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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	15222/21 (FR)
Subject:	Draft Council conclusions on combating racism and antisemitism

Delegations will find in the Annex, a revised version of the draft Council conclusions on the item mentioned above. This Presidency compromise is based on the outcome of the meeting of the WP on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) on Monday 10 January 2022 and the written contributions sent thereafter. This revised version of the draft conclusions will be discussed at the WP on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) meeting on 28 January 2022.

Changes vis-à-vis doc. 15222/21 are marked in **bold**, underlined for additions or in ~~striketrough~~ when text has been deleted.

Courtesy translation of the text of Council document 15222/21 FR

**DRAFT COUNCIL CONCLUSIONS on combating racism and
antisemitism**

The Council of the European Union

- a. **HAVING REGARD** to the Treaty on European Union, and in particular the preamble and Articles 2, 3(3) and 6 thereof,
- b. **HAVING REGARD** to the Treaty on the Functioning of the European Union, and in particular Articles 10 and 19 thereof,
- c. **HAVING REGARD** to the Charter of Fundamental Rights of the European Union, and in particular Articles 1, 2, 3, 4, 5, 6, 7, 10, 20, 21, 22, 51 and 52 thereof,
- d. **HAVING REGARD to Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,**
- e. **(d)** **HAVING REGARD** to 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,
- f. **(e)** **HAVING REGARD** to Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, which specifically mentions victims of hate crime,
- g. **(f)** **HAVING REGARD** to the Council conclusions of 6 December 2013 on combating hate crime in the European Union,
- h. **(g)** **HAVING REGARD** to the Council declaration of 6 December 2018 on the fight against antisemitism and the development of a common security approach to better protect Jewish communities and institutions in Europe and the Council declaration of 2 December 2020 on mainstreaming the fight against antisemitism across all policy areas,
- i. **(h)** **HAVING REGARD** to the European Union Anti-racism Action Plan 2020-2025 presented **by the Commission** on 18 September 2020,
- j. **(i)** **HAVING REGARD** to the European strategy on combating antisemitism and fostering Jewish life presented **by the Commission** on 5 October 2021,

- k. ~~(j)~~ **HAVING REGARD** to the European Council conclusions of 21 and 22 October 2021 recalling ~~the importance of the fight against all forms of antisemitism, racism and xenophobia~~ that the Malmö International Forum on Holocaust Remembrance and Combating Antisemitism on 13 October 2021 is a reminder that no effort must be spared in fighting all forms of antisemitism, racism and xenophobia,
- l. ~~(k)~~ **HAVING REGARD** to the Commission communication on ‘A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime’, presented on 9 December 2021,
- m. ~~(l)~~ **SOLEMNLY RECALLING** that the European Union is a union of law founded on shared values including respect for human dignity, freedom, equality, democracy, respect for human rights, including the rights of persons belonging to minorities; Member States have ~~therefore~~ undertaken to guarantee the rights and freedoms enshrined in the Charter for Fundamental Rights of the European Union and in the Convention for the Protection of Human Rights and Fundamental Freedoms for all people within their jurisdiction and to ensure that human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated;
- n. ~~(m)~~ **WHEREAS** the European Union promotes a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality ~~between women and men~~ prevail; therefore, in defining and implementing its policies and activities, the Union aims to combat discrimination based on any ground ~~sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation~~ specified in article 21 of the Charter of Fundamental Rights ;
- o. ~~(n)~~ **WHEREAS** the Charter of Fundamental Rights of the European Union, which is binding on Union institutions and the Member States when they ~~act within the scope of~~ are implementing Union law, protects inter alia equality, the right to dignity, the right to respect for privacy and family life, freedom of thought, conscience and religion, and freedom of expression;
- p. ~~(o)~~ **WHEREAS** these values enshrined in article 2 of the TEU constitute the identity of the European Union, the Council of the European Union has a strong stake in them, and it is up to the institutions and bodies of the European Union, as well as the Member States, to fully respect and guarantee these values;
- q. ~~(p)~~ **REGRETTING DEPLORING** the increased frequency of racist, xenophobic and antisemitic and racist incidents in all European Union Member States, as well as the exacerbation of racist and antisemitic hate speech online and offline, notably in the context of the Covid-19 pandemic;
- r. ~~(q)~~ **NOTING** that, while the internet and social networks offer new spaces for freedom of expression, they can also be used to enable the dissemination of racist and antisemitic content, ~~inventing~~ allowing for new forms of individual and group persecution and ~~inciting~~ incitement to physical and psychological violence while offering their perpetrators anonymity and therefore a sense of impunity;
- s. WELCOMING the initiatives of the European Commission presented in its EU Anti-racism action plan namely, the creation of the Subgroup for the national implementation of the EU Anti-racism action plan 2020-2025 bringing together the

Member States representatives and the EU permanent forum for anti-racism civil society organisations:

- t.** ~~(r)~~ **WELCOMING** the initiatives of the European Commission presented in its European strategy for combating antisemitism and fostering Jewish life, namely, the creation of a permanent structure bringing together the Member States, representatives of the Jewish communities and **relevant** interested parties in the form of a working group on how to implement the strategy on combating antisemitism, and the organisation of an annual forum of **civil** society on antisemitism;
- u.** ~~(s)~~ **WELCOMING** the recent work of the European Union Agency for Fundamental Rights to collect data on racism and antisemitism and in particular **notably** ~~the report published on 9 November 2021: ‘Antisemitism: its annual~~ **its annual** ~~Overviews of antisemitic incidents recorded in the European Union 2010-2020’~~ **and its report ‘Being Black in the EU’ published on 28 November 2018;**
- v.** **CONSIDERING that despite their undeniable distinct features, racism and antisemitism are phenomena denying equality between individuals because of their ethnic origins or religious beliefs ; they are equally threatening our societies and both require firm political responses that should take into account their respective specificities;**
- w.** **ENDEAVOURING to ensure the appropriate follow-up by the Council on the basis of the Commission reports foreseen by the European Union Anti-racism Action Plan and the European Strategy on combating antisemitism and fostering Jewish life.**

The Council of the European Union, bearing in mind the principle of subsidiarity, invites Member States to:

1. **IMPLEMENT DEVELOP** at national level ~~before the end of 2022~~ the **EU** Anti-racism Action Plan adopted by the European Commission on 18 September 2020 and the **EU European sStrategy** on combating antisemitism **and fostering Jewish life** adopted by the European Commission on 5 October 2021;
2. **ADOPT ENDORSE AND USE** the non-**legally** binding working definition of antisemitism used by the International Holocaust Remembrance Alliance and the practical definition of Holocaust denial and distortion as useful guidance for education and training purposes, ~~and in particular~~ **including** for law enforcement agencies **and judicial authorities** as part of their efforts to detect and prosecute antisemitic crime more efficiently and effectively;

3. **RAISE AWARENESS** among their population on the fight against all forms of racism and antisemitism, in particular by insisting on slavery and Holocaust education, on the prevention of crimes against humanity and by upholding the duty to remember the victims of racial violence and hate crime, by commemorating relevant dates concerning racism and antisemitism, such as the European International Day of Remembrance of the Holocaust Remembrance Day, the European Roma Holocaust Memorial Day, the International Day against Racial Discrimination or the and prevention of crimes against humanity as well as ~~the main commemorative days concerning racism, such as the International Day for the Abolition of Slavery, by upholding the duty to remember the victims of hate crime, by promoting places of remembrance and by encouraging initiatives to commemorate the victims of such acts~~ racist and antisemitic acts are especially relevant in this regard;
4. **PROMOTE**, including financially, education, research and knowledge of antisemitism and the Holocaust, as well as racism and slavery;
5. ~~(4) ADOPT~~ **CONSIDER DEVELOPING**, within the Commission's working group on hate crime recording, data collection and encouraging reporting, and in cooperation with the Agency for Fundamental Rights, a common national indicators methodology for quantifying and qualifying racial and antisemitic incidents and comparing them both over time and between Member States, and for assessing the consequences of these incidents in terms of the safety and well-being of the population groups that are the victims, building on the guidelines developed by the Commission high-level group on combating hate speech and hate crime;
6. ~~(5)~~ **ENSURE** that national coordinators for combating racism and antisemitism, public bodies and institutions, equality bodies, as well as relevant stakeholders, such as the social partners, civil society organisations and groups involved work closely together in developing preventive measures and evaluating the effectiveness of such measures;
7. ~~(9)~~ **SET UP** national human rights institutions in compliance with the Paris principles, and support robust equality bodies, adopt a legislative framework enabling them to carry out their role independently, and provide them with the with the adequate financial and human resources needed to carry out their tasks effectively while guaranteeing the scope of their mandates and powers;
8. ~~(6)~~ **PROMOTE**, in accordance with the right to freedom of expression, a culture characterised by tolerance, inclusiveness and mutual respect, online and offline, in particular by fostering a culture of understanding and by avoiding discouraging stereotypical negative representations of individuals and groups, conspiracy myths and disinformation in the media, publications and programmes, on the grounds of their membership belonging, whether actual or alleged real or perceived, of ethnic or religious groups;
9. ~~(7)~~ **ENCOURAGE** the various media, notably social media, technology and communications sectors to adopt use codes of conduct agreed at European level and enshrining their fundamental duty commitment to respect the principles of equality and non-discrimination, as well as the right to freedom of expression and information and help urge them to develop and adopt solutions enabling them to rapidly detect and eliminate remove illegal online hate speech of a racist and antisemitic nature;

- 10.** ~~(8).~~**STRENGTHEN** the ability of national investigative and judicial authorities to prosecute online racist and antisemitic hate speech, including by establishing national online monitoring centres and platforms where people can report hateful content;
- 11.** ~~(10)~~ **INCREASE THEIR EFFORTS TO ENSURE** the safety security of persons belonging to groups of people affected by acts of racism and antisemitism, in particular including during cultural or religious events and around religious sites **institutions, places of worship and confessional schools;**
- 12.** ~~(11).~~ **CRIMINALISE CONDEMN** all forms of discrimination based on ~~actual or alleged~~ real or perceived ethnic origin or religious beliefs and **ensure an adequate judicial response in compliance with 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** ~~increase the penalties for those who commit such acts;~~
- 13.** ~~(12).~~ **INCLUDE, as appropriate,** in the initial and ongoing training given to law enforcement and justice professionals **judicial authorities, both at national and EU level,** specific modules **content** on combating discrimination based on ~~actual or assumed~~ real or perceived ethnic origins or religious beliefs, and develop best practices for identifying and supporting victims, drawing, **among others,** on the work of the **Agency for Fundamental Rights** and CEPOL where necessary;
- 14.** ~~(13)~~ **ENCOURAGE** victims and witnesses of racism and antisemitic acts **incidents** to report those acts **incidents** and to lodge a complaint, including through the use of digital means, whilst facilitating the associated process by setting up specific information and awareness campaigns, and offer assistance, including psychological, social and material support, where necessary;
- 15.** ~~(14)~~ **TAKE** all appropriate measures to ensure full reparation **adequate compensation** for the harm suffered by the victims of racist and antisemitic acts **incidents which are criminalised in Member States** and ~~ensure communication about the penalties given to perpetrators who have committed these crimes;~~
- 16.** ~~(15)~~ **PROVIDE** financial support for civil society initiatives to support **assisting** the victims of these acts **incidents** during the reporting and ~~reparation~~ **compensation** process;

The Council of the European Union,

17. (16) WELCOMING the Commission's initiatives and in particular:

- the appointment in December 2015 of a *Coordinator on combating antisemitism* and a *Coordinator on combating anti-Muslim hatred*, and, in 2021, of a *Coordinator on combating racism*;
- the creation of an EU High Level Group on combating racism, xenophobia and other forms of intolerance **hate speech and hate crime**;
- **the creation the Subgroup on the national implementation of the EU Anti-racism action plan**;
- the creation of a working group for implementing the EU strategy on combating antisemitism and fostering Jewish life;
- the European Union Code of Conduct on countering illegal hate speech online;

INVITES the Commission to:

18. (17) UPHOLD the fight against **all forms of** racism and antisemitism as a priority **priorities** of the European Union and develop standards that offer comprehensive protection against racism and antisemitism ~~'in crucial areas such as education, social protection, access to and supply of goods and services that are available to the public, including housing'~~, as proposed in the 2021 report by the Fundamental Rights Agency;

19. (18) ENSURE that the Coordinator on combating racism, and the Coordinator on combating antisemitism and fostering Jewish life **and the Coordinator on combating anti-Muslim hatred** are given sufficient human and financial resources to carry out their roles in full and that regular dialogue is held with the stakeholders;

20. (19) PROPOSE more funding opportunities to help national human **rights** institutions, and equality bodies **and other public bodies and institutions**, develop expertise on the application of the EU Charter of Fundamental Rights at national level, as proposed by the **Agency for Fundamental Rights** in its report *Strong and Effective National Human Rights Institutions - Challenges, Promising Practices and Opportunities*, published on 21 January 2021;

21. (20) OFFER SUPPORT, including financially, support to local authorities and **relevant** civil society **organisations in the fight against racism and antisemitism in particular by to help encouraging** them to organise mediation and conflict resolution ~~between ethnic and religious groups~~;

22. (21) PROVIDE updates on the progress **of the implementation** of the EU Anti-racism Action Plan and of the Strategy on combating antisemitism and fostering Jewish life, and on **related** national **initiatives** variations in that regard, by publishing interim reports containing analysis and results.