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Europe's Undertakings to Combat Antisemitism

Introduction

The primary role of governments is to protect their citizens from harm, and the role of intergovernmental organisations (IGOs) is to establish binding and voluntary agreements to ensure the orderly and peaceful interaction between states. Additionally, IGOs advise states on best practices in matters of strategic importance and provide assistance where requested.

Putting aside the human rights and other conventions agreed on at the global level by the United Nations, I shall examine the role of European IGOs in combating antisemitism and assess their successes and limitations. I will do so by discussing the decisions and programmes of the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), and their agencies. Some of the agreements focus on the wider issues of racism and hate crime, but in doing so they incorporate action against antisemitism; other agreements have a narrower focus and are specifically limited to antisemitism. Necessarily this requires surveying progress at a national level, which is where the initiatives impact Jewish communities.

EU concerns over mounting racism and antisemitism were first signalled in the 1994 Resolution on Racism, Xenophobia and Antisemitism, and the 1995 Communication from the Commission on racism, xenophobia, and antisemitism which proposed that 1997 be designated as the European Year against Racism.¹ In these earlier years, no attempt was made to differentiate the various harms, or to examine their specific natures, and they were treated as a whole. Since 2003,

Note: This essay has its origins in M. Whine, "Can European Agencies Combat Antisemitism Effectively?" *Israel Journal of Foreign Affairs* 11, no. 3 (2017): 371–81.

1 Cf. European Parliament, *Resolution of the European Parliament on Racism, Xenophobia and Anti-semitism* (OJ C 323/154, 20.11.1994), issued October 27, 1994, http://www.europarl.europa.eu/workingpapers/libe/102/text5_en.htm#annex2; European Parliament, *Resolution of the European Parliament on Racism, Xenophobia and Anti-semitism* (OJ C 308/140, 20.11.1995), issued October 26, 1995; Commission of the European Communities, *Communication from the Commission on Racism, Xenophobia and Anti-semitism* (COM (95) 653 final), issued December 13, 1995, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51995PC0653&from=EN>.

however, European states have developed their undertakings to combat antisemitism specifically and have begun to identify problem areas which they must address in order to do so more effectively. In the following years, they have agreed upon working definitions of antisemitism and Holocaust denial and established bias indicators to describe contemporary antisemitism. They have improved their collection of data on incidents and crimes, and they have instituted a series of political and legal agreements that condemn antisemitism and call for the prosecution of perpetrators of crimes motivated by it. They have also published practical guidelines to enable criminal justice authorities to combat antisemitism. Official statistics are now augmented by large-scale polling and surveys, and training programmes have been instituted for law-enforcement personnel that focus on hate crime generally, and crime that is motivated by antisemitism categorically.

This progress has been achieved by the twenty-eight states of the EU, the forty-seven states of the CoE, and the fifty-seven states participating in the OSCE. Some agreements are limited to a particular IGO and its Member States, but increasing inter-agency collaboration ensures that other states will also benefit. However, it is at the national level when states apply the agreements that weaknesses emerge, and it is these which are examined in the second part of this essay.

Political and Legal Agreements to Combat Antisemitism

As antisemitic incidents in Europe rose at the end of the twentieth and start of the twenty-first centuries, the OSCE was persuaded to hold an international meeting in Vienna in 2003. Prominent political and Jewish leaders from the United States, Canada, and Europe spoke in turn about the problem, but they had no mandate to take action.² However, the Vienna meeting overcame European governments' reluctance to address the issue, and thereafter they began to consider their responsibilities toward their Jewish citizens in a more effective manner. They noted the threats posed by the spillover of Middle East tensions and the antisemitic messages promoted by Arab states and their media and by Islamist bodies. The Vienna meeting had been preceded by the 2002 OSCE Ministerial

² Cf. Organization for Security and Co-operation in Europe, *OSCE Conference on Anti-Semitism*, Vienna, June 19–20, 2003, Consolidated Summary, PC.DEL./883/03, issued July 18, 2003, www.osce.org/cio/42394?download=true.

Council meeting in Porto, where the rise in all types of hate crimes was discussed. The conference declaration noted their concern over “the manifestation of aggressive nationalism, racism, chauvinism, xenophobia, antisemitism, and violent extremism, wherever they may occur.”³ The following year, at the urging of the OSCE Parliamentary Assembly, and following a recommendation from the OSCE Human Dimension Implementation Meeting, the OSCE held the Berlin Conference in May 2004. The conference declaration committed the OSCE to collecting data on antisemitism and other hate crimes, to periodically review such data, and to identify best practices to counter antisemitism. It also appointed a personal representative of the chairperson in office, whose task is to report on the progress being made by participating states.⁴

Berlin was followed by other high-level OSCE conferences in Cordoba, Bucharest, and Astana at which the mechanisms for monitoring antisemitism were established; teaching materials on antisemitism, Jewish history, and the Holocaust were commissioned; and training for criminal justice agency personnel was put in place.⁵ However, ODIHR was unwilling to combat antisemitism on its own at that point; it had to be addressed in concert with other forms of hatred. Jewish representatives had no issue with the decision but argued instead that the longevity and uniqueness of antisemitism required focused action across a broad range of fronts, including in the realms of religion, education, and law enforcement.

Ten years after the first Berlin conference, a second conference was convened in November 2014 to review progress in the wake of a continuing rise in incidents and the terror attack on the Brussels Jewish Museum five months earlier in May. That gathering focused on Jewish concerns more concretely. The conference recommendations were referred to the December 2015 Ministerial Council meeting in Basel, which proposed to offer Member States a set of best practices

3 Organization for Security and Co-operation in Europe, *Tenth Meeting of the Ministerial Council*, Porto, December 6–7, 2002, MC.DOC/1/02, issued December 7, 2002, www.osce.org/mc/40521?download=true, 45–46.

4 Cf. Organization for Security and Co-operation in Europe, *Berlin Declaration, Bulgarian Chairmanship*, issued 2004, <https://www.osce.org/cio/31432?download=true>.

5 Cf. Organization for Security and Co-operation in Europe, *Cordoba Declaration by the Chairman-in-Office*, CIO.GAL/76/05/REV.2, issued June 9, 2005, www.osce.org/cio/15548?download=true; idem, *Bucharest Declaration by the Chairman-in-Office*, CIO.GAL/89/07, issued June 8, 2007, www.osce.org/cio/25598?download=true; idem, *Astana Declaration by the Chairman-in-Office*, CIO.GAL/111/10, issued June 30, 2010, www.osce.org/cio/68972?download=true.

to combat antisemitism and enhance the security of communities, which are noted below.⁶

The Words into Action program was an outcome of the Basel ministerial meeting and is intended to strengthen states' and civil society capacities to prevent and respond to antisemitism and terrorism against Jewish communities. The three-year program is structured around three themes: addressing communities' security needs; education about Jews and antisemitism; and coalition-building between Jews and other faiths. The work streams bring together police officers, Jewish community security experts, educators, and interfaith activists to define and promote best practices.⁷ At the time of this writing, the security program is the most advanced, and memoranda of understanding to initiate training have been signed between the OSCE and several governments. The Words into Action security handbook notes OSCE commitments, human rights standards, key government obligations toward their Jewish citizens, and describes anti-Jewish crimes and hate speech and their impact on Jewish communities. It provides practical security advice for Jewish communities, police and security services, describes their security needs, and effectively draws together many of the above-listed recommendations. Its appendices include the IHRA Working Definition of Antisemitism, the UK Community Security Trust Police Guide to Judaism and Jewish religious dates, and it is being translated into a number of languages.⁸

Addressing Anti-Semitism through Education and Coalition Building for Tolerance and Non-Discrimination, the second and third elements in the Words into Action program, were both launched in mid-2018, the former in partnership with UNESCO, and at the time of writing await final acceptance by OSCE participating states.⁹

6 Organization for Security and Co-operation in Europe, *Declaration on Enhancing Efforts to Combat Anti-Semitism*, MCD0C/8/14, issued December 5, 2014, <https://www.osce.org/files/f/documents/2/d/130556.pdf>.

7 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide* (Warsaw: OSCE/ODIHR, 2017), www.osce.org/odihr/317166?download=true.

8 Cf. OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Words into Action to Address Anti-Semitism* (Warsaw: OSCE/ODIHR, 2017), <https://www.osce.org/odihr/269756?download=true>.

9 Cf. OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Addressing Anti-Semitism through Education—Guidelines for Policymakers* (Warsaw: OSCE/ODIHR, 2018), <https://www.osce.org/odihr/383089>; idem, *Coalition Building for Tolerance and Non-Discrimination—A Practical Guide* (Warsaw: OSCE/ODIHR, 2018), <https://www.osce.org/odihr/385017?download=true>.

Within the framework of the EU, a similar process was also developing, propelled by the rise in antisemitic incidents. In 2002, the European Union Monitoring Centre on Racism and Xenophobia (EUMC) commissioned the fifteen National Focal Points of its Racism and Xenophobia Network (RAXEN) of national human rights and equalities commissions to collect data on antisemitism within the EU. It also commissioned Berlin's Technical University Centre for Research on Antisemitism to analyze the reports and publish a composite analysis. Their findings were not well received by the EUMC board, allegedly because they apportioned much of the blame for rising antisemitism on Europe's Muslim communities, and a clumsy attempt was made to suppress them.

When the report was leaked to the media, the EUMC was obliged to commission a second report, "Perceptions of Antisemitism in the European Union," based on Jewish leaders' perceptions of the threats to their communities. This confirmed the findings of the first report.

The final composite report, "Manifestations of Antisemitism in the EU 2002–2003," finally acknowledged what the Jewish communities had sensed for some time: that tension in the Middle East led to dramatic rises in antisemitic incidents and that activists from the extreme right were no longer the primary perpetrators, at least in Western Europe. The report also called for the regular monitoring of data and a workable definition of antisemitism for the post-Holocaust era, in which anti-Zionism often serves as a mask for Jew hatred. The latter recommendation was taken up by the EUMC, and a working definition was agreed upon after academics and activists were asked to submit ideas. Representatives of the American Jewish Committee and the European Jewish Congress negotiated the final wording in Vienna, alongside OSCE representatives.¹⁰

The definition was not intended as a legal one, and neither the EUMC nor its successor, the European Union Agency for Fundamental Rights (FRA), formally adopted it, although they published it on their websites. Although the FRA removed it from its website after several years, it was subsequently adopted, in slightly modified form, by the International Holocaust Remembrance Alliance (IHRA), the successor to the Task Force for International Cooperation on Holocaust Education, the outcome of the International Forum on the Holocaust. This had been convened in 2000 by Swedish Prime Minister Göran Persson. The definition sits alongside the IHRA Working Definition of Holocaust Denial, and both definitions have been accepted by the thirty-one Member States of

¹⁰ Cf. European Monitoring Centre on Racism and Xenophobia, *Manifestations of Antisemitism in the EU 2002–2003* (Vienna: FRA, 2004), an updated version including manifestations from 2002 to 2012 can be found online via https://fra.europa.eu/sites/default/files/fra-2013_anti_semitism-update-2002-2012_web_0.pdf.

IHRA.¹¹ The European Parliament and the governments of Austria, Bulgaria, Germany, Lithuania, Macedonia, Romania, Scotland, and the UK have adopted it thus far.¹² The US State Department also promotes it as does the European Commission against Racism and Intolerance (ECRI), the human rights commission which advises CoE Member States on human rights and inspects their compliance with the European Convention on Human Rights. It is included in the ECRI short version of the General Policy Recommendation Number 9 on Antisemitism published in 2017.¹³ Adoption in itself, however, has merely a declaratory value, and it is hoped that states will use it as a guide for their criminal justice systems.

At a political level, the Parliamentary Assembly of the Council of Europe, a body of parliamentarians appointed by their national parliaments, has passed two resolutions: in 2007, on combatting antisemitism in Europe, and again in 2016 on the renewed commitment in the fight against antisemitism in Europe. The first drew attention to the growth of antisemitism, often fuelled by Middle East tension and migrant communities, the need to “vigorously and systematical-

11 Cf. International Holocaust Remembrance Alliance, *Working Definition of Antisemitism*, issued May 26, 2016, <https://www.holocaustremembrance.com/node/196>; idem, *Working Definition of Holocaust Denial and Distortion*, issued October 10, 2013, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-holocaust-denial-and-distortion>.

12 Cf. “Austrian Government Adopts Working Definition of Antisemitism,” International Holocaust Remembrance Alliance, issued April 28, 2017, accessed April 29, 2020, <https://www.holocaustremembrance.com/news-archive/austrian-government-adopts-working-definition-antisemitism>; “Bulgaria Adopts International Definition of anti-Semitism,” *The Times of Israel*, October 19, 2017, <https://www.timesofisrael.com/bulgaria-adopts-international-definition-of-antisemitism/>; J. Chase, “German Government Adopts International anti-Semitism Definition,” *Deutsche Welle*, March 5, 2018, <http://www.dw.com/en/german-government-adopts-international-anti-semitism-definition/a-40608166>; “Lithuania to Apply the Uniform Working Definition of Antisemitism,” Lithuanian Government, Office of the Prime Minister, issued January 24, 2018, <https://ministraspirmininkas.lrv.lt/en/news/lithuania-to-apply-the-uniform-working-definition-of-antisemitism>; “Macedonia Becomes Fourth Country to Include Demonization of Israel in anti-Semitism Definition,” *Haaretz*, March 15, 2018, <https://www.haaretz.com/misc/article-print-page/macedonia-defines-anti-semitism-to-include-demonization-of-israel-1.5909603>; “Romania Adopts Working Definition of Antisemitism,” International Holocaust Remembrance Alliance, issued May 29, 2017, <https://www.holocaustremembrance.com/news-archive/romania-adopts-working-definition-antisemitism>.

13 “Defining Anti-Semitism,” U.S. Department of State Diplomacy in Action, Washington DC, issued 2017, <https://www.state.gov/s/rga/resources/267538.htm>; European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 9 on The Fight against Antisemitism*, issued September 9, 2004, <https://rm.coe.int/ecri-general-policy-recommendation-no-9-on-the-fight-against-antisemit/16808b5ac8>.

ly enforce legislation,” and to address the growth of online hate and antisemitism via the Additional Protocol to the CoE Convention on Cybercrime (see below).¹⁴

The 2016 resolution contains seven recommendations: the need for comprehensive legislation covering hate crime and hate speech, denial and trivialization of the Holocaust, prosecution of public figures who incite antisemitism, and enhanced penalties on conviction of such offences; the need for efficient data collection; education against antisemitism and on the Holocaust; respect for all faiths and appreciation of diversity by the media; enhancing the security of Jewish communities; promotion of CoE anti-racism initiatives; and the recognition of the role of civil society organizations and the need to support them.¹⁵

The European law calling for the prosecution of those who engage in antisemitic incitement is contained within EU Framework Decision 2008/913/JHA, which established a minimum legal level for incitement based on racial or religious grounds, and denial or gross trivialization of genocide, including the Holocaust.¹⁶ States were required to transpose its provisions into domestic law by November 2010. The protections it afforded were augmented in 2012 by Directive 2012/29/EU, which established minimum standards on the rights, support, and protection of victims of crime. Again, this law did not reference antisemitism specifically. However, placing the rights of victims at the heart of the criminal justice response to hate crime, including that motivated by antisemitism, thereby strengthened the protection afforded to European Jews.¹⁷

The 2003 Additional Protocol to the CoE Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems binds signatory states to criminalizing online racial

¹⁴ Cf. “Combating anti-Semitism in Europe, Resolution 1563,” Parliamentary Assembly Council of Europe, issued June 27, 2007, accessed April 29, 2020, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17561&lang=en>.

¹⁵ “Renewed Commitment in the Fight against Antisemitism in Europe, Resolution 2106,” Parliamentary Assembly Council of Europe, issued April 20, 2016, accessed April 29, 2020, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22716>.

¹⁶ Cf. European Union, “Framework Decision on Combating certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, 2008/913/JH/,” *Official Journal of the European Union* 328, no. 55 (2008), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0913&from=EN>.

¹⁷ Cf. European Union, “Directive 2012/29/EU of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime,” *Official Journal of the European Union* 315, no. 57 (2012), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

and religious incitement and the denial of genocide, including the Holocaust, and the EU now requires Member States to transpose it into domestic law.¹⁸

Thus, three separate but overlapping laws offer a high degree of protection to Jewish communities. Moreover the effect of the legislation has been significantly strengthened by the case law of the Strasbourg-based European Court of Human Rights, which applies the European Convention on Human Rights to cases brought to it by CoE Member States and individuals. Its judgements are binding and require governments to amend their legislation and administrative practice in a wide range of human rights related areas. The court has ruled on a number of cases in defense of the rights of Jews, including upholding criminal convictions against Holocaust deniers, those who promote ethnic hate against Jews, those who insult Jews on account of their religious and racial origin, and those who incite acts of terrorism.¹⁹

The 2017 European Parliament resolution on combating antisemitism also calls for the adoption of the working definition of antisemitism in order to uphold law enforcement and judicial action; the enhancement of Jewish communities' security; assistance for the European coordinator on combating antisemitism; the appointment of national coordinators to combat antisemitism; and the establishment of cross-party parliamentary groups to strengthen support across the political spectrum. It highlights the important role of civil society, and calls for financial backing for civil society initiatives; media respect for diversity and training for journalists; the full and proper implementation of the 2008 Framework Decision; penalty enhancement on conviction for anti-Jewish crimes where none exists; the establishment of dedicated hate crimes police units; cross border cooperation in the prosecution of hate crimes; comprehensive and efficient hate crime data systems; the enforcement of the Code of Conduct; and Holocaust teaching and a review and funding of teaching materials to ensure that Jewish history and contemporary Jewish life are presented in a comprehensive and balanced manner. Finally, the resolution calls on Member States to officially com-

18 Cf. Council of Europe, *Additional Protocol to the Convention on Cybercrime: Concerning the Criminalization of Acts of a Racist Nature Committed through Computer Systems*, issued January 28, 2003, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008160f>.

19 Cf. European Court of Human Rights, *Fact Sheet—Hate Speech*, issued March 2020, https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

memorate the Holocaust and for the EC to liaise closely with other IGOs to combat antisemitism at the international level.²⁰

Drawing states' attention to antisemitism falls within the mandate of the CoE Commissioner for Human Rights, and in 2016 he published a warning to governments about the growth in Holocaust denial and of making any false equivalence between the Holocaust and the suffering endured under Soviet occupation of Central and Eastern Europe.²¹ Recognising that the GPRs prepared by ECRI are seen only by governments, ECRI now publishes short versions to help civil society organisations understand the obligations which their governments have undertaken. The GPR on Antisemitism was first published in 2004, but an abridged version was published in 2017 and will be available with others in the series toward the end of 2018. Jewish communities can then use it as a checklist to monitor their government's compliance.²²

Overcoming Weaknesses in Applying the Agreements

Despite the considerable progress made by the IGOs at a regional level over the past twenty years, there are continuing weaknesses at the national level which result in patchy and uneven application of the agreements.

These deficiencies can be the consequence of one or several reasons: reluctance to change due to political or cultural reasons or institutional racism; slow or partial application of international agreements at the local level; slow transformation by criminal justice systems to accommodate new thinking and practices. Insofar as the first of these is concerned, the FRA has suggested that recent political gains by populist far right parties may be leading to reduced commitment to improve the human rights protection of minorities. It noted that they have increased their percentage of the overall vote in those countries where they have stood from 5 percent in 1997 to 16 percent in the most recent parliamentary elections, and concludes that the election results therefore foster a so-

20 "European Parliament resolution on combating anti-Semitism," European Parliament, issued June 1, 2017, accessed April 29, 2020, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0243&language=EN&ring=B8-2017-0383.

21 Cf. "Why Remembering the Holocaust is a Human Rights Imperative," Commissioner for Human Rights, Council of Europe, issued October 18, 2016, accessed April 29, 2020, www.coe.int/en/web/commissioner/-/why-remembering-the-holocaust-is-a-human-rights-imperative.

22 Cf. ECRI, *ECRI General Policy Recommendation No. 9*.

cial climate that provides fertile ground for racism, discrimination, and hate crime.²³

This may be the case, but the FRA has advanced other reasons for states' failures to apply the agreements made at a regional level, which it has repeated in its annual reporting for several years, which predate the rise in right-wing populism and explain the second reason. These failures fall into four areas: (1) inadequate practical implementation and application of the 2000 Racial Equality Directive which prohibits discrimination on the grounds of race and ethnic origin and which defines direct and indirect discrimination and harassment; (2) ineffective investigation and prosecution of hate crime, including hate speech; (3) the lack of dedicated national action plans to fight racism, racial discrimination, xenophobia, and related intolerance, in the absence of accompanying performance indicators and monitoring and evaluation mechanisms; (4) the lack of systematic training on applying anti-discrimination legislation for law enforcement officers.²⁴

The major complaints, however, are the failure by some states to transpose and apply the Framework Decision, or to transpose it effectively, and to apply the Racial Equality Directive. Recognising these lacunae led the FRA to warn that

The EC initiated formal inquiries into Member States that still had major gaps in transposing the Framework Decision on Racism and Xenophobia into national law. The Commission intended to launch infringement procedures where necessary. This prompted notable legislative developments in a number of Member States.²⁵

A two-year research project undertaken on behalf of the EU Directorate-General Justice in five jurisdictions (the Czech Republic, England and Wales, Ireland, Latvia, and Sweden) to mark the tenth anniversary of the adoption of the 2008 Framework Decision established that hate crime policy in the EU and the wider Council of Europe is only applied in a piecemeal fashion. They noted there is no overarching policy across Europe on hate crime, either from the perspective of the EU or the CoE although the OSCE has developed a number of policies in the area. These typically emerge from a desire to combat racism and only

²³ Cf. European Union Agency for Fundamental Rights, *Fundamental Rights Report 2018*, issued May 29, 2018, <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>, 67.

²⁴ Cf. *ibid.*, 68.

²⁵ European Union Agency for Fundamental Rights, *Fundamental Rights Report 2018—FRA Opinions*, issued May 29, 2018, <https://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018-fra-opinions>.

then are expanded to incorporate other forms of racism of which hate crime is one component they asserted.²⁶

The report authors added that police recording of hate crime data may be undermined by victims failing to communicate their experiences to the police, and that some states overstated their compliance with the Framework Decision in considering any “hate element” in sentencing defendants charged with hate crimes. These failures inevitably lead to under-recording of hate crimes, including those motivated by antisemitism.²⁷

The absence of policies, and the resultant piecemeal approach by states, is a perennial criticism by the FRA which annually reviews Member States’ progress in implementing the 2008 Framework Decision and the 2000 Racial Equality Directive. The agency noted that “in 2017 only 14 states had in place action plans and strategies aimed at combating racism and ethnic discrimination.”²⁸

There remain serious gaps in the collection of official data by law enforcement and other relevant authorities. According to the November 2017 FRA report, no data was available for eleven out of twenty-eight EU Member States. The ODIHR report published in the same month notes that only thirty-four out of fifty-seven states submitted official data, of which only twenty-three did so on antisemitism. The FRA observed that “few record antisemitism in a way that allows them to collect adequate official data.”²⁹ The lack of official records, coupled with victims’ hesitance to report incidents, contributes to the gross under-reporting of the extent and characteristics of antisemitism. This limits the ability of policy makers and other relevant stakeholders at all levels to assess the effectiveness of policies or to implement new initiatives. This, in turn, allows perpetrators to think that they can carry out such attacks with relative impunity. Victims who do not report their experiences to authorities also not receive the assistance that the 2012 directive mandates.

With regard to data collection, the FRA observed that the data that does exist is generally not compatible, not least because it is collected using different methodologies and from different sources. Although official data collection systems are generally based on police records or criminal justice data, authorities do not always categorize incidents motivated by antisemitism under that heading. The FRA therefore concluded:

²⁶ FRA, *Fundamental Rights Report 2018*, 68.

²⁷ Cf. J. Schweppe et al., *Lifecycle of a Hate Crime: Comparative Report* (Dublin: ICCL, 2018), <https://www.iccl.ie/wp-content/uploads/2018/04/Life-Cycle-of-a-Hate-Crime-Comparative-Report-FINAL.pdf>, 22.

²⁸ *Ibid.*, 25–27.

²⁹ FRA, *Fundamental Rights Report 2018*, 67.

The current state of official data collection is such that the present report can only provide an overview of the data available on antisemitism in EU Member States. Due to gaps in data collection and high levels of under-reporting, the data presented here cannot be taken as an accurate portrayal of the prevalence of antisemitism in any given EU Member State, nor should these data be used to compare the situation in different countries. Nevertheless, the data that do exist show that antisemitism remains an issue of serious concern and that decisive and targeted policy responses are needed to tackle this phenomenon.³⁰

Dissatisfied with states' lack of progress in measuring hate crime, the EC launched the EU High Level Group in June 2016. This followed the 2015 Annual Colloquium on Fundamental Rights on "Tolerance and respect: preventing and combating antisemitic and anti-Muslim hatred" and is designed to speed progress on priority issues. These are countering hate speech online and improving methodologies for recording and collecting data on hate crime. The membership of the group includes representatives of all the IGOs and states' national points of contact on hate crime.³¹

Four training schemes assist states to identify, investigate, and record hate crimes. ODIHR offers hate crime training courses for police officers and prosecutors, and the EU Agency for Law Enforcement Training (CEPOL) launched webinar-based courses in 2017. Important though they are, these involve only a minority of officers and prosecutors, and any learning takes time to trickle down to police officers on the streets.³² To reinforce these projects, the EC is now also funding "Facing All the Facts," a partnership between three national Jewish agencies (CEJI, CST, and CIDI), three national police agencies (those of the UK, Hungary, and Italy), and the OSCE, for police officers.³³ This originated, in

30 European Union Agency for Fundamental Rights (FRA), *Antisemitism-Overview of Data Available in the European Union 2006–2016*, issued November 2017, <https://fra.europa.eu/en/publication/2017/antisemitism-overview-data-available-european-union-2006-2016>, 5.

31 Cf. "A EU High Level Group on Combating Racism, Xenophobia and Other Forms of Intolerance," European Commission, Justice and Consumers, issued March 18, 2019, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51025.

32 Cf. OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Training Against Hate Crimes for Law Enforcement: Programme Description* (Warsaw: OSCE/ODIHR, 2012), <https://www.osce.org/odihr/tahcle>; idem, *Prosecutors and Hate Crimes Training: Programme Description* (Warsaw: OSCE/ODIHR, 2014), <http://www.osce.org/odihr/pahct>; "78/2016 Hate Crimes: Course Description," European Union Agency for Law Enforcement Training (CEPOL), issued 2016, accessed April 29, 2020, <https://www.cepol.europa.eu/education-training/what-we-teach/residential-activities/782016-hate-crimes>.

33 Cf. "Facing All the Facts," CEJI-A Jewish Contribution to an Inclusive Europe, issued 2017, accessed April 29, 2020, <http://www.facingfacts.eu/article/facing-all-facts-project-ready-start>.

part, in a project to enable Jewish communities to gather information on anti-semitism to the standards required by criminal justice authorities, and many communities' representatives have participated in it.

In yet another recent report by the FRA, its director notes that laws against hate crime are in place, as are enhanced penalties for crimes motivated by bias but that

There are two major catches. Only a fraction of victims report hate-motivated harassment and violence to the police. Moreover, even when they do, police officers do not always flag them as hate crimes. Some may not recognize certain incidents as stemming from prejudice. Others may simply lack the necessary practical tools, such as reporting forms, that allow racist motivation to be noted—or the inclination to provide information not always deemed obligatory. This means these hate crimes remain unidentified or unrecorded—and thus un-investigated, unprosecuted, unaccounted and, ultimately, invisible.³⁴

The other priority area is addressed by the EC Sub-Group on Countering Hate Speech Online, established in May 2016, which monitors the four largest social networks' application of the Code of Conduct on Countering Illegal Hate Speech Online.³⁵ In recognizing the substantial role played by social networks in promoting the spread of hate speech, including antisemitism, and their unwillingness to adhere to European legal norms, the EC seeks to monitor their efficiency and speed in removing illegal content brought to their notice by civil society organizations. The exercise is forcing the networks to strengthen their reporting systems, training their staff to recognize and act against illegal hate speech, and increasing their cooperation with civil society. A third monitoring exercise ran from mid-November to mid-December 2017, and although the results have yet to be published at the time of writing, a fourth is planned for the latter quarter of 2018, at which time it will also cover two smaller platforms which joined the process in 2018.³⁶

To assist the European Parliament and its Member States in confronting antisemitism, the European Parliament Working Group on Antisemitism was established in 2012. Among those who provide progress reports are the EC coordinator on combating antisemitism, who was appointed by the EC vice president and jus-

³⁴ European Union Agency for Fundamental Rights (FRA), *Hate Crime Recording and Data Collection Practice Across the EU*, issued June 19, 2018, <http://fra.europa.eu/en/publication/2018/hate-crime-recording>, 3.

³⁵ Cf. "Countering illegal hate speech online #NoPlace4Hate," European Commission, Justice and Consumers, issued March 18, 2019, accessed April 29, 2020, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300.

³⁶ Cf. *ibid.*

tice commissioner in December 2015. The coordinator serves as a dedicated contact point for Jewish communities. Developing overarching strategies, with a mission to produce tangible results, the coordinator has assisted members of the European Parliament in passing the April 2017 resolution and the IHRA Working Definition on Antisemitism, identifying funding streams for civil society organizations, and provides ongoing valuable advice.³⁷

States that have held parliamentary and other high-level inquiries into antisemitism have been able to identify the ways in which antisemitism manifests itself and the directions from which it comes, and to propose remedial action. The UK, Italy, Germany, and Norway have all held inquiries, and their value is enhanced when they are followed by regular reviews by government or parliament to ensure that recommendations are scrutinized and acted on. Holding governments to account is necessary if progress is to be made. Government action plans, aimed at combating hate crime and racism, likewise focus attention and provide measurement of progress.³⁸

Appointing high-level envoys charged with promoting action against antisemitism has likewise paid dividends. In the case of the UK, the envoy doubles as IHRA representative, and the German envoy previously served as his country's representative on IHRA.³⁹

Large scale surveys were designed to fill the gaps in knowledge left by the inadequacies of official data collection, and the 2013 FRA poll of 5,900 Jews' experiences of antisemitism in eight EU states revealingly demonstrated the limitations of official data collection on antisemitism. Its worrying conclusions were that 66 percent of respondents considered antisemitism to be a problem; 76 percent considered that antisemitism had worsened; 23 percent occasionally avoided Jewish events because they felt unsafe; 64 percent who had experienced physical violence or threats of violence did not report their experience to the police or

37 Cf. "Commission Appoints Coordinators on Combating Antisemitism and anti-Muslim Hatred," European Commission, Migration and Home Affairs, issued December 1, 2015, accessed April 29, 2020, https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151201_2_en.

38 See, for example, Home Office, *Action Against Hate: The UK Government's Plan for Tackling Hate Crime*, issued July 2016, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543679/Action_Against_Hate_-_UK_Government_s_Plan_to_Tackle_Hate_Crime_2016.pdf which is renewable every two years after a full review, and its references to funding action against antisemitism.

39 Cf. "Sir Eric Pickles announced as UK Envoy on Post-Holocaust Issues," UK Government, Foreign & Commonwealth Office, issued September 10, 2015, accessed April 29, 2020, <https://www.gov.uk/government/news/sir-eric-pickles-announced-as-uk-envoy-on-post-holocaust-issues>; "New Commissioner at the Federal Ministry of the Interior," Bundesministerium des Inneren, issued April 11, 2018, <https://www.bmi.bund.de/>.

any other organization; and 82 percent who had experienced discrimination did not report it. Equally concerning was the finding that 42 to 53 percent, depending on location, were not aware of legislation that protects Jews from such forms of discrimination.⁴⁰

A second survey with additional questions was launched in mid-2017 covering five more than the original eight states. Preliminary reports are due at the end of 2018, and it will be instructive to see if there have been any improvements in Jews' perceptions of their security, or trust in their states' law enforcement procedures following the initiatives described above.⁴¹

Following discussion at the High Level Group and based on the recommendations of the two sub groups on data collection and combating online hate, the FRA is now increasing its advice on best practices to enable states to improve their monitoring of hate crimes and to assist victims. Grouped around the theme that better recording of hate crime helps support victims, the FRA suggests that adoption of their advice will both enable policy makers to prioritise action against hate crime as well sending a message that hate crimes are not to be tolerated.⁴²

Among these are that states must collect detailed data on the various biases behind hate crime. Only fifteen Member States currently do so, but the information obtained enables them to monitor their responses and to build trust with victims of hate crime. A second recommendation is that Member States should conduct victimization surveys to understand the gap between official hate crime reporting and the perceptions and experiences of hate crime. The shocking revelation from the FRA Survey on Perceptions of Antisemitism was that 64 percent of victims of violent antisemitism did not report their attack to the police or any other body, and that 82 percent of victims of discrimination did not report. The two yearly large scale Crime Survey of England and Wales is used by the Home Office and other departments of state to evaluate and develop crime reduction policies as well as pinpointing the changing nature and levels of crime. The

40 Cf. European Union for Fundamental Rights (FRA), *Jewish People's Experience of Discrimination and Hate Crime in European Union Member States*, issued October 15, 2013, <http://fra.europa.eu/en/publication/2013/jewish-peoples-experience-discrimination-and-hate-crime-european-union-member>.

41 This article dates previous to the publication of the mentioned report. The report can now be found at: European Union Agency for Fundamental Rights (FRA), *Second FRA Survey on Discrimination and Hate Crime against Jews*, issued December 10, 2018, <http://fra.europa.eu/en/project/2017/second-fra-survey-discrimination-and-hate-crime-against-jews>.

42 Cf. "Better Records to Help Support Hate Crime Victims," European Union Agency for Fundamental Rights (FRA), Press Release, issued June 21, 2018, accessed April 29, 2020, <http://fra.europa.eu/en/press-release/2018/better-records-help-support-hate-crime-victims>.

UK is only one of nine Member States to conduct such polling and the assessment is that the gaps between what the police report and what victims report is substantial. FRA recommends that Member States should capitalize on civil society expertise and strengthen training and collaboration across a range of areas. This replicates the advice given in the OSCE Word into Action programme which was compiled using Jewish community expertise. Greater tolerance toward minority cultures is recommended as this will enhance the state authorities' understanding of hate crime. Finally, the police have to be trained to recognize and record the bias motive behind hate crime. Others have stressed the importance of first responders to a crime recording the victims or witnesses perception of bias in order to uncover the full nature of the crime.

Only by including the bias motive in any indictment that may follow can the courts assess the scale and motivation for the crime. Again it is only a minority of EU Member States that currently provide training although three programmes are currently on offer, as noted above.

To encourage states that have yet to overcome their reservations about collaborating with civil society or which otherwise need assistance, the FRA also publishes a Compendium of Practices, which states are free to incorporate into their own practices.⁴³

Conclusions

European institutions were slow to recognize that rising antisemitism was coming from new and different directions at the end of the twentieth century. However, they took note of the increase in racism and racist violence and began to legislate and adopt strategies to combat the threat. But it was only after Jewish leaders highlighted their concerns that antisemitism and antisemitic incidents were continuing to rise did they consider dealing with it as a separate human rights abuse. Thereafter several years elapsed before they developed their understanding and capacities to monitor it separately, and then construct policies to combat it.

It also took them some years to move forward from issuing worthy declarations and resolutions to taking effective action. Indeed, the resolutions and statements they have agreed upon have pushed them to recognize the necessity of taking action, as they cannot ignore the specific character and dangers of anti-

⁴³ Cf. "Compendium of Practices," European Union Agency for Fundamental Rights (FRA), accessed April 29, 2020, <https://fra.europa.eu/en/theme/hate-crime/compendium-practices>.

semitism. This has required both more holistic and focused responses than those required to combat other forms of racism.

It is a lengthy process to transpose European laws into domestic legislation. It requires parliamentary action, and governments might argue that they have had other more pressing concerns, but their progress is monitored by the EC which has the power to inspect the transposition of directives, and to hold governments to account. Some governments might be further impeded by the growth of right wing populism. Yet other barriers have been the reluctance of some states' authorities to work collaboratively with civil society, including Jewish communities. Again this issue was addressed in the 2012 Directive, the 2017 European Parliament resolution, and the Words into Action programme, all of which encourage states to utilise civil society expertise.

It is clear nevertheless that despite the enactment of European laws and the creation of agreements to protect Jewish communities and combat antisemitism, many barriers still remain at a national level. These are compounded by the perception that other communities' problems are more pressing, that absorbing millions of recent migrants require governments' attention, and that there are very few Jews in all but a few states.

Those states willing and able to apply the agreements in the manner intended nevertheless should seek to institutionalise them so that they do not fall by the wayside as governments' priorities change. Jewish communities will remain at risk until states prioritise the fight against antisemitism, and institute more informed and efficient protection for them.

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