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From: Presidency  
On: 29 September 2020  
To: Permanent Representatives Committee/Council

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Subject: Antisemitism/hate speech - Exchange of views with the Director of the Fundamental Rights Agency (FRA)

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Decades after the Holocaust, antisemitism is on the rise across the EU and has recently been further fuelled by the Coronavirus pandemic. Already in December 2018, the Council of the European Union unanimously adopted the *Council Declaration on the fight against antisemitism and the development of a common security approach to better protect Jewish communities and institutions in Europe*.<sup>1</sup> Drawing on survey data of the EU Agency for Fundamental Rights (FRA), the declaration acknowledges that Jews across the EU regularly experience different forms of antisemitism, including hate speech, from a variety of sources and perpetrators.<sup>2</sup>

Yet, many victims of antisemitism are unable or unwilling to seek redress, and do not report incidents to the authorities. In addition, only a minority of Member States systematically record antisemitic offences.<sup>3</sup> Overall, this can lead to offenders getting away with relative impunity and to victims not getting the support they need. Against this background, what steps can we take to enhance the criminal justice response to antisemitism?

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<sup>1</sup> <https://data.consilium.europa.eu/doc/document/ST-15213-2018-INIT/en/pdf>.

<sup>2</sup> <https://fra.europa.eu/en/publication/2018/experiences-and-perceptions-antisemitism-second-survey-discrimination-and-hate>.

<sup>3</sup> <https://fra.europa.eu/en/publication/2020/antisemitism-overview-2009-2019>.

## **Under-reporting: antisemitism remains largely invisible in criminal justice systems**

FRA survey findings show that many Jews cannot live an openly Jewish life because of the prevalence of antisemitism in our societies: 39% have experienced harassment, 4% have experienced property damage and 3% have experienced physical violence motivated by antisemitism. Those who wear or display symbols that identify them in public as being Jewish are more likely to have such experiences. Less than half (49%) of those who experience violence report incidents to the police or any other organisation, with only one in five (21%) doing so for harassment. The most common reasons given for not reporting are that respondents felt that nothing would happen as a result, the incidents were not serious enough, or that it would be an inconvenience to report. Concerning violence, additional reasons given for not reporting were lack of trust in the police and the fear of reprisals.

Severe under-reporting of antisemitism leads to the phenomenon remaining largely invisible in criminal justice systems. The low number of incidents reported to the police leads to relatively few cases being prosecuted and brought to justice, at least as regards antisemitic offences. This points to the need to strengthen systems and structures to encourage and enable victims of antisemitism to report incidents to the authorities. This could include:

- Third-party or anonymous reporting through systematic cooperation with Jewish communities and other civil society organisations;
- Law enforcement training on receiving and handling criminal incident complaints – this should include training on the practical application of the non-legally binding working definition of antisemitism of the International Holocaust Remembrance Alliance (IHRA);<sup>4</sup>
- Training of national equality bodies on receiving and handling discrimination complaints related to antisemitism;
- Awareness-raising campaigns on victim support, in cooperation with local authorities in areas of higher concentration of Jewish people.

## **Systematic recording to support the proper investigation of antisemitic offences**

For victims of antisemitism to obtain redress, every link in the criminal justice chain needs reinforcement: reporting, recording, investigation, prosecution, and sentencing. This means that when victims or witnesses report incidents, these need to be recorded systematically. It also means that law enforcement officers must make visible the antisemitic motive underlying an offence when taking statements. This, in turn, would enable the proper investigation of incidents and the full prosecution of offenders, with due regard to aggravating circumstances and enhanced penalties where relevant.<sup>5</sup>

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<sup>4</sup> <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

<sup>5</sup> <https://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>.

The key guiding principles on improving the recording of hate crime by law enforcement authorities endorsed by the EU High Level Group on combating racism, xenophobia and other forms of intolerance offer guidance on how to capture the antisemitic motive underlying an offense.<sup>6</sup> This could include:

- Training law enforcement officers on how to recognise and record antisemitic bias indicators;
- Enabling the flagging of antisemitic offences at the moment of recording;
- Training law enforcement staff in analysing incidents ‘flagged’ as potentially antisemitic;
- Compiling and publishing relevant annual statistics.

### **Questions for discussion**

1. What more could Member States do to encourage victims or Jewish communities and other civil society organisations to report antisemitic incidents to the relevant authorities?
2. What could Member States do to improve recording and collection of data on antisemitism, in order to promote the proper investigation of antisemitic offences?

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<sup>6</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/ec-2017-key-guiding-principles-recording-hate-crime\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/ec-2017-key-guiding-principles-recording-hate-crime_en.pdf)