European Commission

EU High Level Group on combating racism, xenophobia and other forms of intolerance

December 2017

SUBGROUP ON METHODOLOGIES FOR RECORDING AND COLLECTING DATA ON HATE CRIME

IMPROVING THE RECORDING OF HATE CRIME BY LAW ENFORCEMENT AUTHORITIES

KEY GUIDING PRINCIPLES

Justice and Consumers

This document is not legally binding and is intended for guidance only. It can therefore neither provide legal advice on issues of national law nor an authoritative interpretation of EU law, which remains within the sole remit of the Court of Justice of the EU.

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1. BACKGROUND AND PURPOSE OF THIS PAPER

The proper identification and recording of hate crime is the first step in ensuring that offences are investigated and, where necessary, prosecuted and sanctioned. Appropriate mechanisms thus need to be in place to enable law enforcement officials to identify the potential bias motivation of an offence, and to record that information on file. Having such mechanisms in place would also help ensure that victims and witnesses can report hate crimes to law enforcement authorities with confidence.[1]

There is a great degree of variation in the depth and breadth of hate crime recording and data collection mechanisms in EU Member States, as evidence gathered by the European Union Agency for Fundamental Rights[2] (FRA), the Office for Democratic Institutions and Human Rights[3] (ODIHR) and the European Commission against Racism and Intolerance[4] (ECRI) shows. Gaps in national recording mechanisms are recognised by practitioners as a serious obstacle to comprehensively addressing hate crime. There is therefore a consensus among them that hate crime recording and data collection systems need to be improved.

Acknowledging this, the EU High Level Group on combating racism, xenophobia and other forms of intolerance mandated FRA to facilitate a Subgroup on methodologies for recording and collecting data on hate crime.[5] While recognising the importance of reliable data collection and statistics to support the development of measures to counter hate crime,[6] the High Level Group agreed that the Subgroup's immediate focus of attention should be on identifying ways to improve the recording of hate crime by frontline law enforcement officers.[7]

The present paper was developed on the basis of exchanges of practices and discussions held within the Subgroup with regard to improving the recording of hate crime. The paper also builds on written input provided by participants to the Subgroup. This led to the identification of key guiding principles which, where properly implemented, could improve the recording of hate crime. The guiding principles presented in this paper are the outcome of systematic consultation, gathering input from representatives of relevant national authorities,[8] the European Commission, FRA, ODIHR, ECRI, and civil society organisations.[9]

The purpose of this paper is to provide authorities in EU Member States with a compilation of guiding principles that can assist law enforcement agencies in their efforts to improve hate crime recording mechanisms. In this context, the paper suggests concrete steps that Member States could take to put these principles into practice. Member States are encouraged to apply and build on these principles when identifying ways to improve their hate crime recording mechanisms, for example by considering how these principles can be included under their national legal frameworks and the organisational structures of their law enforcement agencies.

In this light, this paper is not legally binding and is intended for guidance. It aims to assist Member States in building the capacity of law enforcement to ensure effective

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[1] By analogy, the principles identified in this paper could be transposed to situations where victims and witnesses can report incidents directly to public prosecutors and judges, as is the case in some EU Member States.
[2] http://fra.europa.eu/en/theme/hate-crime.
[3] http://hatecrime.osce.org/what-do-we-know.
[4] See ECRI Country Monitoring Work https://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp.
[5] The Subgroup is facilitated by FRA and brings together representatives of relevant national authorities, the European Commission, ODIHR, ECRI, as well as umbrella civil society organisations.
[6] See also: www.osce.org/odihr/datacollectionguide.
[7] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=34255&no=5.
[8] These are representatives of police forces, ministries of the interior, ministries of justice, as well as of national councils for crime prevention.
[9] CEJI – A Jewish Contribution to an Inclusive Europe; the European Network Against Racism (ENAR); the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe).

implementation in practice of national legislation related to hate crime[10] and to the protection of victims of hate crime, including provisions transposing Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law[11] and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.[12] In this respect, this paper can assist Member States' efforts in setting in place non-legislative and policy measures to facilitate the achievement of the objectives of the above mentioned EU instruments.

The paper should be read in conjunction with other relevant strands of the work carried out by the EU High Level Group on combating racism, xenophobia and other forms of intolerance.[13]

2. INTRODUCTION TO THE KEY GUIDING PRINCIPLES

The identification by the Subgroup of key guiding principles for improving the recording of hate crime is based on the following premise, suggested by OSCE/ODIHR: "police officers may not recognize the signs that a crime is a hate crime and record it as such, or have the necessary recording mechanism or forms. It is, therefore, essential that measures are put in place to encourage victims to report and to improve their confidence in the system and to ensure that the police have the knowledge to identify and record hate crimes correctly."[14]

One of the principal conclusions of the Subgroup in this respect is that any mechanism with which to record hate crime must be grounded in the reality of the work of law enforcement officers and not put significant additional burden on them. Their responsibility should be to capture bias motivation of incidents adequately. This, in turn, would facilitate thorough investigation for eventual prosecution, as well as provide a basis for effective victim support.

Police record hate crime usually in a multiphase process that differs from country to country. Generally however, it involves three steps:

a) Identifying an incident as 'hate crime' by applying bias indicators.
b) Recording the information in an electronic database.
c) Investigating and reviewing.

In this context, the Subgroup considers that hate crime recording mechanisms should meet at least the following criteria in order to be effective:

- Standard operating procedures of law enforcement agencies must require police officers to pay attention to and provide them with tools to flag possible bias motivation.[15]
- Law enforcement officers must be able to use bias indicators to identify bias motivation.
- Law enforcement officers must be able to flag incidents as potential hate crimes and record any bias related information that might be useful to support further investigation.

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[10] In line with ECRI General Policy Recommendation No. 7, Member States are also invited to continue to adopt appropriate legal measures in combating hate crime.
[11] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0913.
[12] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029.
[13] See in particular *Hate crime training for law enforcement and criminal justice authorities: 10 key guiding principles* (February 2017), available at http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=30378&no=1 and *Ensuring justice, protection and support for victims of hate crime and hate speech: 10 key guiding principles (December 2017),* available at http://http//ec.europa.eu/newsroom/just/document.cfm?doc_id=48874.
[14] ODIHR (2014), *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide*, p. 11.
[15] National law enforcement authorities record hate crimes following different procedures. Generally, though, this is a multi-stage process that starts with the frontline police officer and continues with others who conduct further investigation collecting and recording more evidence.

Furthermore, the Subgroup suggests five key guiding principles that can lead to improving the recording of hate crime. The first three guiding principles concern organisational and structural aspects, namely:

- Cultivating a human rights culture within all law enforcement agencies in the EU.[16]
- Developing or adapting hate crime recording mechanisms to correspond to national needs and capacities.
- Cooperating actively with civil society organisations.

The next two guiding principles concern the operational level and relate to the day-to-day work of law enforcement officers:

- Defining and applying indicators to identify bias motivation.
- Reviewing law enforcement standard operating procedures to allow the flagging of incidents as potential hate crimes.

These guiding principles are examined in the following section.

3. KEY GUIDING PRINCIPLES TO IMPROVE RECORDING OF HATE CRIME

ORGANISATIONAL AND STRUCTURAL KEY GUIDING PRINCIPLES

✓ *Cultivating a human rights culture within law enforcement agencies*

The professional routines of law enforcement officers are heavily influenced by the prevailing organisational culture. In hierarchical systems, such as law enforcement agencies, the highest ranking officers will generally set the tone, which will be expected to be followed by lower ranking officers. A consensus emerged within the Subgroup that, in addition to political will, the higher levels of the law enforcement hierarchy must first grasp and acknowledge the importance of properly recording hate crimes, and then communicate its commitment to the rank and file.

This could be achieved through cultivating a culture of human rights within law enforcement agencies. The result would be that flagging a reported offence as a potential hate crime would not be seen as merely an 'additional reporting burden' by law enforcement officers at the time of recording, but as an essential component of tackling crime efficiently. This process should therefore be built into the professional routines of officers when they take statements from victims and witnesses. In other words, law enforcement officers at all levels of the hierarchy need to understand why it is important to properly record hate crimes in the first place. It is also important that the highest ranking officers understand that an increase in recorded hate crimes is a positive indicator for their efficiency and effectiveness and not merely an increase of actual crime levels.

In this context, the Subgroup considers training as an appropriate means through which to strengthen a human rights culture, including by addressing conscious or unconscious bias in law enforcement. A number of tools are available to Member States to assist them in developing, modifying or tailoring training programmes to suit their specific needs and national contexts. These include, among others, the 10 key guiding principles relevant to hate crime training for law enforcement officers identified by the High Level Group.[17] The European Union Agency for Law Enforcement Training also released an online training module on hate crime in September 2017.[18] This module aims to raise awareness of the specificity of hate crime among different ranks within law enforcement agencies. In addition, ODIHR can offer technical assistance to EU Member States through its dedicated

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[16] There is a variety of resources that provide guidance on aspects of human rights culture in law enforcement. For example, the UN High Commissioner for Human Rights has published a 'Pocket Book on Human Rights for the Police'; OSCE/ODIHR published 'Guidelines on Human Rights Education for Law Enforcement Officials', and ECRI adopted General Policy Recommendation No. 11 on Combating Racism and Racial discrimination in policing.

[17] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=30378&no=1.

[18] https://enet.cepol.europa.eu/moodle/mod/scorm/view.php?id=56810.

programme on *Training Against Hate Crimes for Law Enforcement* (TAHCLE).[19] EU-funded civil society organisations also cooperate actively with public authorities to build the capacity of law enforcement officials to acknowledge the specificity of hate crime, as is the case with the Facing all the Facts programme, for example.[20]

Against this backdrop, the Subgroup identified, as a potential activity, the development of a platform to enable the exchange of training programmes on hate crime as a potentially useful tool through which to improve the recording of hate crime. Such a platform would enable EU Member States where specific instructions, guidance documents or trainings on recording of hate crime are not available[21] to learn from EU Member States where these are in place.[22] Conversely, EU Member States where these are in place and publically available could learn from each other, as regards what they could do to improve existing instructions, guidance documents or trainings on recording of hate crime.

✓ *Developing or adapting recording mechanisms corresponding to national needs and capacities*

The Subgroup discussions revealed important differences in the operation of hate crime recording mechanisms across the EU.[23] The Subgroup acknowledges ODIHR's observation that recording mechanisms need to be "rooted in national experiences and based on a realistic assessment of available resources and current capacities".[24] This is also reflected in the Subgroup's conclusion that any procedures improving the recording of hate crime should not put a significant additional burden on law enforcement officers, but be hardwired as much as possible into their professional routines.

For these reasons, it would be beneficial that national law enforcement authorities make independent assessments of existing crime recording systems. This would enable them to identify any potential shortcomings in their systems as regards the identification of hate crime. Performing such self-assessments would help Member States determine:

- The extent to which they actually record hate crime;
- Whether different police forces record the same reality in the same way; and,
- What type of coordination, cooperation or data sharing there is between different police forces and the rest of the criminal justice system;
- What type of coordination, cooperation or data sharing there is between police forces and civil society organisations, where relevant and appropriate.

While law enforcement agencies remain best placed to identify gaps and inconsistencies in their own practices of recording hate crime, practical support can be provided by FRA and ODIHR to national authorities for conducting these assessments. This could be achieved, for example, through one-day workshops in the national language(s) of interested Member States conducted or facilitated by FRA and ODIHR on practices improving the recording of hate crime. Such workshops could be, as an indication, on the following:

- raising awareness of the need to properly record hate crimes;
- raising awareness of the usefulness of producing high quality data on hate crime;
- understanding existing hate crime recording and data collection frameworks;
- identifying gaps in these frameworks; and,

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[19] www.osce.org/odihr/tahcle.
[20] http://www.facingfacts.eu/.
[21] Member States that indicated that specific instructions, guidance or training on recording hate crime are not available there include: Austria, Belgium, Italy, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal and Romania.
[22] Member States that indicated that specific instructions, guidance or training on recording hate crime are available there include: Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Finland, France, Hungary, Ireland, Slovakia, Spain, Sweden and the United Kingdom.
[23] See also FRA (2012), Making hate crime visible in the European Union: acknowledging victims' rights. FRA will revise and update this report in 2018, providing detailed descriptions of hate crime recording and data collection mechanisms in place in the 28 EU Member States, as well as outlining how Member States cooperate with civil society organisations in these areas.
[24] ODIHR (2014), *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide*, p. 7.

- discussing practical steps to improve the national hate crime data framework.

Participants would include frontline police officers; police investigators; persons in charge of data entry into police databases; ministerial officials responsible for (hate) crime registration; representatives of relevant national human rights bodies; statisticians; and representatives of relevant civil society organisations that already conduct robust hate crime monitoring with transparent methodologies in cooperation with law enforcement.

Member States' law enforcement agencies differ in how they engage with civil society organisations. The next section looks specifically at this aspect.

✓ *Cooperating actively with civil society organisations*

The High Level Group highlighted that the engagement with civil society organisations can bring added value to the planning, preparation, delivery and evaluation of hate crime trainings for law enforcement[25] and that they play an essential role as providers of victim support services.[26] A consensus also emerged within the Subgroup that active cooperation with civil society organisations can be beneficial to ensuring that hate crime is recorded properly.[27]

Civil society organisations can provide support to victims of hate crime victims or represent population groups that are more likely to be targets of hate crime, such as migrants, Jews, Roma, LGBTI persons, etc. Civil society organisations that monitor hate crime robustly can provide valuable insights to law enforcement as regards the impact of hate crime on particular groups, as regards perpetrators or as regards the expectations of their constituencies for police protection.[28] Such organisations also often act as a bridge between victims of hate crime and law enforcement agencies, whether it concerns providing victim support or communicating the outcomes of police work back to their constituencies.

The Subgroup has identified a number of ways through which law enforcement agencies and civil society organisations can cooperate to improve recording of hate crime. These include, but are not limited to:

- Working together to encourage victims and witnesses to report hate crimes;
- Exchanging data and information about local patterns, perpetrators and victims of hate crime to improve community policing and further develop intelligence-based policing;
- Exchanging expertise to develop, refine and revise bias indicators;
- Working together to uncover the dark figure of hate crime;
- Cooperating in the development of instructions, guidance or training on recording hate crime.

The Subgroup would encourage Member States to set up frameworks of systematic and sustainable cooperation between law enforcement agencies, as well as other public authorities engaged in tackling hate crime, such as municipalities and relevant civil society organisations. Examples of existing frameworks of cooperation include:

- Regular information exchange meetings;
- Establishing working groups on how to improve the recording of hate crime;
- Developing data sharing agreements; or,
- Working towards comparable and compatible recording methodologies.

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[25] EU High Level Group on combating racism, xenophobia and other forms of intolerance (2017), *Hate crime training for law enforcement and criminal justice authorities: 10 key guiding principles*.
[26] EU High Level Group on combating racism, xenophobia and other forms of intolerance (2017), *Ensuring justice, protection and support for victims of hate crime and hate speech: 10 key guiding principles*.
[27] Member States that indicated some form of engagement between law enforcement agencies and civil society organisations include: Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Germany, Estonia, Finland, France, Hungary, Ireland, Italy, Luxemburg, Netherlands, Poland, Portugal, Romania, Sweden, Spain, United Kingdom.
[28] ODIHR (2014), *Hate Crime Data Collection and Monitoring: A Practical Guide*.

The specific form in which law enforcement agencies cooperate with civil society organisations should remain at the discretion of national authorities. The next section examines the more practical, operational aspects of the guiding principles.

KEY OPERATIONAL GUIDING PRINCIPLES

*In **Germany** and in **United Kingdom**, hate crime is flagged by using dedicated forms/fields. In **Sweden**, the electronic police reporting system includes a box which serves to remind police officers to ask about bias motives. In the process of filling in the box, a pop-up window comes up with the definition of what a hate crime is.*

✓ *Using indicators to identify bias motivation when recording hate crime*

The scope of Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law is restricted to race, colour, religion, descent or national or ethnic origin. Many EU Member States have, however, opted to include protection on other grounds in national legislation transposing the framework decision, sometimes also covering all of the grounds included in Article 21 of the Charter of Fundamental Rights of the European Union. [29]

Against this backdrop, the Subgroup considers that any information recorded by law enforcement officers when taking statements by victims or witnesses must be useful to support the investigation of offences. For that reason, law enforcement officers must be given the means to use indicators to identify bias, that is, "objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender's actions were motivated in whole or in part by bias, prejudice or hostility". [30]

Recognising this, some EU Member States have developed lists of bias indicators that police officers can use to identify the bias motivation underlying the reported offence. [31] A number of EU Member States include the perception of victims or witnesses that a reported offence is motivated by bias, prejudice or hostility in their lists of bias indicators. [32] Where this is the case, the officer's own perception that the offence is a potential hate crime could be included as a bias indicator, in line with ECRI's General Policy Recommendation 11 on combating racism and racial discrimination in policing. [33]

The Subgroup agreed that bias indicators could be used in law enforcement training on how to identify and record hate crimes. The emphasis would lie on providing guidance to officers on what they should actively look for to identify bias motivation in their investigations, e.g. when they take statements by victims and witnesses, as well as when they interrogate alleged perpetrators.

*In **Spain**, there is list of 15 bias indicators guiding police investigations, including the victim´s perception, the membership of the victim to a specific community or minority group, racist, xenophobic or homophobic expressions uttered by offenders when committing a crime or tattoos or use of symbols of racist or extremist ideology by the offender.*

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[29] See FRA (2012), *Making hate crime visible in the European Union: acknowledging victims' rights*.
[30] ODIHR (2014), *Hate Crime Data Collection and Monitoring: A Practical Guide*.
[31] Member States that indicated this to be the case include: Croatia, Cyprus, Estonia, Finland, Germany, Hungary, Ireland, Poland, Slovakia, Spain, Sweden, and the United Kingdom.
[32] Member States that indicated this to be the case include: Cyprus, Finland, Ireland, Spain, Sweden and the United Kingdom.
[33] www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N11/e-RPG%2011%20-%20A4.pdf.

✓ *Flagging potential hate crimes when they are reported*

At the operational level, the Subgroup sought to identify simple and practical solutions to improve the recording of hate crime that would not put a significant additional burden on the day-to-day work of police officers. This could be achieved by including the possibility to flag an offence as a potential hate crime when it is reported, which would aid its investigation. This could be achieved either by including a dedicated check box in the general crime reporting form, or by using a dedicated form to record relevant information on those offences that the officer involved considers could potentially be hate crimes. Some Member States have already established such systems, where flagging potential hate crimes is compulsory and integrated in the general crime reporting form.[34] Other EU Member States include the possibility of flagging potential hate crimes in the general crime reporting form optionally.[35]

*In **Croatia** police officers use a generic form. If a hate crime is identified, police officers will put a mark in the corresponding electronic form of the information system. After marking the case as a hate crime, an additional form appears in order to insert data on motive, victim, perpetrator's conduct etc.*

Yet in other Member States, there is at present no possibility of flagging potential hate crimes at the moment of reporting.[36] The specific system used by law enforcement agencies to flag potential hate crimes will be determined and developed by national authorities. The Subgroup could assist in this regard by facilitating the sharing of experience on different national systems with a view to improving the current situation.

[34] For example, Finland, Sweden, Slovakia and the United Kingdom.
[31]For example, Belgium, Croatia, Cyprus, Denmark, Estonia, France, Germany, Ireland, Poland, Portugal and Spain.
[36] For example, Austria, Czech Republic, Hungary, Italy, Lithuania, Luxemburg, Malta, Netherlands and Romania.