the internet, and UNDERLINING the importance of the Additional Protocol to the CoE Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;

EMPHASISING the need to assist, support and protect the victims of hate crime, BEARING in mind the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims, specifically making reference to victims of hate crime⁹;

⁷ E.g. European Court of Human Rights (ECtHR), *Nachova and Others v. Bulgaria*, Nos. 43577/98 and 43579/98, 6 July 2005 and *Stoica v. Romania*, no. 42722/02.

⁸ E.g. European Court of Human Rights (ECtHR), *Gunduz v. Turkey* No. 35071/97, 4 December 2003 and *Garaudy v. France* No. 65831/01, 24 June 2003.

⁹ OJ L 315, 14.11.2012, p. 57. Denmark did not participate in the adoption of this Directive and is not bound by it.

STRESSING the need for an effective and systematic collection of reliable and comparable data on hate crimes, including, as far as possible, the number of such incidents reported by the public and recorded by the authorities; the number of convictions; the bias motives behind these crimes; and the punishments handed down to offenders;

UNDERLINING the importance of training for practitioners coming into contact with victims of hate crime in order to increase their awareness of the needs of victims of hate crime and to enable them to deal with these victims in a respectful and professional manner, *inter alia* with a view to facilitate reporting of this type of crime;

TAKING NOTE OF the attention paid by the European Parliament to the fight against racism, xenophobia, homophobia and hate crime. The Parliament's resolution adopted on 14 March 2013 calls for a comprehensive strategy for fighting hate crime, bias violence and discrimination and for strengthening of efforts at European and national level in that regard, particularly in relation to better collection of data, support for victims and encouragement for victims to report incidences. The Parliament also reiterates its call for a stronger framework for protection of LGBT people and better implementation of national Roma integration strategies;

LOOKING FORWARD to receiving from the Commission the report pursuant to Article 10(2) of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law for assessing the effectiveness of the existing EU legal norms on fighting hate crimes in order to enable the Council to assess the extent to which Member States have complied with the provisions of the Framework Decision;

TAKING NOTE of the Commission's intentions, as indicated in the Report to the European Parliament and to the Council entitled "*The memory of the crimes committed by totalitarian regimes in Europe*" of 22 December 2010, to keep under review the conditions for an additional legal instrument, including in the light of the findings of the forthcoming report.

INVITES MEMBER STATES TO:

1. ensure that Framework Decision 2008/913/JHA has been fully transposed into national legislation and implemented in practice;
2. consider the experience of other Member States in extending within their criminal legislation, the scope of punishable hate crime offences and the inclusion of other bias motives behind these offences;
3. ensure prompt and effective investigation and prosecution of hate crimes ensuring that bias motives are taken into consideration and throughout criminal proceedings;
4. take appropriate measures to facilitate the reporting of hate crimes by victims and as far as possible also associations supporting them, including measures to build trust in police and other state institutions;
5. collect and publish comprehensive and comparable data on hate crimes, as far as possible including the number of such incidents reported by the public and recorded by law enforcement authorities; the number of convictions; the bias motives behind these crimes; and the punishments handed down to offenders;

6. ensure that victims of hate crime are assisted, supported and protected, taking into account the Victims' Directive to be implemented by 16 November 2015, in particular the case-by-case assessment of a victim's protection needs, as defined in Article 22 of the Directive;
7. promote training for relevant practitioners coming into contact with victims of hate crime, thereby enabling them to efficiently assist these victims;
8. enhance preventive measures, *inter alia* by reflecting remembrance in human rights education, history curricula and relevant training, taking steps to educate the public on the values of cultural diversity and inclusion, and aiming for all sectors of society to have a role in combating such intolerance; and
9. consider ratifying the Additional Protocol to the CoE Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, if they have not yet done so;

INVITES THE COMMISSION TO:

10. in accordance with existing obligations assess Union legislation currently in place and submit the report to the Council;
11. ensure appropriate follow-up to this assessment;
12. when assessing the extent to which the Member States have taken the necessary measures in order to implement the Victims' Rights Directive, pay due attention to how the case-by-case assessment of victim's protection needs (Article 22) has been reflected in national legislation;
13. facilitate the exchange of good practices between Member States actors and provide guidance to promote such practices;
14. allocate the necessary budget to fund projects to prevent and combat hate crime, including remembrance projects and awareness raising campaigns, under the Union financing programmes;
15. contribute to improving the collection of reliable and comparable data and its analysis; and
16. improve strategic cooperation with external stakeholders (international organisations and civil society);

INVITES RELEVANT EU AGENCIES TO:

17. particularly with regard to the Fundamental Rights Agency, CEPOL, Eurojust and Europol continue their efforts to counter hate crime taking into account their respective mandates and pool their expertise;
18. the Fundamental Rights Agency to continue assessing in an objective, reliable and comparable manner the extent of racism, xenophobia, anti-Semitism and other forms of hate crime through EU-wide surveys;
19. the Fundamental Rights Agency to work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes."