

**Ad Hoc Committee on the Elaboration of International Complementary Standards
Geneva, 17 July 2015**

Speaking points

- At the EU level, a **number of general provisions of the Treaties** provide for the basic principles and framework of the EU fight against racism and xenophobia. The **EU's Charter of Fundamental Rights** also prohibits discrimination on the grounds of race, colour, ethnic origin and religion or belief.
- **The Commission is strongly committed to fighting against racism and xenophobia**, and has always expressed its determination to make use of all means available under the Treaties to that aim. It has exercised and exercises these powers in several ways.
- First, a **solid legal framework has been developed** over the years to address racism, xenophobia and hate crimes at EU level.
 - First, the Commission monitors the transposition and implementation of **EU legislation prohibiting discrimination on grounds of racial or ethnic origin and on grounds of religion**. These include:
 - the so called **Race Equality Directive** ([Directive 2000/43/EC](#)), which applies in a wide range of areas, from employment, to social protection, including social security and healthcare, to social advantages, to education and access to and supply of goods and services which are available to the public, including housing;
 - the so called **Employment Equality Directive** ([Directive 2000/78/EC](#)), which lays down a general framework for combating discrimination on the grounds of, among others, religion or belief, as regards employment and occupation.

Both these instruments provide for the obligation to ensure the **availability of judicial remedies to victims** to ensure access to justice, and they provide for the grounds for taking **positive actions** to promote equality within the Member States, including setting up specialised independent organisations called **equality bodies** (assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality).

- Secondly, the Commission monitors **EU legislation on combating certain forms of racist and xenophobic crime**, and particularly the **Framework Decision to combatting racism and xenophobia by means of criminal law** ([Council Framework Decision 2008/913/JHA](#)), which sets the frame for a common response to hate speech and hate crime, ensuring **accountability of perpetrators**.

This instrument which dates back to 2008 **obliges Member States to penalise the public incitement to violence or hatred** against a group of persons or a member of

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such a group defined by reference to race, colour, religion, descent or national or ethnic origin, which shall also be punishable if committed by public dissemination or distribution of tracts, pictures or other material (**hate speech**). Express mention is made of the act of **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, which fall within the scope of the hate speech provision if they are committed in a manner likely to incite to violence or hatred.

Furthermore, **for any other criminal offences, Member States must ensure that racist and xenophobic motivation is considered as an aggravating circumstance**, or alternatively that such motivation may be taken into account in the determination of the penalties (**hate crime**). The Framework decision also provides for the **liability of legal persons, ex-officio investigations and prosecutions**, and **jurisdictional rules**.

- A legal framework exists at EU level also as regards **the rights of victims of crime, including bias-motivated crime**. The **Victims' Rights Directive** ([Directive 2012/29/EU](#)), adopted in October 2012, gives victims of crime a broad set of rights, including access to justice, compensation and restoration, as well as the right to receive appropriate information, support and protection. It also ensures that all victims of crime benefit from an individual assessment of their protection needs. Particular attention is paid to victims of hate crime.
- Finally, there are **other legislative instruments** which contribute to the fight against racism and xenophobia:
 - For example, a **directive concerning the broadcasting of cross-border audiovisual media services prohibits content inciting to hatred on grounds of, among others, race, religion or nationality** ([Directive 2010/13/EU](#)). This Directive **also obliges Member States to ensure that audiovisual commercial communications shall not include or promote any discrimination** based on, among others, racial or ethnic origin, nationality, religion or belief.
 - Another example is the **legislation concerning border management**, which require that border guards and consular staff perform their tasks with no discrimination against travellers on grounds of, among others, racial or ethnic origin, religion or belief.
- As to the implementation of these rules, **Member States are under the obligation to transpose these rules into their national laws and national courts are then competent to hear and rule upon individual cases of violations of those provisions**, after obtaining if needed clarifications from the Court of Justice of the EU on how to interpret relevant rules and principles (EU decentralised system of judicial protection).
- When it comes to individual cases, the **European Court of Human Rights also has a very relevant role to play** since when a case is brought to its attention the Court can examine

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the circumstances and assess not only whether a particular situation constitutes discrimination, hate speech or bias-motivated crime but also whether the national authorities have discharged all their positive obligations in relation to the effectiveness of remedies and procedures at national level, including investigation and prosecution in relation to instances of bias-motivated speech or crime, under relevant provisions of the Convention.

- The **role of the Commission** in this context is that of **monitoring rigorously the transposition and implementation of existing EU provisions by the Member States**, in its role as “guardian of the Treaties”. This monitoring activity is reported in regular implementation reports which are published for most instruments. **Proceedings against Member States** before the Court of Justice of the EU can be initiated by the Commission for violation of their obligations, both on the basis of own inquiries or on the basis of complaints the Commission receives from individuals or from civil society organisations which provide evidence of the existence of laws or practices contrary to existing standards (case of Roma discrimination in education may be mentioned as example).
- **Nonetheless, despite all these legal instruments offering protection and ensuring accountability** against racism and related forms of intolerance and the remedies available at national, EU and more broadly European level, **ethnic and religious minorities across the EU continue to face racism, discrimination, verbal and physical violence, and exclusion.**
- Recent reports show that **racial and ethnic discrimination** in areas such as healthcare or education persists within the EU, with **discrimination against Roma and immigrant populations, but also discrimination on grounds of religion or belief, being regarded as the most widespread form of discrimination in Europe.**
- This is shown, for example, by **data collected by the EU Fundamental Rights Agency (FRA)**. An [EU wide survey](#) which asked 23,500 individuals with an ethnic and minority background about their experiences of discrimination and criminal victimisation in everyday life in EU Member States (the survey dates back to 2008, and it is now being updated) showed that **on average 47% of Roma respondents, 41% of respondents from Sub-Saharan Africa and 36% of respondents from North Africa were discriminated against** at least once in the 12 months preceding the survey in at least one of the areas of discrimination they were asked about (work, access to housing, access to social services and healthcare, education, access to services available to the public such as shops, restaurants, banks).
- **At the same time**, the EU has witnessed a **worrying incidence of extreme forms of intolerance in particular over the past years**. Numerous reports and an increasing number of parliamentary questions, letters and media alerts concern **hate speech and hate crime**, inter alia with regard to the resurgence of neo-Nazi parties and the glorification of totalitarian regimes, on-line hate speech, racism in sports events, and several specific incidents with a racist and xenophobic undertone, including by opinion leaders. In the

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above mentioned survey FRA [found](#) that **between 16 % and 32 % of Roma, and 19 % to 32 % of persons of African origin were victims of assault, threat or serious harassment with a perceived racist motive** in the 12 months prior to the survey. **Antisemitism and islamophobia are also on the rise.** These incidents are **often under-recorded**, and the vast majority of such offences are **not reported to the police or any other organisation.**

- This clearly shows that **laws are only as good as the extent to which they are enforced and implemented in practice.** This holds particularly true in this context, where the **rules must be transposed into national law and enforced by the competent national authorities.**
- This is prompting the Commission to **prioritise actions aiming at ensuring that not only Member States introduce legislation, but actively and effectively prevent and fight racism and xenophobia on the ground.**
- In order to do so, a first essential aspect already mentioned above is the **effective use of enforcement powers given to the Commission as guardian of the Treaties.** We are in close and constant contact with the Member States to **ensure correct legal transposition, implementation and enforcement of the existing legislative instruments,** and in particular, the Racial Equality Directive and the Framework Decision on combating racism and xenophobia by means of criminal law.
- But this is not enough. The **legal framework and its enforcement must be accompanied by the development of very concrete tools that can assist the Member States in ensuring the effective application of relevant legislation and in preventing and tackling racism and xenophobia in practice.**
- Now if we focus for example on the **judicial response to racism and xenophobia,** and in particular to racist and xenophobic speech and crime, a crucial point to address is **how to ensure effective investigation and prosecution of instances of racism and xenophobia.**
 - It is essential to ensure that national authorities **promptly investigate any alleged racist or xenophobic acts and, where necessary, the perpetrators of such acts are brought to justice.**
 - In order to assist Member States in ensuring that this happens, the Commission has **supported the establishment of experts fora and working parties which aim at facilitating the exchange of good practices** between national authorities in various areas, such as:
 - Exchanging best practices on how to ensure **effective investigation and prosecution**
 - **Tackling underreporting and fostering victims' trust** in the law enforcement authorities
 - Fostering **training** of law enforcement officials and judicial authorities

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- **Enhancing multi-disciplinary coordination and cooperation**, both within Member States' governmental departments as well as between governments and external stakeholders, including civil society.
 - These platforms are being developed also with the **assistance of the FRA**, as well as **regional bodies** such as the OSCE's (Organization for Security and Cooperation in Europe) Office for Democratic Institutions and Human Rights (**ODIHR**) and the CoE's European Commission against Racism and Intolerance (**ECRI**)
 - On this basis, the Commission will support over the next months the **compilation of an online compendium of best practices** and is reflecting on the possibility to develop **practical guidance for the national authorities**.
- But there are also other more horizontal aspects to consider.
 - One very important aspect that we feel needs to be addressed when combating racism and xenophobia is **data collection**.
 - **Effective fight against racism and xenophobia requires the systematic collection of data**. Those data are an **essential component of effective policy-making** as they are necessary to give a clear understanding of the scope and nature of problems. Improving official **data collection is an area requiring urgent attention**.
 - A [recent report](#) of the FRA shows for example that **only 4 Member States collect comprehensive data on hate crime and make them public**.
 - At **EU level**, FRA work and other tools are very important to improve understanding of the general situation on the ground, especially when it comes to perceptions (Eurobarometer on non-discrimination 2015, results expected in the autumn).
 - As regards the national level, the Commission **cannot force Member States to collect hate crime data**. However, we can **encourage and support the collection of such data and the development of related mechanisms ensuring a systematic collection of statistical data on discrimination and instances of racism, xenophobia and related intolerances**, through best practice exchange, comparative analysis and guidance.
 - A related concern is also **tackling underreporting of incidents of discrimination**, racism and xenophobia, since recent data show that most of those being discriminated or experiencing racist speech or violence tend not to report their experience. It is key in this context to work on **awareness raising** to ensure that victims know their rights, about what they can do and whom they can contact for support (for example through booklets or contact points).
 - Another aspect is the need to **support activities aimed at preventing acts of intolerance from happening** in the first place.
 - This includes the support of work aimed at supporting the establishment or providing **assistance for the capacity-building to relevant governmental or independent monitoring bodies**.

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- But it also implies the **need to set up effective multidisciplinary strategies to change perceptions and to develop counter-narrative** to populist debates, **and to integrate the judicial response with measures aimed at promoting tolerance, diversity and social cohesion.**

Thinking for example of **racism and xenophobia against migrants**, it is clear that the **judicial response must be integrated with measures aimed at promoting integration and social cohesion, addressing root causes of marginalisation and social exclusion and raising awareness of the benefits of migration.**

A recent survey showed that **56 percent of European respondents overall said they were worried about immigration from outside the EU.** Interestingly enough, the study also shows that **respondents' perceptions differ if they are made aware of the actual immigration statistics: for example, the percentage of Italian respondents saying that there were too many immigrants in the country dropped from 44% to 22% when informed about the actual statistics; while the number of those saying "not many" increased from 15% to 34%.**

These trends show that **it is imperative to providing evidence-based and rational answers to wrong public perceptions and avoid that populist discourse seeps into mainstream discourse, leading to further discrimination and exclusion.**

This entails a **commitment by public authorities and political parties, which must lead by example** in acknowledging the seriousness of racist and xenophobic speech and behaviour.

The role of **local authorities** and initiatives at local level to promote cohesion and mutual understanding should also be enhanced, as well as the importance of fostering intercultural and interfaith dialogue.

It also implies **close cooperation with key messengers such as media, educational bodies, community and religious leaders.**
- **Cooperation with private actors is also crucial**, especially when it comes to promoting diversity at the work place. The Commission is quite active in this area encouraging voluntary initiatives from enterprises and public organisations (EU Platform of Diversity Charters).
- A last aspect to be mentioned is **cooperation with and support to civil society and grass root organisations.**
 - **Civil society can play a crucial role** in supporting all the actions that have been mentioned: from **collecting data** providing policy makers with evidence-based advice, to setting up actions to **support victims**, to developing **training** modules, to carrying out **awareness raising** activities and facilitating relations between communities and national authorities.
 - Effective cooperation also implies **financial support.** The Commission supports the activities of civil society partners in this field through a number of **financial programmes**, giving priority in this area, in particular, to:
 - the **training** of judges, prosecutors and other legal professionals;
 - the development of programmes providing **support to victims**;

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- the development of **efficient monitoring and reporting mechanisms** for racist and xenophobic hate crime and speech, including **online hate speech**;
 - the **exchange of best practices** to combat racism, xenophobia and other forms of intolerance, with a **focus on criminal law tools**.
- **Racism, xenophobia and hate crime, are a common concern to the whole EU. No Member State can boast a clean record** when it comes to discrimination, hate speech or hate crime.
 - As illustrated, the EU undertakes a **broad set of activities** to ensure that racism and xenophobia are effectively tackled within the EU. But a **tireless effort** is required to set up **firm responses**, made up by both **preventive and corrective action**, involving **legal and policy making**, which can **address existing gaps and challenges** and make our work more effective.
 - These are complex issues where there is no 'quick fix', but our experience tells us that **by pulling together different tools and expertise, and by strengthening political will and long-term solid commitments, a positive difference can be made** to combat and eradicate all manifestations of racism and xenophobia **in all spheres of life and in all parts of the world**.