**Racist crime and speech in Europe**

**ENAR strategy (2017)**

**Updated June 2016**

***What is the problem and what is the impact of the problem?***

Racism, xenophobia and related crime and speech remain a reality throughout the European Union.

Hate crimes are crimes based on bias motivation or perception on the victims belonging to certain groups. Hey have an impact on victims, the community he/she represents and the whole of society, as perceptions are based on stereotypes, and that the vulnerability of one group is linked to the vulnerability of other minority groups (Reference). Victims are left in fear and isolation, and their vulnerability can lead to severe psychological and social problems, feeding perception of mutual distrust and breaking social links.

Official data collection systems are still far from reflecting the reality. There is no systematic recording of racist crime across the EU and in some countries data collection is inexistent. Evidence from the Fundamental Rights Agency (FRA) and from ENAR Shadow Reports displays some figures, and confirm that policies suffer from wide gaps in most European countries. In 2013, ENAR demonstrated an increase of racist crime according to NGOs.

Despite the lack of information on the ethnicity of the victims, undoubtedly, some categories of populations - belonging to visible minorities - are the target of these racist attacks. Among others, Roma, Jews, Muslims, migrants0 refugees and People of African descent/Black Europeans are among the victims of hate crime.

At a legislative level, the national hate crimes laws are not fully consistent. The protected characteristics vary depending on the jurisdiction. Some narrow definitions result in under-recording of incidents. The concepts defined in legislation are not always translated in comprehensive data collection policies and/or in police, prosecution, and courts sensitisation training policies. As a result, the existing EU standards are far from being consistently applied across the continent.

Notably, several Member States do not systematically investigate the racist motivation of crime. This is due to police fearing that the prosecution won’t take up the bias motivation, not willing to actively look for perpetrators, or not investing in what can be tricky investigations. This leads to the whole justice system under-qualifying crimes (prosecution/sanctioned as a less severe crime: ex murder and not racist murder). The impact is that the specific hatred elements are made invisible to society.

The racist element can also be qualified of violent by a “terrorist” or an “mentally instable person”– depending who the perpetrators are – denying the victims a chance to shred light to a particularly Hate crimes not recognised – white perpetrator ‘mentally unstable’ or political.

The Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law falls short in defining a broad spectrum of graduated sanctions, including better definitions of specific forms of racism, and providing standards on unveiling the racist motive in the pre-trial investigation. It contains no provision to better explain Member States’ obligations in terms of reporting, investigating and prosecuting hate crimes, which considerably lowers its practical effects.

Support to victims represents another area where consistency is lacking. European standards in this area are very recent, and even assessing the quality of the existing psychological support, needs assessment and protection measures against re-victimisation proves difficult. The lack of victim-centred approach in recording and responding to racist crime can partially explain some of the difficulties to improve law-enforcement’s response. NGOs are developing their own reporting and recording, but there are only a few instances of official cooperation with police and prosecution (CST model) throughout the criminal justice system.

The Directive 2012/29/EU defines additional standards in terms of reporting crimes, assessing victims’ special protection needs and taking appropriate protection measures. Other provisions better define the missions of support services, although they are not specific to victims of hate crime. Similarly, general provisions create an obligation for Member States to adequately train police staff, prosecution services and judges on all the content of the Directive. The transposition deadline of the Directive was November 2015

Hate speech is also widespread in the EU. Political hate speech by politicians is particularly worrying as politicians are opinion leaders and can influence a large group of persons and lead to physical violence. Hate speech in the political sphere is no longer limited to far right. Many political parties fail to condemn or sanction incidents within their own ranks.

Online hate speech has also been a concerned for groups at risk of racism and can take particularly extremes forms of incitement to hatred and violence, which is punishable under EU criminal law. The vast majority of online hate speech is not illegal however, as it does not pass the threshold of incitement to violence or hatred. Many NGOs and victims feel powerless towards the rapid multiplication of offensive content online, and fear that counter-narratives are not always effective in changing the entitlement to have racist opinions.

When illegal, content should be timely removed by private platforms. This process is not without problems because IT companies are not always reactive to local specificities of racism and may make mistake in removal processes. Law enforcement agencies should also be more systematically held accountable to enforce EU and national law and investigate and prosecute illegal hate speech. Otherwise, this develops a feeling of impunity. Some case law has been encouraging to having law enforcement taking the issue seriously (guidance for online prosecution).

Both racist crime and speech are largely underreported to law-enforcement authorities or any other relevant public body. In 2013 in the UK 86% of racist crime was unreported. This is due to the lack of trust in police, the lack of awareness of rights, or because verbal harassment is seen as part of daily experience. The feeling of shame and vulnerability of victims explains why there is not always action taken.

***What is ENAR aiming to achieve in response to the problem? What is the change we want to see? Outcomes (1. Change in law, policy and standards 2. Change in practices and accountability 3. Change in mobilisation  all of which to impact change in people’s lives)***

**Long-term goal: all European States duly respond to racist crime, increase victims’ protection and access to effective remedies.**

* **Comprehensive data collection based on victims and witness perceptions**
* **Timely and effective investigation by police of bias motivation including multiple biases**
* **Prosecution following up on bias motivation**
* **Victims have improved access to justice and feel safe and empowered to report racist crime or speech**
* **Civil society organisations and community-led organisations are consulted and have access to relevant information regarding crimes involving members of their community throughout criminal justice system**
* **Civil society organisations, community-led organisations and concerned users are empowered to report illegal content to IT companies, which act promptly and fairly.**

In 2017, we aim to achieve:

- new policy standards at EU level based on both the Framework decision and the Victims’ Rights Directive, which include investigation and data collection standards.

- a EP study on legal basis to amend or repeal Framework decision to cover more forms of intolerance and biases.

- revised European Parliament Rules of Procedures enhancing administrative sanctions against MEPs using hate speech

- At least five ENAR members mobilise on responding to racist crime and speech and develop counter-narratives.

- More court case on law enforcement regarding hate speech based on investigation by police/prosecution

***Why ENAR?***

ENAR has a strong link to activists at the forefront of racist crime and speech and has a good track record of leading EU advocacy. We have been a crucial actor in the lead up to the adoption of the Framework decision and have led work on the EP Rules of procedures and a new EU hate crime legislation.

ENAR’s advocacy engagement would run until the European Union adopts a new directive on bias violence with improved standards on addressing racist crime and protecting victims. ENAR’s efforts to strengthen civil society capacity to monitor and report on racist violence should progressively be complemented by State’s data collection obligations.

Tentative time frame: up to 2020.

ENAR’s role

* Focus on violence based on the grounds of ethnicity, race and religion
* Use the coordinating power of the network to harmonise civil society reporting on racist crime
* Liaise with other non-discrimination network to join forces regarding violence on other grounds
* National and European advocacy

***What are the main barriers from achieving the desired outcomes?*** Power analysis. What is your analysis of the key forces driving/blocking such a change? What economic or political interests are threatened/promoted by the change? Which groups are drivers/blockers/undecided? Is it visible (rules and force) or invisible (in people heads – norms and values) or hidden (behind the scenes influence). Who do the key players listen to (because that may help us decide on our alliance strategy).

Main barriers:

*Data is not collected according to consistent standards by civil society*. Many different actors collect data on racist violence, from grassroots NGOs providing victims’ support to national NGOs focusing on one particular group. Despite some attempts to harmonise civil society efforts, the reporting remains fragmented and rarely based on comparable criteria. Some use the OSCE working definition of hate crime, while other used other national definitions.

*There is a lack of capacity of NGOs to actively cooperate with police or launch their own reporting system*. Many NGOs do not have sufficient funding and have paid the price of austerity.

*Hate speech is becoming more acceptable* and there is a lack of understanding of the difference between offensive content and illegal content online. There is an increase in crime against refugees and migrants.

*Deep rooted prejudice among law enforcement*

*The relations between communities and law enforcement is deteriorat*ing (counter terrorism)

*Member States don’t want new EU equality legislation* and they argue that there is no legal basis to cover more grounds in hate crime legislation. The proposed Equal Treatment Directive (the so-called ‘Horizontal Directive’) has been blocked by the European Council since 2008 for instance. This is also due to the fact that the legislative procedure for this field is Article 19(1) TFEU: unanimity by the Council. Member States are blocking legal or policy frameworks on discrimination/violence on the ground of sexual orientation or gender identity.

Drivers/blockers:

The EP is a driving institution. The EP has already taken many times positions in favour of reopening and improving the legislation. The EP needs to better say how this can be done. The EP is the only institution in the position (through a study, and then an INL report) to change the current state of play by saying aloud that there is a legal basis for this in the treaties.

Blockers: HU, PL, DE on reopening legislation to cover more grounds. Conservative religious groups.

EC is a blocker on new legislation but an ally in principle – potentially game changer regarding standards and sanctions.

Allies: ILGA-Europe, Social Platform, Amnesty International. Other members of the Social Platform such as AGE, EDF, TGEU, ENoRB share an interest although they are not as active as the others. OSEPI is also at our side. VSE can join different actions.

CEJI’s facing fact project has been a driver to find solution oriented practices and expand network of stakeholders.

FRA – ally but not influencial.

***What are the change hypothesis/assumptions***? Opportunities? How is the change we are discussing likely to take place? What alliances (e.g. between sympathetic officials or politicians, private sector, media, faith leaders or civil society) could drive/block the change? What would strengthen the good guys and weaken the bad – e.g. research and evidence, pressure from people they listen to (who are they?) or mobilisation in the street? Can you foresee any likely ‘critical junctures’: new governments; changes of leadership; election timetables when change is more likely to occur?

**European Union’s improved EU legislative standards** would increase pressure on Member States. We believe that a new legislation on bias violence is achievable within the current assumptions by the beginning of the 2019-2024 Commission/Parliament terms.

**Better official and NGO data collection systems must be developed.** This, on the one hand, would develop trust-based initiatives between authorities and the communities. On the other hand, it is very much needed to justify the need for reinforced EU and national policies. One particular aspect is the collection of data showing the gaps that remain under the current laws and policies. Such information is needed to justify our call for legislative improvements.

* There is an established link between hate speech and physical violence
* Better data collection would mean better response because more visibility – work on perception and prevention

Opportunities

* *Victims’ directive* The ‘Victims’ Directive’ was adopted in 2012 to establish minimum standards on the rights, support and protection of victims of crime. This comprehensive piece of legislation could have repercussions on victims of hate crime as well, as highlighted by the FRA in its opinion on the implementation of the FD. Article 22(3) in particular, foresees that Member States need to assess systematically the protection needs of victims of hate crime, to grant them certain rights to protect them from secondary victimisation. The Victims’ Directive should be transposed by Member States by 15 November 2015. Initiatives to draft implementation guidelines on the directive are a good hook to raise attention on victims of hate crime.
* Framework Decision and the Victims’ Rights Directive work together (this is clearly the case, as proved by meetings we had in early 2016/late 2015. 2017: evaluation cycle VRD.
* *Multiplication of civil society reporting.* Simultaneously – and perhaps under the influence of the Organization for Security and Co-operation in Europe (OSCE) – an increasing number of civil society organisations have developed tools, apps, websites or even networks to report on hate crime and provide support to victims. ENAR Ireland collaborative platform iReport.ie, CCIF app or the Greek Racist Violence Recording Network are good practices, among others, of civil society engagement on the issue of racist violence. ENAR will reinforce this movement (November 2014 training with the OSCE; proposal for a reporting tool to be set up with voluntary members). While the Commission, at the end of 2015, was still engaging in dialogue with different Member States on the application of the Framework Decision, admittedly ready to launch infringement procedures when justified, it will now also be able to start working on the transposition of the Directive.
* *More European Commission engagement on racist crime.* The Commission will thus has gained in December 2015 the power to launch infringement proceedings on the basis of the FD. Colloquium in 2015 on antisemitism and islamophobia. Conclusions on revitising guidances and data collection. HLWG.
* *Opportunities of joint advocacy on bias violence.* Other networks and NGOs have also been advocating for improved legislation on hate crime, including ILGA-Europe, the Social platform and Amnesty International. ENAR participated in several meeting to strategize on common actions and is now part of the Social platform’s task force on bias violence. AI recent report on Bulgaria and Germany.
* *Victimisation surveys from the FRA.* The FRA has published extensive reports on the issue of hate crime in the EU, contributing to making the issue ‘visible’. The FRA has also worked with both civil society organisations (eg in the 2013 Fundamental Rights Conference) and with EU institutions (eg conferences with EU presidencies, submissions to the Commission) to move forward on the questions. FRA’s victimisation surveys – and recommendations to Member States on this methodology – have proven helpful to document trends in the EU, in the absence of official data.

- HLWG – direct channel to MS

***How will we respond to achieve the desired outcomes?* Activities. Actions**

1. *Research to highlight need for improved policies (examples needed?) - shadow report updates and database*
2. *More training and support to members on using the monitoring tool. Or liaise with OSCE and Facing facts*
3. *Support members led projects on legislation/advocacy plans building; Training of relevant professionals (law enforcement, justice system, victim support) or Development of victimization surveys, either directly or as a public policy to identify needs and orient policies.*
4. *Work on draft guidelines on racist crime investigation with steering group of experts, a single transposition assessment benchmark based on FD and VRD*
5. *Establish a coalition of the willing with member states to work towards Council conclusions on hate crime?*
6. *Adopt and disseminate a position on online hate speech reflecting our members and human rights standards – handbook with IT companies?*
7. *Finalise advocacy on EP RoP if not adopted in 2016 – monitoring implementation. Ask for official monitoring form.*