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NOTE

From:	Presidency
To:	Delegations
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Subject:	Draft Council conclusions on combating racism and antisemitism

For the purpose of reaching an agreement at the next meeting of the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) meeting on 16 February 2022, delegations will find in the Annex, a revised version of the draft Council conclusions on the item mentioned above.

The changes compared to the previous version (5534/22) are marked in **bold**, underlined for additions or in ~~striketrough~~ when text has been deleted.

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, 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. **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. **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. **HAVING REGARD** to the Council conclusions of 6 December 2013 on combating hate crime in the European Union,
- h. **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. **HAVING REGARD** to the European Union Anti-racism Action Plan 2020-2025 presented by the Commission on 18 September 2020,

- j. **HAVING REGARD** to the European strategy on combating antisemitism and fostering Jewish life presented by the Commission on 5 October 2021,
- k. **HAVING REGARD** to the European Council conclusions of 21 and 22 October 2021 ~~recalling that~~ **which refer to the EU Strategy on combating antisemitism and fostering Jewish life and to** 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. **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. **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 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. **WHEREAS** the European Union promotes a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality prevail; therefore, in defining and implementing its policies and activities, the Union aims to combat discrimination based on any ground specified in article 21 of the Charter of Fundamental Rights ;
- o. **WHEREAS** the Charter of Fundamental Rights of the European Union, which is binding on Union institutions and the Member States when they 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. **WHEREAS** the 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. **DEPLORING** the increased frequency of racist, ~~xenophobic~~ and antisemitic incidents in all European Union Member States, as well as the exacerbation of racist and antisemitic hate speech, **Holocaust denial and distortion, and conspiracy myths,** online and offline, notably in the context of the Covid-19 pandemic;

- r. **(new) NOTING that racism and antisemitism may ultimately lead to forms of violent extremism and terrorism;**
- s. **(new) HAVING REGARD to the General Policy Recommendation No. 1 on Combating racism, xenophobia, antisemitism and intolerance by the European Commission against Racism and Intolerance ECRI of the Council of Europe adopted on 4 October 1996, the revised General Policy Recommendation No. 9 on preventing and combating Antisemitism by the European Commission against Racism and Intolerance ECRI of the Council of Europe adopted on 1 July 2021, the UN Resolution on the promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality of 13 July 2021, and the UN Resolution on Holocaust denial of 20 January 2022;**
- t. **~~(#)~~ NOTING** that, while the internet and social networks **media** offer new spaces for freedom of expression, they can also be used to enable the dissemination of racist and antisemitic content, allowing for new forms of individual and group persecution and incitement to physical and psychological violence while offering their perpetrators anonymity and therefore a sense of impunity;
- u. **~~(s)~~ WELCOMING** the initiatives of the European Commission presented in its EU Antiracism **Action pPlan** 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;
- v. **~~(t)~~ WELCOMING** the initiatives of the European Commission presented in its European strategy **for on** 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 fostering Jewish life**, and the organisation of an annual **civil society** forum ~~of civil society~~ on antisemitism;
- w. **~~(u)~~ WELCOMING** the work of the European Union Agency for Fundamental Rights to collect data on racism and antisemitism and notably its annual Overviews of antisemitic incidents recorded in the European Union and its report 'Being Black in the EU' published on 28 November 2018;
- x. **~~(v)~~ CONSIDERING** that despite their undeniable distinct **features characteristics**, 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;

- y. ~~(w)~~ **ENDEAVOURING** to ensure the appropriate **and regular** follow-up by the Council on the basis of the Commission's **monitoring** 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. **DEVELOP** at national **action plans as laid out in** level the EU Anti-racism Action Plan adopted by the European Commission on 18 September 2020 and the EU Strategy on combating antisemitism and fostering Jewish life adopted by the European Commission on 5 October 2021;
2. **ENDORSE AND USE** the non-legally binding working definitions **and of Holocaust denial and distortion** used **adopted** by the International Holocaust Remembrance Alliance ~~and the practical definition of Holocaust denial and distortion~~ as useful guidance for education and training purposes, including for law enforcement 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~~ **through** 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;

In this respect, ~~by commemorating~~ **commemorate** relevant dates concerning racism and antisemitism, such as the International Holocaust Remembrance Day, the European Roma Holocaust Memorial Day, the International Day against Racial Discrimination or the International Day for the Abolition of Slavery, ~~by promoting~~ **promote** places of remembrance and ~~by encouraging~~ **encourage** initiatives to commemorate the victims of such racist and antisemitic acts ~~are especially relevant in this regard;~~

4. **PROMOTE**, including financially, education, research and knowledge of **Jewish life**, antisemitism and the Holocaust, as well as **of** racism and slavery;
5. **CONSIDER DEVELOPING**, within the Commission's **High Level Group on non discrimination, equality and diversity and its Subgroup on equality data** ~~working group on hate crime recording, data collection and encouraging reporting,~~ and in cooperation with the Agency for Fundamental Rights, a common methodology for quantifying and qualifying racial and antisemitic incidents and comparing them both over time and between Member States;

6. **ENSURE** that national coordinators or coordination mechanisms 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. **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 adequate resources to carry out their tasks effectively ~~mandates and powers~~;
8. **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 discouraging the use of stereotypical negative representations of individuals and groups and conspiracy myths ~~and disinformation~~, on the grounds of their belonging, whether real or perceived, to ~~of~~ ethnic or religious groups;
9. **ENCOURAGE** the various media, notably social media, technology and communications sectors to ~~use~~ implement codes of conduct agreed at European level and enshrining their commitment to respect the principles of equality and non discrimination, as well as the right to freedom of expression and information and urge them to develop and adopt solutions enabling them to rapidly detect and remove illegal online hate speech of a racist and antisemitic nature amongst others;
10. **STRENGTHEN** the ability of national investigative and judicial authorities to prosecute illegal online racist and antisemitic hate speech, including by establishing measures such as national online monitoring centres and platforms where people can report hateful content;
11. **INCREASE THEIR EFFORTS TO ENSURE** the security of persons belonging to groups affected by acts of racism and antisemitism, including during cultural or religious events and around religious institutions, places of worship and confessional schools;
12. **CONDEMN** all forms of discrimination based on 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;

13. **INCLUDE**, as appropriate, in the initial and ongoing training given to law enforcement and judicial authorities, both at national and EU level, content on combating discrimination based on real or perceived ethnic origins, ~~or~~ religious beliefs **or cultural background**, 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. **ENCOURAGE** victims and witnesses of **all** racist~~m~~ and antisemitic 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. **TAKE** all appropriate measures to ensure adequate compensation for the harm suffered by the victims of racist and antisemitic incidents which are criminalised in Member States;
16. **PROVIDE, including financially,** support for civil society initiatives assisting the victims of these incidents during the reporting and compensation process;

The Council of the European Union,

17. **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 hate speech and hate crime;
 - **the creation of an EU High Level Group on non-discrimination, equality and diversity;**
 - 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;
18. **INVITES the Commission to:**
19. **UPHOLD** the fight against all forms of racism and antisemitism as priorities of the European Union and develop standards that offer comprehensive protection against racism and antisemitism;

20. **ENSURE** that the Coordinator on combating racism, 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;
21. **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, in line with the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, ~~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;~~
22. **SUPPORT**, including financially, local authorities and relevant civil society organisations in the fight against racism and antisemitism in particular by encouraging them to develop projects aimed at increasing social cohesion such as ~~organise mediation, and~~ conflict resolution and interfaith dialogue;
23. **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 in that regard, by publishing interim reports containing analysis and results.