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Delegations will find attached Commission document SWD(2014) 27 final.

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EUROPEAN
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Brussels, 27.1.2014
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COMMISSION STAFF WORKING DOCUMENT

**National transposition measures and Data on application of the Framework Decision
submitted by the Member States**

Accompanying the document

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of Council Framework Decision 2008/913/JHA on combating
certain forms and expressions of racism and xenophobia by means of criminal law**

{COM(2014) 27 final}

1. National transposition measures

Member State	National transposition measures communicated to the Commission under Article 10	Date of adoption
Belgium	Loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie	30/07/1981
	Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination	10/05/2007
	Loi du 23 mars 1995 tendant à réprimer la négation, la minimisation, la justification ou l'approbation du génocide commis par le régime national socialiste allemand pendant la seconde guerre mondiale	23/03/1995
	Loi du 15 février 1993 créant un Centre pour l'égalité des chances et la lutte contre le racisme	15/02/1993
	Code pénal	08/06/1867 Amended through Act 1999-05-04/60; Act 2003-01-23/42; Act 2007-05-10/35
	Titre préliminaire du Code de procédure pénale	05/05/1878 (latest amendment 12/11/2013)
	Code d'instruction criminelle	17/11/1808 Amended through Act 10-07-1967; Act 1998-03-12/39; Act 1999-05-04/60; Act 2003-01-06/34; Act 2005-12-27/34;
	Constitution	Coordinated on 17/02/1994
Bulgaria	Наказателен кодекс на Република България	27/05/2011 (entry into force)
	Закон за административните нарушения и наказания	27/05/2011 (entry into force)

	Наказателно-процесуален кодекс	Effective 29/04/2006, last amended 23/12/2008
Czech Republic	Zákon číslo 40/2009 Sb. trestní zákoník ve znění zákona č. 306/2009 Sb.	01/01/2010 (entry into force)
	Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád) ve znění zákona 306/2009 Sb.	01/01/1962 (entry into force)
	Zákon č. 40/1964 Sb., občanský zákoník	01/01/1965 (entry into force)
	164/1947 Sb. Dohoda sjednaná vládou Spojeného království Velké Británie a Severního Irska, vládou Spojených států amerických, Prozatímní vládou Francouzské republiky a vládou Svazu sovětských socialistických republik o stíhání a potrestání hlavních válečných zločinců evropské osy	08/08/1945 (entry into force)
	Usnesení předsednictva České národní rady č. 2/1993 Sb., o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku České republiky	28/12/1992 (entry into force)
	Zákon č. 418/2011 Sb., o trestní odpovědnosti právnických osob a řízení proti nim	01/01/2012 (entry into force)
Denmark	Straffeloven	Consolidated version published by Order No 1034 of 29/10/2009
	Lov om rettens pleje or retsplejeloven	Consolidated version published by Order No 1053 of 29/10/2009
Germany	Strafgesetzbuch	16/12/2010
	Gesetz über Ordnungswidrigkeiten	29/07/2009
	Gesetz zur Regelung des öffentlichen Vereinsrechts	21/12/2007
Ireland	Prohibition of Incitement to Hatred Act 1989	29/11/1989
	Non-Fatal Offences Against the Person Act 1994	19/05/1997
	Petty Sessions (Ireland) Act 1851	07/08/1851
	Criminal Law Act 1997	22/04/1997
	Interpretation Act 2005	17/10/2005
Estonia	Karistusseadustik	06/06/2001

	Kriminaalmenetluse seadustik	12/02/2003
	Eesti Vabariigi põhiseadus	28/06/1992
	Meediateenuste seadus	16/12/2010
Greece	Συντάγματος	Constitution
	Νόμος 927/1979	25/28/06/1979
	Νόμος 3304/2005	
	Ποινικού Κώδικα	Criminal Code
Spain	Ley Orgànica 10/1995, de 23 de noviembre, del Código Penal y Ley Orgànica 5/2010	23/11/1995
	Ley Orgànica 6/1985, de 1 de julio, del Poder Judicial	01/07/1985
France	Code pénal	01/01/2014 (consolidated version)
	Loi du 29 juillet 1881 sur la liberté de la presse	29/07/1881
Croatia	Kazneni zakon (KZ) (OG 125/11, 144/12)	21/10/2011 (last amended 19/12/2012)
	Zakon o kaznenom postupku (ZKP)	15/12/2008 (last amended 04/12/2013)
	Zakon o odgovornosti pravnih osoba za kaznena djela	11/09/2003 (last amended 07/12/2012)
Italy	Legge 9 ottobre 1967, n. 962, Prevenzione e repressione del delitto di genocidio	09/10/1967
	Legge 13 ottobre 1975, n. 654, Ratifica ed esecuzione della convenzione internazionale sull'eliminazione di tutte le forme di discriminazione razziale	13/10/1975
	Decreto legge 26 aprile 1993, n. 122, Misure urgenti in materia di discriminazione razziale, etnica e religiosa	26/04/1993
	Codice penale	19/10/1930 (last amended 15/10/2013)
Cyprus	ΝΟΜΟΣ ΓΙΑ ΤΗΝ ΚΑΤΑΠΟΛΕΜΗΣΗ ΟΡΙΣΜΕΝΩΝ ΜΟΡΦΩΝ ΚΑΙ ΕΚΔΗΛΩΣΕΩΝ ΡΑΤΣΙΣΜΟΥ ΚΑΙ ΞΕΝΟΦΟΒΙΑΣ ΜΕΣΩ ΤΟΥ ΠΟΙΝΙΚΟΥ ΔΙΚΑΙΟΥ	21/10/2011 (entry into force)
Latvia	Law on Crime (Criminal Law)	17/06/1998

	Criminal Procedure Law	21/04/2005
Lithuania	Lietuvos Respublikos Baudžiamasis Kodeksas	26/09/2000
Luxembourg	Code pénal	19/07/1997
	Code de procédure pénale	09/12/1808 (last amended 29/03/2013)
Hungary	A Büntető Törvénykönyvről szóló 1978. évi IV. törvény (Btk.)	31/12/1978 (entry into force)
	A Jogi személlyel szemben alkalmazható büntetőjogi intézkedésekről szóló 2001. évi CIV. törvény (Jszbt.)	
	A Büntetőeljárásról szóló 1998. évi XIX. törvény (Be.)	10/03/1998
Malta	Kodiċi Kriminali	10/06/1854 (amended by ACT No. XI of 17/07/2009)
Netherlands	Wetboek van Strafrecht	03/03/1881 (amended 09/12/2004)
	Wetboek van Strafvordering	
	Burgerlijk Wetboek	
Austria	Strafgesetzbuch	23/01/1974 (latest relevant amendment 27/06/2012)
	Verbandsverantwortlichkeitsgesetz	28/09/2005 (latest relevant amendment 05/12/2007)
	Verbotsgesetz 1947	08/05/1945 (latest relevant amendment 27/02/1992)
	Austrian Code of Criminal Procedure	30/05/1990 (latest
Poland	Kodeks karny	02/04/1997
	Kodeks postępowania karnego	06/06/1997
	Ustawa z dnia 28 października 2002 r.o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary	28/10/2002
Portugal	Código Penal Português	15/02/1929 (latest amendment 19/04/2013)

	Lei 109/2009	15/09/2009
Romania	Legea 286/2009	24/07/2009
	Legea 187/2012	12/11/2012
Slovenia	Kazenski zakonnik	01/11/2008 (latest amendment 02/11/2011)
	Zakon o odgovornosti pravnih oseb za kazniva dejanja	21/11/2005
	Zakon o kazenskem postopku	01/01/1995 (entry into force)
Slovakia	Trestný Zákon 300/2005	20/05/2005 (latest amendment 26/07/2012)
	Zákon 262/2011 pozmeňujúci zákon 301/2005	13/07/2011
Finland	Rikoslaki	Last amendment 13/05/2011
Sweden	Den svenska brottsbalken	01/01/1965 (entry into force)
	Den svenska rättegångsbalken	01/01/1948 (entry into force)
United Kingdom	Public Order Act 1986	07/11/1986
	Accessories and Abettors Act 1861	06/08/1861
	Criminal Procedure (Scotland) Act 1995	08/11/ 1995
	Crime and Disorder Act 1998	31/07/1998
	Criminal Justice Act 2003	20/11/2003
	Criminal Law (Consolidation) (Scotland) Act 1995	08/11/1995
	Criminal Justice (Scotland) Act 2003	20/02/2003
	Criminal Justice and Licensing (Scotland) Act 2010	30/06/2010
	Police, Public Order and Criminal Justice (Scotland) Act 2006	25/05/2006
	Interpretation Act 1978	20/07/1978
	Insolvency Act 1986	25/07/1986
	Proceeds of Crime Act 2002	24/07/2002
	Serious Crimes Act 2007	30/10/2007
	Public Order (Northern Ireland) Order 1987	18/03/1987
	Criminal Law Act (Northern Ireland) 1967	01/08/1967

	Criminal Justice (No 2) (Northern Ireland) Order 2004	27/07/2004
	Interpretation Act (Northern Ireland) 1954	21/12/1954
	Magistrates Court (Northern Ireland) Order 1981	24/11/1981
	Crimes Act 2011 (Gibraltar)	14/04/2011
	Criminal Procedure and Evidence Act 2011 (Gibraltar)	14/10/2011
	Gibraltar Constitution Order 2006	14/12/2006
	Transnational Organised Crime Act 2006 (Gibraltar)	20/04/2006

2. Data on application of the Framework Decision submitted by the Member States

Information on the number of incidents reported, cases prosecuted and cases sentenced is essential in order to understand the practical application of the Framework Decision. However, as recurrently reported, data collection on hate speech and hate crime is not uniform in the EU and thus not sufficient for reliable cross-country comparisons.

Limited data collection in a Member State (where few incidents are reported, recorded and prosecuted) can be an indicator that hate crimes are not effectively tackled. The Commission asked all Member States to provide it with figures about the incidence of and the criminal response to hate speech and hate crime. BE, CZ, DK, DE, IE, FR, LV, LU, HU, AT, PL, RO, SI, SK, FI, SE and UK have submitted these data:¹

- In BE the police registered 860 cases of incitement to discrimination, hatred or violence in 2011 and 432 cases in the first half of 2012. A total of 726 cases of racism and xenophobia (including hate speech, hate crime and discrimination) were reported to the prosecutor in 2012, and 66 judgments (49 of which were convictions, 4 acquittals and 8 suspensions) were passed.²
- In CZ, 4 persons were convicted in 2011 for ‘encouragement to hatred against a group of people or to restrict their rights and freedoms’ and 2 persons were convicted for committing the same offence in 2012. No figures were provided as regards cases reported or prosecuted.
- DK registered 38 cases of hate speech reported in 2011, 19 prosecutions, and 5 convictions. As for 2012, 36 cases were reported, and there were 15 prosecutions and 6 convictions.³
- Police forces of the Länder registered a total of 1605 cases of incitement to hatred or violence in 2011 in DE. Judgment was passed in 400 cases, 265 individuals were convicted. 1733 cases were registered by police forces in 2012 but there are no statistics available on their criminal follow-up yet.⁴
- IE reports that there were 142 racially motivated incidents in 2011 and 98 in 2012. It has not submitted data on prosecutions or judgments passed.⁵ As regards specifically the offence of ‘incitement to hatred’, there were no incidents recorded in 2011 and there were 11 recorded in 2012.

¹ Each Member State uses different legal terms. In this overview the terms used have the following definitions. Judgment means a judicial decision taken by a court, Conviction means that the accused person was found guilty of the crime. Acquittal means that the accused person was not found guilty and was discharged. Prosecution means the conducting of legal proceedings against someone.

² Rapport Annuel 2011, ‘Discrimination/Diversité’, Centre pour l’égalité des chances et la lutte contre le racisme.

³ Statistics extracted from the police computer systems (POLSAS).

⁴ These data are (partly) based on the ‘report on the protection of the constitution’. The statistics refer to crimes against the state and are not comparable to criminal prosecution statistics.

⁵ Statistics can be found at the website of the Office for the Promotion of Migrant Integration.

- FR reports an 82% rate of criminal response to incidents of racism, xenophobia and antisemitism in 2012, and 431 convictions in 2011 for offences related to racism, antisemitism and discrimination.⁶
- In LV criminal prosecution was started against 3 persons in 2011 and 2 persons in 2012 for ‘provocation of national, ethnic or racial hatred’.⁷ For this crime a total of 11 persons were tried between 2011 and 2013. No persons were tried for ‘incitement of religious hatred’.⁸ Information with regard to convictions/acquittals was not submitted.
- LU refers to 3 judgments on cases of hate speech in the period 2011-2013, 2 resulting in convictions and 1 acquittal.
- HU has reported that in 2011, 101 ‘hatred crimes’ were registered and there were 40 prosecutions. In 2012, 105 ‘hatred crimes’ were registered and there were 24 prosecutions. Most of the prosecutions in the period 2011-2013 did not result in convictions.
- AT registered in 2011, as regards the offence of incitement, 10 prosecutions, 6 convictions, 1 acquittal and 1 pre-trial diversion. In 2012 there were 17 prosecutions, 2 acquittals, and 2 pre-trial diversions; a different source registered 10 convictions in cases where this was the leading offence. As regards the offence of denying, grossly trivialising, approving or justifying National Socialist genocide or other Nazi crimes against humanity, in 2011 there were 78 prosecutions, 45 convictions, 7 acquittals and 10 pre-trial diversions. In 2012 there were 65 prosecutions, 9 acquittals and 5 pre-trial diversions. A different source registered 58 convictions where this was the leading offence.
- PL registered 323 criminal proceedings on hate speech and hate crime, 40 prosecutions and 20 convictions. In 2012, 473 criminal proceedings were registered, 75 prosecutions and 34 convictions.
- RO registered 25 cases of ‘incitement to racial / national hatred’ in 2011, leading to no prosecution. There were 66 cases registered in 2012, again leading to no prosecution. Four judgments were rendered on this offence in 2012.
- SI reports that there were 5 prosecution proposals and 4 convictions in 2011, as well as 17 prosecution proposals and 16 convictions in 2012, under the offence of ‘inciting or provoking to hatred, violence or intolerance’.
- According to statistics submitted by SK, there were 11 judgments in 2011 and 6 in 2012 on offences corresponding to Article 1 of the Framework Decision. As regards crimes with a racist or xenophobic motivation, the aggravating circumstance was applied in 16 cases in 2011 and a further 16 in 2012.

⁶ Rapport 2012 sur la lutte contre le racisme, l’antisémitisme et la xénophobie, Commission nationale consultative des droits de l’homme.

⁷ Statistics provided by the Prosecutor’s office.

⁸ Statistics provided by the Court Administration.

- FI registered 11 incidents ‘suspected’ of constituting ‘ethnic agitation’ in 2011, 3 prosecutions and 1 conviction. In 2012 there were 4 prosecutions and 6 convictions under this offence. The police also registered 175 cases of defamation and 153 cases of menace ‘suspected’ of having a racist motivation. However there are no statistics showing the level of prosecution and judgments passed in cases of defamation and menace with a racist motivation.⁹ The provision on racist and xenophobic motivation as an aggravating circumstance has been applied so far in approximately ten cases per year.
- SE identified just over 5490 hate crimes in 2011, 72% of which had a racist or xenophobic motivation and 12% an anti-religious (Islamophobic, anti-Semitic, Christianophobic and others) motive. In March 2012, 70% of identified hate crimes (principal offence) reported in 2010 had been cleared up. 7% were personally cleared up, 63% of the cases were cleared up technically and 30% were, at the end of March 2012, unresolved.¹⁰
- UK:
 - Cases where incitement (‘stirring up hatred’) was the main offence:
 - a) *England and Wales*: in 2011/2012, the Crown Prosecution Service (CPS) recorded 17 charges for this offence, resulting in 13 convictions and 4 acquittals. The number of cases charged and reaching a first hearing in the magistrates’ courts was 30 in 2011 and 23 in 2012 (excluding possession). The Ministry of Justice recorded 9 persons convicted of this offence in 2010 and 6 in 2011 (excluding hatred on grounds of religion).¹¹
 - b) *Scotland*: 0 proceedings were recorded in 2010/11 for this offence, and 1 proceeding in 2011/12, resulting in a conviction.
 - Cases where hate crime was the main offence:
 - a) *England and Wales*: in 2010/2011, 31 486 racially and religiously aggravated offences were recorded by the police. In 2011/2012 the number of hate crime cases referred to the CPS by the police for a charging decision was 14 781. The most commonly prosecuted crimes in 2011/2012 were offences against the person (49.5%) and public order offences (31.5%). In this period there were also 12 367 completed prosecutions; 10 412 convictions with 84.2% successful outcomes; 12 357 racist hate crime defendants referred to the CPS for charging

⁹ These are the provisions used in FI for cases of hate speech against individuals, whereas the offence of ‘ethnic agitation’ is applied where the victim is a group.

¹⁰ Swedish National Council for Crime Prevention (Brottsförebygganderådet - Brå): Hate crime 2011 (Statistics on police-reported offences with an identified hate crime motive. A summary of report no. 2012:7).

¹¹ Crown Prosecution Service (CPS): Annual Report on hate crime and crimes against older people for 2011/2012 (October 2012). The CPS data cannot be directly compared with the Ministry of Justice data, because they relate to different time periods and because different cases progress through the criminal justice systems at different rates.

decision by the police; 11 774 racist offences prosecuted, of which 84.4% were successful, and 76.3% of all successful outcomes involved convictions; 415 cases motivated by hostility on grounds of religion referred to the CPS by the police; 593 cases involving religiously aggravated hostility prosecuted, of which 80.8% were successful, and 71.2% of successful outcomes were due to convictions; the principal offence categories for racial and religious hate crimes are offences against the person (49.6%) and public order offences (32.5%). The number of racially and religiously aggravated offences charged and reaching a first hearing in the magistrates' courts was 14815 in 2011 and 24535 in 2012. The Ministry of Justice recorded 2731 judgments for racially and religiously aggravated offences in 2010 and 950 in 2011 (excluding the basic offences).

- b) *Scotland*: for racially aggravated conduct, 1022 persons were prosecuted in 2010-2011 (with 839 convictions) and 1083 (with 898 convictions) in 2011-2012. However, a different source recorded 759 persons prosecuted (with 614 convictions) in 2010-2011 and 797 (626 convictions) in 2011-2012.
- c) *Northern Ireland*: in 2010-2011, there were 298 prosecutions for offences with racial and religious hostility motivation, of which 51 were for an indictable conviction and 247 for a summary conviction. In 2011-2012, 332 prosecutions were brought for offences with racial and religious hostility motivation, of which 68 were for an indictable conviction and 264 for a summary conviction.