TO THE MEMBERS OF THE COUNCIL WORKING PARTY ON FUNDAMENTAL RIGHTS AND FREE MOVEMENT OF PERSONS (FREMP)

Brussels, 15 November 2013

Subject: Council conclusions on combating hate crimes

Dear members of the FREMP working party,

Amnesty International and Social Platform welcome the Council's engagement on combating hate crime and the leading role played by the Irish and Lithuanian Presidencies in prioritising this issue.

Hate crimes are a form of discrimination as victims are targeted on the basis of an identity-related characteristic such as race, ethnicity, sexual orientation, gender identity, religion or belief, disability or age. Hate crimes have detrimental consequences, not only for individual victims but also for the wider groups or communities that targeted victims are associated with. More generally, hate crimes threaten the very foundations of the European Union which is based on the equal enjoyment of human rights by all.

In view of the meeting of the FREMP working party on 21 November, our organisations would like to submit the following recommendations for consideration when discussing the draft Council conclusions on combating hate crime.

- The Council conclusions should clearly acknowledge that, in order to effectively combat hate crime, the EU must adopt a comprehensive approach that looks beyond judicial cooperation and 'joins the dots' between criminal justice, non discrimination and human rights. Policy and legal responses to hate crimes should be part of a broader and ambitious EU policy aimed at combating all forms of discrimination.

- The conclusions should further acknowledge the need for the EU to adopt new binding instruments to address some of the obvious protection gaps under the current legal framework. In particular:

    - The EU should go beyond the current scope of the Framework Decision 913/2008/JHA in order to provide protection against hate crimes perpetrated on all the grounds included in Article 21 of the European Union Charter of Fundamental Rights;

    - Provisions on hate crimes should include reference to investigation and prosecution practices to ensure that any alleged hate motive behind the perpetration of a crime is unmasked and thoroughly taken into account in these phases. It is the hate

motive that sets hate crimes apart from other crimes; authorities have the duty to effectively unmask any such motive.

Our organisations believe that EU Treaties do provide some legal basis for such legislation building on the strong provisions (art.21 Charter, art. 10 TFEU, art. 19 TFEU) and the existing legal framework on non discrimination combined with EU competence in the area of criminal law (See Article 83 (2) on definitions and 82 (2)(d) TFEU on procedural aspects) or with the subsidiary legal basis of article 352 TFEU.

The EU policy aimed at combating hate crimes will not be effective until comprehensive and strong legislation is adopted as a first step to empower, strongly and equally throughout the Union, all the actors involved in combating hate crime, including the victims themselves and the civil society groups that support them.

- The conclusions should also stress that new legislative initiatives need to go hand in hand with the effective implementation of existing relevant instruments. In particular, detailed guidelines on the protection and rights of victims of hate crime should be elaborated in the context of the transposition of the Victims Directive by member states. Furthermore, hate crime should be taken into due consideration in monitoring member states' implementation of their obligations under the Equality Directives.

Our recommendations are very much in line with the conclusions of the Fundamental Rights Conference on hate crime that took place in Vilnius on 12-13 November. We are hopeful that they will be reflected in the Council conclusions in December and translated into concrete action in the next year. We were encouraged to hear at the Conference in Vilnius that the Greek Presidency has committed to follow up this issue and we look forward to continuing dialogue and collaboration with the Council.

Yours sincerely,

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