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OFFICE OF THE MINISTER FOR JUSTICE AND EQUALITY

## **Informal Justice and Home Affairs Ministers' Meeting**

**Dublin 17 - 18 January 2013**

**Discussion Paper – Working Lunch (Justice) Friday 18<sup>th</sup> January**

### **EU action to protect freedom of movement for EU Citizens and social integration by encouraging effective action and enhancing cooperation between justice systems in countering hate crime, racism, anti-Semitism, xenophobia and homophobia**

#### **1. Introduction: Existing Treaty and legal framework**

The genesis of the European Union lies in the aftermath of the Second World War. The founding states determined that war and genocide should never happen again on European soil. We recall that in the Holocaust the Roma, Slav and above all the Jewish populations of Europe were targeted in mass killings organised with an industrial efficiency. Sadly, intolerance and xenophobia still persist in Europe. Memories are fading and a new generation must learn afresh about the perils and injustice of prejudice.

The protection of human rights within a system of government based on the Rule of Law is a central element in the values that bind us with our partners as members of the European Union and of the commitment that all member states sign up to on accession. This values base of the Union is reflected in Article 2 of the Treaty on European Union (TEU), which founds the Union on a community of indivisible and universal values of respect for human dignity, freedom, democracy, gender equality, non-discrimination, solidarity, the rule of law and respect for human rights and civil liberties, for all persons on the territory of the EU. These are common values of the Member States, in societies which promote pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. Respecting and promoting these values is an essential element of the European Union's identity.

In furtherance of the protection of these common values, 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 defines a common EU-wide criminal law and criminal justice approach to combating racism and xenophobia. It aims to ensure that similar outrageous behaviour constitutes an offence across EU Member States and that effective, proportionate and dissuasive criminal penalties are provided.

The Framework Decision, in Article 1 (a), requires EU Member States to take measures to punish public incitement to violence or hatred directed against a person or persons belonging to a group defined by reference to race, colour, religion, descent or national or ethnic origin and the commission of such acts by public dissemination or distribution of tracts, pictures or other material. It also requires EU Member States to take measures to punish any conduct publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes, when the conduct is carried out in a manner likely to incite to violence or hatred against a person or persons belonging to one of the groups listed in Article 1 (a).

For other criminal offences, for example, damage to property, motivated by hatred or prejudice, the Framework Decision, in Article 4, provides: "For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties." While this Framework Decision is restricted to race, colour, religion, descent or national or ethnic origin, many EU Member States have opted to include other grounds such as anti-Semitism, sexual orientation or disability in criminal definitions protecting against discrimination.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is also relevant to this discussion. This Directive provides that there shall be no direct or indirect discrimination based on racial or ethnic origin in employment, provision of goods and services, education and social protection is also relevant. It further mandates the establishment of a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

## 2. Incidence of racism and intolerance

The Special Eurobarometer 393 Discrimination in the EU in 2012<sup>1</sup> undertaken at the request of the Commission shows that discrimination on the grounds of ethnic origin continues to be regarded as the most widespread form of discrimination in the EU. It is notable that 56% of respondents reported it as 'widespread' (although this is down from 61% in 2009). 39% reported that discrimination on the basis of religion or beliefs is widespread (no change since 2009). And 46% of respondents (down from 47% in 2009) regard discrimination on grounds of sexual orientation to be widespread.

Recent reports by the Fundamental Rights Agency<sup>2</sup> document the incidence and impacts of hate crimes in Europe. The FRA concludes that crimes motivated by racism, xenophobia, anti-Semitism, extremism and intolerance of the other remain a daily reality across the European Union<sup>3</sup>. The resurgence in anti-Semitic attitudes and statements in some quarters, including by people in leadership positions, and the growth in anti-Semitic crimes from within, but not confined to, migrant populations in Europe are particularly worrying. The Agency recommends action to make hate crimes more visible and to acknowledge the rights of victims at three levels: legislation, policy and practice.

Hate crimes have a particular impact not only on the victim, but on society as a whole. This is recognised in the case law of the European Court of Human Rights, in which the ECtHR has consistently argued that hate-crime victims have the right not only to be generally acknowledged as victims of crime, but also as having suffered victimisation specifically because of the biased attitudes of the offenders.

Under well-established ECtHR case law, Article 14 of the ECHR is to be read as obliging EU Member States to render visible – or as the ECtHR says to 'unmask' – bias motives leading to criminal offences by highlighting and punishing hate crimes more severely than others. For example, in a 2003 case<sup>4</sup>, the ECtHR stated that "where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence."

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<sup>1</sup> Special Eurobarometer 393: Discrimination in the EU in 2012.

[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf)

<sup>2</sup> FRA. Making hate crime visible in the European Union: acknowledging victims' rights, 2012 (2012a)

FRA. Anti-Semitism: Summary overview of the situation in the European Union 2001-2011, Working paper, June 2012 (2012b)

<sup>3</sup> FRA, 2012a, p. 13

<sup>4</sup> ECtHR, *Menson and Others v. UK*, No. 47916/99, decision as to the admissibility, 6 May 2003.

This conclusion also points to the need for effective collection and analysis of data on hate crimes so that their true incidence and the extent of bias can be fully understood. Reliable data on hate crime would at a minimum record:

- the number of such incidents reported by the public and recorded by the authorities;
- the number of convictions of offenders;
- the grounds on which these offences were found to be discriminatory; and
- the punishments served to offenders.

At a practical level, measures to encourage victims to come forward with complaints and to support victims and witnesses to participate in the criminal justice process have had a significant impact in ensuring that crimes are reported and offenders punished. These also have a positive educative impact on the wider society, by showing that the authorities take such crimes seriously and that offenders will be prosecuted.

### **3. Human Rights and European Values – a consistent and principled message to the world.**

Human rights are not just to be protected within our individual borders or within Europe's borders. Our security and our future economic prosperity depend on stable partners in the rest of the world and particularly in our European neighbourhood and trading partners. Free societies that respect the rights and freedoms of all people present minimal security threats and provide consistency and reliability in economic relationships.

Promoting human rights throughout the world and linking human rights compliance at European level to favoured partnership with us and access to the internal market is an essential expression of our values. It also serves our essential long-term interests. In this aspect also, our credibility in Europe depends on all members showing consistency between the standards we espouse for the rest of the world and our commitments to our own people and our fellow member states. Europe's good name and reputation depends on Europe's integrity.

### **4. Questions for discussion**

Ministers are invited to discuss the following questions that are relevant to this topic:

- The Framework Directive is due for review in November 2013. Is this review an opportunity to look at the effectiveness of member state legislation to tackle hate crime, xenophobia and anti-Semitism? Can better data collection and analysis of incidents make hate crime and the damage it does to individual victims and the wider society more visible and efforts to tackle it more effective?

- How can we ensure that persons in a position of leadership, including political leadership, actively uphold European values and foster a climate of mutual respect for and inclusion of persons of different religious or ethnic background or sexual orientation?
- Aside from review of legislation, is there a case for strengthening the anti-discrimination protections provided by National Human Rights Institutions and Equality Bodies so as to provide more effective support to persons who have been victims of hate crimes or discrimination?
- Is there a growth in anti-Semitism in Europe? If the answer is yes, what are the causes and what can be done to counteract them?