

The European Union's Tools to Address Antisemitism

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What does the EU's combatting antisemitism policy tell us about European integration and how EU institutions can push forward a democratizing agenda related to antidiscrimination within member states? This article examines "competence creep" within the EU as it relates to addressing antisemitism and the EU's increasing focus on values. Values are what define a polity. Although European identity has been elusive, EU institutions and particularly the Commission have messaged that the EU is not simply a liberal economic project, but also democratically liberal, upholding values related to equality, justice and inclusion. Historically, antisemitism has been a key tool for antidemocratic forces to undermine democracy. Exclusion and repression of the Jewish community over centuries culminated in the genocide of six million Jews in the last century, making combating antisemitism an important issue to be addressed Europe-wide.

Since 9/11 antisemitism has been on the rise in Europe and the covid epidemic and social media have only exacerbated the situation (Anti-Defamation League 2021; Directorate-General for Justice and Consumers et al. 2021; Elman 2015). Social policies, like combating antisemitism, have tended to be weaker at the EU level, and member states have also had rather weak or no policies to address antisemitism. However more recently, the EU has used both legal and other policy mechanisms to address antisemitism. The following will examine the tools the EU is employing to address antisemitism and how the EU uses hard and soft law. In doing so, the EU has become more federal in nature, utilizing a multi-level government approach, as well as engaging civil society to achieve their goals both projecting liberal values and staving off antisemitism.

The EU's engagement to address antisemitism has been a multi-pronged approach both centralizing and decentralizing policy initiatives at the EU and national levels, while engaging civil society to ensure better policy construction and implementation. The original treaties did not give much competencies to the EU outside of the free market. Scharpf (2002) points out, there has always been an asymmetry between economic integration and integration of social policies. Over time, however, the EU has expanded into more policy areas and 'competence creep' is constantly occurring in the EU as no issue can be isolated from European integration

(Garben 2019). Beginning with the Amsterdam Treaty, the subsequent Lisbon treaty with the inclusion of the Charter of Fundamental Rights and earlier directives such as the Racial Equality Directive (RED) of 2000 and the Council Framework Decision [2008/913/JHA](#) combating certain forms and expressions of racism and xenophobia by means of criminal law (2008 Council Framework), policy creep into antidiscrimination became possible as the issue was expanded into EU hard law, which also enabled expansion into soft law.

Hard law refers to EU laws that are binding upon member states and can be “invoked in court as standards for review” (Kantola and Nousiainen 2012, 36). For instance, infringement proceedings for member states non-compliance with a directive would be an example of hard law. Soft law, on the other hand, refers to “recommendations, co-regulation, voluntary sectoral agreements, benchmarking, peer pressure, networks and the open method of co-ordination” (Senden 2006, 3). Soft law is where many tools to address anti-discrimination have emerged and is a way for the EU to shape member state agendas and policies related to anti-discrimination (Kantola and Nousiainen, 2012). Depending on the usage of hard or soft law also determines if the policy is being centralized at the EU level or decentralized at the member state level, or put into the hands of civil society.

To address antisemitism, the EU has incorporated both hard and soft law mechanisms to create a stand-alone policy on antisemitism. In the past, the EU and member states dealt with antisemitism as part of larger anti-racism policies. However, with the violent and deadly attacks in 2015 against Jewish targets and the rise of antisemitism related to conspiracy theories and holocaust distortion in the context of covid-19, the EU took a more targeted approach to address the singularity of antisemitism (Dudek 2022; Whine 2022). In 2021, the Commission unveiled its first comprehensive strategy to combat antisemitism. The strategy laid out several tools the EU, member states and NGOs could employ to address antisemitism and foster Jewish life. Unique to this policy is fostering Jewish life, which supports the vibrancy of a living breathing Jewish community today, as well as addressing antisemitism and ills of the past, such as the Holocaust.

To contend with antisemitism, the EU is employing prior legal and policy avenues it created to address racism, xenophobia, hate speech and hate crimes. As will be demonstrated, although the EU had created mechanisms in the past, they were not fully utilized. The current policy to address antisemitism is multi-pronged, shows a willingness to revisit legal mechanisms

that laid dormant, as well as a creation of a new policy strategy to seriously address the concerns of Europe's Jewish community. The policy is quite new, so it is impossible to measure its effectiveness yet, but the initiatives and mechanisms being used suggest a significant change from the past, which ignored rising antisemitism since 2001 (Elman 2015; Whine 2022).

The main tools the EU has to address antisemitism include hard law such as infringement procedures and the Digital Services Act (DSA) and soft law such as “the code of conduct”, which has been strengthened with the subsequent DSA, mainstreaming and the creation of national strategies.¹ The following will examine the development of antisemitism policy examining the legal basis for the EU to address antisemitism and the various hard and soft law tools created that can address antisemitism, other policy initiatives such as education and training and how those tools affect the federal nature of the EU.

The EU legal basis to address antisemitism

The legal underpinnings for the EU to protect Europe's Jewish citizens and to develop policies to address antisemitism stem from the Amsterdam Treaty and the Charter of Fundamental Rights. In the Amsterdam Treaty Article 13 states that

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

Following Article 13, was the creation of the Racial Equality Directive (RED) in 2000, which was to create a “framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.” (Council Directive 2000/43/EC of 29 June 2000). Directive 2000/43/EC, *implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, lays down a framework to protect against discrimination. European Jews, as an ethnic minority have protection under this directive. Givens and Case (2014) explain that the RED came about due to racist ant-immigration sentiment and as a response to the rise of the radical

¹ Not all member states have created national strategies. So far 16 member states have.

right, in particular the 2000 election in Austria which brought Jörg Haider's radical right Freedom Party into a coalition government.

In addition to Article 13 and the RED, the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law also established standards by which Jews, as a religion and "race" could be protected under EU law and thus the 2008 Framework became a basis for further EU policy related to antisemitism, as is cited in later Council decisions on antisemitism (Council of the European Union 2008, 2018).

Furthering protections against antidiscrimination, of which antisemitism could be understood, was codified in the Charter of Fundamental Rights (CFR), which became enshrined in the Lisbon Treaty in 2009 and reinforced the EU's legal responsibility regarding anti-discrimination and religious freedom with the following articles:

Article 1: "Human dignity is inviolable. It must be respected and protected."

Article 3: "Everyone has the right to respect for his or her physical and mental integrity."

Article 10: Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 21: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

Within the CFR in Article 51 the EU is to "respect(ing) the limits of the powers of the Union as conferred on it in the Treaties". Over time, this delineation of conferral powers, or the ability of powers to be delegated to the EU or reserved at the member state level have become much more blurred, making the EU more likened to a federal system.

The CFR protects against discrimination based on religion and protects religious freedom. Thus, the CFR enshrines in the Lisbon Treaty the legal basis and policy space for the EU to address antisemitism. Yet, politics has played a role in shaping how combating antisemitism policy has been shaped. In particular, when and how legal instruments have been deployed as well as how they are deployed is not just about law, but how EU institutions, namely the Commission, working with civil society, have shaped the policy based upon a legal basis that has developed over time, particularly in the past twenty or so years.

Since antisemitism expresses itself in many ways and in many arenas, so too have the policy initiatives to address antisemitism emerged across different policy areas utilizing various tools and engaging EU, national, subnational and civil society actors to play a role in building the policy that has been weak within many member states and at the EU level. Much of building this policy has emerged from the Commission, working with civil society to define, and identify antisemitism and to construct a policy to protect and foster an ever-declining Jewish population in Europe (Directorate-General for Research and Innovation (European Commission) et al. 2023). EU policy initiatives have utilized both hard and soft law and engaged various levels of government and civil society in order to address the rise of antisemitism as well as other forms of hate and discrimination.

Hard Law: Infringement:

One important tool the Commission has to enforce EU law is infringement proceedings. The Commission uses infringement to ensure transposition, or adoption of laws within member states that meet the goals of a directive or framework. Thus, infringement is a hard law mechanism the Commission can utilize to ensure compliance (Börzel 2021). Although there are several areas where member states demonstrate non-compliance, the Commission cannot seek and address every instance of non-compliance since it has limited resources (Hartlapp, and Falkner 2009). The Commission must strategically select cases that serve its “political and institutional interests” (Börzel 2021, 21). In 2020 and 2021, following the creation of the EU anti-racism action plan 2020-2025 and the creation of the EU strategy to combat antisemitism, the Commission utilized infringement as a way to push member states to transpose the 2008 Council framework decision on “combating certain forms and expressions of racism and xenophobia by means of criminal law” 2008/913/JHA. Specifically the infringement focused on hate speech, hate crimes and trivialization, distortion or denial of genocide, including the Holocaust. The 2008 Framework states:

“Member States must ensure that the following intentional conduct is punishable when directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin:

- publicly inciting to violence or hatred, including by public dissemination or distribution of tracts, pictures or other material;

– publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court or the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or one or more of its members. (European Commission, 2014: 3)

Thus, the Commission requested member states to create “legal frameworks (that ensure...racist and xenophobic motivation is taken into account by national courts as an aggravating factor for all crime committed...ensur(ing) hate crimes are effectively and adequately prosecuted” (European Commission Press Room 2021). Member states have been called out for not transposing “correctly the criminalisation of specific forms of hate speech, which incite racist or xenophobic violence or hatred, *including* public condoning, denial or gross trivialisation of international crimes and the Holocaust” (European Commission Press Room 2021).

Transposition of the 2008 Framework was a challenge since there are vastly different understandings of hate crime across Europe, including what constitutes a hate crime, potential victims and legislation to address hate crimes (Garland and Chakraborti 2012). Measuring hate crimes also vary. For instance, Austria, the Czech Republic, Germany, Italy and Sweden measure antisemitism (each using different measurements that are not comparable), whereas twenty two other member states do not measure antisemitism at all (Garland and Chakraborti 2012)².

The notion of hate crime and hate speech was late to come to Europe adding to the lack of legislative development in this area. In the US, hate crimes were acknowledged during the civil rights movement of the 1960s, whereas in Europe the term took longer to have a foot hold across member states only emerging in the 1990s and 2000s (Garland and Chakraborti 2012). Part of the inconsistency of defining/recognizing hate crimes across member states is that historic trajectories differed and hate speech and hate crimes resulted from different historical experiences (Goodey, 2007; Garland and Chakraborti, 2012). For instance, Goodey (2007) argues that the experience of WWII and the Holocaust in Germany and Austria placed

² Measurement of the occurrence and severity of antisemitism across member states is an issue the Working Group on combatting antisemitism raised in its December 2022 meeting (European Commission 2022).

antisemitism and far right extremism as a focus of hate crimes and hate speech. However, other scholars would argue that antisemitism and far right extremism were paid more lip service than action in these countries (Elman 2015; Hayes and Dudek 2019). In Europe, the notion of hate has been focused on more traditional ideas of hate related to “ racial, ethnic and religious hatred (notably anti-Semitism), and less so to hate with respect to sexuality, disability, new manifestations of religious intolerance, and gender” (Goodey, 2007:17). In contrast, the US has defined hate crimes much more broadly, whereas Europe has maintained a much more narrow definition (Goodey 2007)³.

It took seven years to negotiate the 2008 Framework “mainly due to the disparity of the Member States’ legal systems and traditions as regards protection of the right to freedom of expression” (European Commission 2014, 2). Transposition of the Framework was to occur by 2010 (Euro-Lex 2014). Both the 2008 framework decision and the Charter of Fundamental Rights enshrined in the Lisbon Treaty contain mechanisms to address hate speech and hate crimes, including those related to antisemitism. However, the Lisbon Treaty stipulated that the Commission did not have the power to launch infringement proceedings prior to December 1, 2014 under Article 258 of the TFEU with regard to Framework Decisions adopted prior to the entry into force of the Treaty of Lisbon (European Commission 2014).

Thus, in 2014, under the Council framework decision on “combating certain forms and expressions of racism and xenophobia by means of criminal law” 2008/913/JHA (Council of the European Union 2008), the Commission was required to create a written report assessing to what extent member states had implemented the provisions of the 2008 legislation (European Commission 2014). The goal of the report was to utilize the Framework Decision as a first step to combat racism and xenophobia utilizing criminal law “in a coherent manner across the EU” (European Commission, 2014:10).

The 2014 report stated that there were several issues with transposition. For instance, thirteen member states had no specific provisions criminalizing Holocaust denial, distortion or trivialization including: Belgium, Czech Republic, Denmark, Germany, Estonia, Greece,

³ Recently there has been some movement to address LGBTQ rights and gender, especially as it relates to the common market (Bell 2008; Kantola and Nousiainen 2012).

Republic of Ireland, Hungary, Netherlands, Austria, Finland, Sweden, and the UK (European Commission, 2014: 5).

The 2014 report stated that,

“The Framework Decision obliges Member States to criminalise the public condoning, denial and gross trivialisation of crimes against peace, war crimes and crimes against humanity committed by major war criminals of the European Axis countries. Such conduct can be considered as a specific manifestation of antisemitism when it takes place in a way that is likely to incite to violence or hatred. It is therefore essential that this conduct be incriminated under national penal codes”(European Commission, 2014: 5)

Thus, criminalization of such speech, a key tool in fighting antisemitism, had not been realized in several member states. Regarding other forms of hate speech and hate crimes there was a mixed transposition whereby “some member states did not have specific provisions for the conduct of incitement and use provisions which incriminate threatening, insulting, abusive, defamatory or contemptuous language on the basis of race, colour, religion or belief, national or ethnic origin”(European Commission 2014, 3–4).

The conclusion of the report was that the Commission would work bilaterally with member states to ensure the Framework would be properly transposed (European Commission, 2014:10). Although in 2014 the Commission pledged to work with member states to address failures to fully transpose the 2008 Framework, member states continued to not comply.

Commission President Ursula von der Leyen raised antisemitism as an important European issue for the EU to address. Just nine days after becoming Commission president von der Leyen gave a speech to the European Parliament’s Working Group on Antisemitism. During that speech she commemorated the attack on the Halle synagogue during Yom Kippur that had left two dead just two months prior. She made a commitment with the following words,

“Anti-Semitism is a poison for our community. And it is up to all to fight it, to prevent it and to eradicate it. The fight against anti-Semitism is as much for every other part of our community as it is for Jewish people. And it is one which must be led at local, regional, national and European level. We must all do our part.”(von der Leyen 2019)

More importantly, her words were met with commitment as that speech entrusted VP Margarita Schinas to tackle the issue and dedicated an increased staff to the coordinator for combating antisemitism office. Racism more generally would also be part of her agenda. On June 17, 2020, Commission President Ursula von der Leyen addressed a Plenary session of parliament in response to the anti-racism protests following the murder

of George Floyd in the US, which pushed the Black Lives Matter Movement across the globe. She called for the fight against racism and antidiscrimination. She called for the building of a Europe that is “more equal, more humane, more fair.” (de La Baume and David M. Herszenhorn 2020). Later that summer, in August 2020 von der Leyen, at her State of the Union address, pledged to “build a truly anti-racist Union – that goes from condemnation to action”(von der Leyen 2020, 22). In her speech and within the Commission’s 2021 work programme she announced extending “the list of EU crimes to all forms of hate crime and hate speech (European Commission 2020a). Although the 2008 Framework is still currently the only EU criminal law instrument to address hate speech and hate crimes, the Commission has intentions to expand its legal purview related to such matters and to elevate these crimes to be considered euro-crimes, meaning they would be criminal under EU law (Nina Peršak 2022). However, as a result of this new attention to racism and xenophobia, the Commission launched the EU anti-racism action plan 2020-2025. Included in the plan was acknowledgement of the 2014 monitoring of transposition of the 2008 Framework Decision and that if hate speech and the criminalization of hate crimes were not properly transposed then, if necessary, infringement procedures would be utilized (European Commission 2020b).

To initiate infringement the Commission writes a formal letter to a member state making them aware that they have not fully transposed EU law. Usually within two months of this letter, the member state must show what measures it has taken to comply. If the Commission determines a country is still not in compliance, they can issue a reasoned opinion. The formal letter and reasoned opinions maintain a bilateral dialog between the Commission and an individual member state. These letters and country responses are not shared publicly. During this stage, the Commission values confidentiality over transparency. Confidentiality ensures less likelihood the Commission will be deterred by a strong member state or to inflame anti-EU sentiment in member states if it appears like the Commission is putting pressure on members (Börzel 2021). Although the Commission utilizes confidentiality, it does publish when different stages of infringement occur and in what legal areas. If after the reasoned opinion a country has still not transposed EU law, the case can be referred to the Court of Justice of the EU (CJEU) where fines can be imposed. The most public and highest fines have been applied to cases related to the environment and rule of law most notably with Hungary and Poland.

In 2020 and 2021 the Commission launched infringement proceedings for several member states, thirteen in all, regarding lack of transposition of the 2008 Framework, 2008/913/JHA related to hate crimes and hate speech, including hate speech related to the trivialization of genocide, i.e. the Holocaust. Infringement proceedings are left to the discretion of the Commission (Gormley 2017) and in this case, it suggests the Commission chose infringement six years after the 2014 report. It seems that the Commission's new found prioritization of combating racism (including antisemitism) spurred the Commission's actions. Table 1 provides a breakdown of countries that had had infringement proceedings started related to criminalizing hate speech and hate crimes and Table 2 lists countries that specifically had infringement proceedings for not addressing criminalizing the denial or gross trivialisation of international crimes such as the Holocaust.

Table 1: Infringement Process for Criminalizing Hate Speech and Hate Crimes

Country	Date	Reason	Procedure
Belgium	February 18, 2020	incorrect transposition	letter of formal notice
Bulgaria*	February 18, 2020	incorrect transposition	letter of formal notice
Estonia	October 30, 2020	incorrect transposition	letter of formal notice
	January 26, 2023		second letter of formal notice
Finland	February 18, 2020	incorrect transposition	letter of formal notice
	January 26, 2023		second letter of formal notice
Greece	June 9, 2021	incorrect transposition	letter of formal notice
	January 26, 2023		reasoned opinion
Hungary	December 02, 2021	incorrect transposition	letter of formal notice
	January 26, 2023		reasoned opinion
Lithuania	June 09, 2021	incorrect transposition	letter of formal notice
	July 15, 2021		case closed
Luxembourg	December 02, 2021	partial transposition	letter of formal notice
Poland	February 18, 2020	incorrect transposition	letter of formal notice
	January 26, 2023		second letter of formal notice
Romania	October 30, 2020	incorrect transposition	letter of formal notice
Sweden	February 18, 2020	Incomplete and incorrect transposition	letter of formal notice

*Not listed in Eur-Lex search but available in the “Infringement Package Key Decisions” (European Commission 2020c, 2021a, 2021c).

Sources: Commission Infringement Decisions found at: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions

Table 2: Infringement Process for not criminalising public condoning, denial or gross trivialisation of international crimes

Country	Date	Procedure
Bulgaria*	February 18, 2021	letter of formal notice
Estonia	October 30, 2020	letter of formal notice
	January 26, 2023	second letter of formal notice
Finland	February 18, 2021	letter of formal notice
Germany	December 02, 2021	letter of formal notice
Hungary	December 02, 2021	letter of formal notice
	January 26, 2023	reasoned opinion
Lithuania	June 09, 2021	letter of formal notice
	July 15, 2021	case closed
Luxembourg	December 2, 2021	letter of formal notice
Netherlands	June 9, 2021	letter of formal notice

*Not listed in Eur-Lex search but available in the “Infringement Package Key Decisions” (European Commission 2020c, 2021a, 2021c).

Sources: Commission Infringement Decisions found at: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions

Greece and Hungary both received a reasoned opinion in January 2023 after failing to transpose the 2008 Framework related to hate speech and hate crime. The Commission gave Greece and Hungary three months to comply and threatened to refer the cases to the CJEU if compliance does not occur within that time frame (European Commission 2023). Thus far, only Lithuania has complied following the Commission’s letter of formal notice. The Commission has used infringement as a way to enforce a legal framework within member states that addresses hate crimes and hate speech, particularly hate speech related to the Holocaust. Currently the Commission is trying to push hate crimes as euro-crimes, to create a standard across Europe that will assist the EU in its goals to promote values such as anti-racism and combatting antisemitism, gypsyism, Muslim, Asian and other forms of hate.

Infringement uses hard law to assert the EU’s influence over member states forcing member states to comply with the goals of the 2008 Framework. Member states will still choose how to address hate crimes and hate speech, but the Commission is using infringement to ensure

that minimum standards and understanding of hate crimes and hate speech are transposed into member states, pushing the EU's values onto member states. Börzel (2021) explains that member states have capacity at times to shape EU law as they are being formulated, however, often times infringement happens well after a government has left office. In particular between 2008 and 2020, several member states including Hungary, Poland, Italy, and Sweden (with the Sweden Democrats as part of a governing coalition) now have far-right influenced governments, which if the 2008 Framework were to be decided today, it may not have been approved. The rise of the far right in positions of government makes transposition in the area of racism and xenophobia that much more imperative. Thus, transposition of the 2008 Framework is not only about combating racism, but also preserving democracy in Europe, which the far right threatens.

Infringement is a meaningful hard law tool that the Commission is utilizing to push member states to address discrimination, including antisemitism. The Commission was reluctant to push the transposition of the 2008 Framework, even after the 2014 report which showed a lack of transposition across several member states. However, the rise of the far right, the increase in antisemitic acts and violence and the global impact of George Floyd's murder elevated the need to enforce the 2008 Framework and promote Europe's democratic values. Commission leadership also showed its commitment by finally utilizing infringement, an important hard law tool. The infringement process is still ongoing, and we will see what happens in within the next few months.

The Code of Conduct and Digital Services Act “Soft to Hard Law”

The internet has facilitated the spread of antisemitism in contemporary times. In particular, the pandemic re-awakened old stereotypes and conspiracy theories that were accompanied with an increase of antisemitic hate speech and Holocaust distortion online (Directorate-General for Justice and Consumers et al. 2021). Even prior to the pandemic, antisemitism and other forms of hate speech on line were a concern for the Commission.

The 2014 Report on the implementation of the 2008 Framework, specifically stated that “online hate speech is one of the most prevalent ways of manifesting racist and xenophobic attitudes” (European Commission 2014, 8). The report also asserted that “Member States should have the means to intervene in cases of online hate speech. When establishing jurisdiction over conduct committed within their territory, Member States must ensure that their jurisdiction

extends to cases where the conduct is committed through an information system, and the offender or materials hosted in that system are in its territory”(European Commission 2014, 8). Yet, many member states did not transpose this aspect of the 2008 Framework nor the recommendations in the 2014 report (European Commission 2014). When member states did ask internet platforms to remove content they were often ignored and could not get information from the platforms regarding online offenders (Podstawa 2020). Because the internet is not location specific, i.e. you can read something posted in another country and yet it still has resonance where you are, regulating the internet and platforms poses challenges.

At the 2015 EU Colloquium on Fundamental Rights Tolerance and respect: preventing and combating Anti-Semitic and anti-Muslim hatred in Europe, the coordinators for combating antisemitism and Muslim hate were appointed. Also at the Colloquium, the code of conduct on countering illegal hate speech online (COC) initiative also emerged (Podstawa 2020). The COC is a non-binding self-regulating mechanism in which social media platforms agree to monitor and remove hate speech. The legal basis for the COC is the 2008 Framework. The COC’s voluntary and non-binding nature make it a soft law mechanism backed by ideals from hard law related to protecting against discrimination and hate, which can lead to undermining democracy and/or violence.

In 2016, western governments experienced serious threats from online platforms. The rise of ISIS was an issue as well as campaigns of disinformation surrounding Brexit and the 2016 election in the US. The emergence of “fake news”, Russian interference in European elections and referendums driving misinformation were all concerns that created the impetus for the creation of the COC, especially knowing that hard law would take time to develop and there already was a present danger (Tuck 2023). On May 31, 2016, the EU Commission presented to major IT/social media platforms, Facebook, Microsoft, Twitter, and YouTube⁴ the COC. The goal of the COC was for IT companies, within a twenty-four-hour time period to review content that users and trusted flaggers identify as illegal hate speech and to remove that content if found to violate EU and national laws (Directorate General for Justice and Consumers 2016; European Commission 2020d). The companies agreed to put into effect guidelines on their platforms prohibiting incitement of violence and hate speech. It was also suggested that companies should

⁴ Other companies have since joined including: Instagram, Dailymotion, Snapchat, TikTok and Jeuxvideo.com

train staff and make them aware of the rules and manifestations of hate speech. Moreover, the COC established that companies should work with relevant authorities and share information with national governments on how notices are processed, thus improving communication between national authorities and the companies (Quintel and Ullrich 2020). In addition, civil society organizations would act as trusted flaggers using their expertise to identify content and report it to the platforms. The assumption would be that trusted flagger reports would improve the quality of flagging and quicker removal as companies would defer to the expertise of trusted flaggers (Quintel and Ullrich 2020) “When a request is made companies are to “assess this request against their rules and community guidelines and, where necessary, national laws transposing EU law on combatting racism and xenophobia”(European Commission 2020:1).

The benefit of the COC is that its self-regulating nature allows a softer form of regulation that can more easily change with advances in technology. Often times the companies deal with issues of hate speech and the event does not go to the judiciary, which can expedite removal, but does not create legal enforcement for hate speech. The EU is the leader in regulatory policy across many fields. However, the west has not regulated the internet and has mostly utilized industry self-regulation (Quintel and Ullrich 2020). The EU is no exceptions and historically self-regulations was the manner in which the EU regulated online content. Self-regulation refers to “the possibility for economic operators, the social partners, non-governmental organization or associations to adopt among themselves and for themselves common guidelines at European level” (Quintel and Ullrich 2020, 200). As Quintel and Ullrich (2020) point out, the nature of the internet has “profoundly challenged jurisdiction, enforcement and regulatory skill sets” (p. 200). The concept of a code of conduct first emerged in 1996 with the Green Paper on the Protection of Minors and Human Dignity in Audio Visual and Information Services, which called on member states to draw up a code of conduct. In 2000, the E-Commerce Directive gave digital platforms immunity from liability for illegal content as long as it was quickly removed and it prohibited members states from imposing monitoring obligations on platforms (Quintel and Ullrich 2020).

The COC did not fundamentally change these earlier initiatives, but it did set up a way to monitor and publicly shame platforms as the Commission publishes regular reports on compliance with the COC. Because the COC is voluntary, there are no enforcement mechanisms or penalties for social media platforms. Moreover, the definition of hate speech and hate crimes

as already discussed varies across countries and has not been fully transposed which also adds to the challenge for platforms to be sure to comply with the 2008 Framework and member state legal structures, which guides the COC. The COC was a start to regulate an industry without borders and immense in scope. The regular reporting shows that platforms have mixed reviews in their responsiveness to and taking down hate speech.

The COC recommends that a majority of flagged content be assessed within 24 hours. The first monitoring process took place for six weeks between October 10th-November 18th, 2016. Twelve civil society organizations reported a sample of 600 notifications in the following Member States: Austria, Belgium, Denmark, France, Germany, Italy, The Netherlands, Spain, and the United Kingdom. The largest percentage of hate speech found was antisemitic in nature 23.7% (Directorate General for Justice and Consumers 2016). It should be noted that three out of the twelve organizations specialized in detecting antisemitism, but within this sample, such hate speech against Jews is quite evident. In 2018, 39 organizations from 26 member states, with a total of 4392 notifications relating to hate speech deemed illegal were sent to IT companies during a period of 6 weeks and found 10.1% with antisemitic content and in 2019, 39 organizations from 23 Member States (and the United Kingdom) flagged 4364 notifications relating to hate speech also over 6 weeks and 7.1% of the flagged content dealt with antisemitism (Directorate -General for Justice and Consumers 2019; 2020). In 2022, 9.9% of content flagged was antisemitic in nature (Directorate-General for Justice and Consumers 2022).

Platforms have remained in compliance, yet as the table below demonstrates, in 2021 and 2022, there has been a decline in the rate at which platforms respond to flagged content and the removal rate has also declined, moreover the flagged content also declined in 2022, but it seems that online hate speech has not.

Table 3: Summary of the Code of Conduct Evaluations

Year	# of Flagged Content	% Addressed in 24 hours	% Removed
2016	600	40%	28.2%
2017	2575	51.4%	59.9%
2018	2982	81.7%	70%
2019	4392	88.9%	71.7%
2020	4364	90.4%	71%
2021	4543	81%	62.5%
2022	3634	64%	63.6%

Source: Directorate-General for Justice and Consumers, “Countering illegal hate speech online 1st-7th evaluation of the Code of Conduct” https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en, 2016-2022.

These numbers suggest that online dissemination of antisemitism is a concern. The volume of posts however, does not necessarily address the impact of these posts. Posts have the potential to incite violence and to spread false information that can shift public opinion and shape national narratives while spreading hate and fear. To this end, the European Commission DG for Justice and Consumers commissioned a study of French and German antisemitic online posts which was conducted by the Institute for Strategic Dialogue examining online content in French and German. Some key findings include:

- Within a dataset of over four million posts collected from these accounts, over 180,000 posts (around one in forty) were flagged as containing antisemitic references by the keyword annotators.
- antisemitic content on Facebook was engaged with through likes, comments and shares over half a million times during 2020 and 2021, and received over three million retweets and likes on Twitter. In Germany, antisemitic content on Telegram has been viewed over two billion times in total. German and French accounts had a combined followership of almost 4.5 million (while the number of unique followers is likely to be much lower).
- There was a considerable growth in the use of antisemitic keywords during the pandemic. Comparing the first two months of 2020 (pre-pandemic) and 2021 (during the pandemic), a seven-fold increase in antisemitic posting could be observed on the French language accounts,

and over a thirteen-fold increase in antisemitic comments within the German channels studied (Directorate-General for Justice and Consumers et al. 2021).

This kind of data demonstrates the rise of antisemitism in Europe and its cross-border nature, particularly when it is on social media platforms. Even with the COC, it is clear that transmission of online antisemitic content continues and intensified during the pandemic.

The COC focuses on specific content and leaves the regulation mostly in the hands of industry, and public authorities have little to no decision making influence in the process (Quintel and Ullrich 2020; Tuck 2023). The COC and past social media regulation are content based in which the focus was on notice and take down. For instance, if content included hate speech, terrorism, child pornography or other kinds of illegal activity the platform would be notified and content was to be removed. However, content focus does not address how platforms operate (Tuck 2023).

November 16, 2022, the EU enacted the Digital Services Act (DSA), which moves from a content-based approach found in the COC to a systems-based approach. This new generation of regulation focuses on how platforms deal with risk assessment, such as the extent to which platforms attempt to mitigate risks. The approach in the DSA is to focus on duty of care similar to health and safety regulations. The predecessor to the DSA, the General Data Protection Regulation, (GDPR) has rules related to privacy, but many argue they have not been enforced well (Tuck 2023). Regulators do not have enough resources, and several regulatory challenges have ended up in the courts for years, which often culminate in fines that are not consequential. In fact large platforms usually have a line in their budgets dedicated to fines in anticipation (Tuck 2023). Fines are simply the cost of doing business rather than a real penalty. The other issue with the GDPR is that privacy rules vary from country to country.

The DSA is different from the GDPR in that each member state will have a regulating agency, the Commission will also have oversight and platforms will also contract third-party auditors. Platforms will need to share their algorithms in order to ensure a systems approach. Moreover, platforms must divulge what decisions were made about content, what is prioritized and not prioritized, which tells a great deal about self-risk assessment of these companies. Once again, since laws vary about hate speech, such as antisemitism- including Holocaust denial and distortion, across member states, like the GDPR, it may be a challenge to address antisemitism. However, with the infringement proceedings started, there should eventually be convergence on

national laws. Another issue is how states treat antisemitism. Some countries have more stringent laws and enforce them, others do not. However, since the Commission will also be overseeing national regulators, there is the possibility that such regulatory divergence can be avoided (Tuck 2023).

Regulation within the DSA will vary depending on the size of the provider. Larger providers, considered platforms of over 45 million users, will be required to address systemic risk and the sharing of their algorithms, and the Commission will “have direct supervision and enforcement powers over the largest platforms and search engines, and can impose fines of up to 6% of their global turnover. The Commission may also apply supervisory fees to platforms to help finance their own enforcement tasks”(AlgorithmWatch 2023).

The DSA will allow an individual or trusted flagger within a member state to flag content that may be coming from another member state or from abroad. If that content can be viewed within the EU and contains antisemitic content, then it must be removed and platforms will need to include addressing antisemitism in their risk assessments. That means that member states with more stringent rules on antisemitism content will be a guardrail to protect against a race to the bottom. For instance, France and Germany have more stringent rules on antisemitic content, thus if antisemitic content is detected on the internet by someone in Germany, German laws apply. Large platforms will find it difficult to have one platform version for Germany and one for another member state. Thus, either platforms will bring all of their content to the EU standard or there will be one platform standard for Europe and another for the rest of the world (Tuck 2023). If the first scenario occurs it means that the EU’s regulation could have a chilling effect on antisemitic content online spreading not just in Europe, but beyond Europe’s borders. One other important component of the DSA is that platforms are protected if they report hate speech or other crimes on their platforms. In this way, platforms are shielded from punishment if they self-report, which makes it more likely that they would do so.

The DSA creates a hard law and soft law structure that distributes competencies across various levels. Members states’ newly formed regulatory bodies, third party auditors, civil society as flaggers and watchdogs, social media and other online companies and the Commission will all have roles to play in this regulatory structure. Particularly for large platforms, the Commission will have the ability to not only do oversight of national regulators, but to directly supervise large platforms. What this means for addressing antisemitism, is that research being

done both monitoring and understanding how antisemitism is being spread online can be shared with the various levels of monitors and since the Commission has taken on antisemitism and antidiscrimination in more meaningful ways, hate speech will be part of their monitoring focus. However, keeping in mind that only the twenty-four official languages of the EU will be regulated. Thus, if hate speech appears in non-EU languages, it will most likely not be flagged or regulated, since it will go unnoticed (Tuck 2023).

The DSA is a hard law mechanism with soft law attributes that provides member states, civil society, the Commission and companies a tool to address the troubling spread of antisemitism online. The Commission's work to raise awareness about the spread of antisemitism and how it manifests will assist in helping member states and companies understand better and hopefully enforce hate speech rules as they relate to antisemitism online. The DSA addresses the spread of antisemitism on line, but what about other venues that provide an opportunity to spread antisemitism?

Soft Law: Mainstreaming

On December 02, 2020, under the German Presidency, the Council announced the Council Declaration on mainstreaming the fight against antisemitism across policy areas. Mainstreaming was first used in gender policy within the EU and has also been used in other policy areas such as the environment. In the past, litigation was the main instrument to address issues like discrimination and inequality (Bell 2008). However, litigation tends to be retrospective in nature, after something had occurred, and it put a heavy cost and burden on individual litigants (Bell 2008). Mainstreaming offers a policy mechanism that is proactive. Bell (2008) points out, the lessons learned from gender equality and the challenges of litigation influenced anti-racism policy and the adoption of mainstreaming. Unlike litigation (hard law), mainstreaming uses soft law, which seeks "common policy objectives with discretion left to national authorities" (Bell 2008, 48).

Mazey (2002) points out that mainstreaming gender created policy opportunities and new policy instruments for gendering EU policies, however, the CJEU and Council have been untouched by mainstreaming and EU gender mainstreaming has had varied impact across policy sectors and across member states. These variations are expected and demonstrate the limitations to mainstreaming. In particular the soft law aspect, which advises, suggest and shares best

practices does not require compliance as hard law does. Nonetheless, sharing of best practices and thinking about the multi-dimensionality of policies crossing into other policy areas such as race, are helpful in promoting a conscious effort to include combating antisemitism across policy areas. The flexibility that mainstreaming provides allows member states to address issues in a way that best fits their country condition. The process of mainstreaming brings together various stakeholders and provides an opportunity for policy learning.

Infringement is a top-down model whereby the Commission, working with member states, forces legal compliance. Mainstreaming is more horizontal bringing in various levels of government and NGOs. Rather than utilizing the “Community method” whereby the Commission and member states are the main actors, mainstreaming allows the Commission to retain “considerable control” yet facilitate more “intergovernmental politics” or what some scholars refer to as Europeanization (Claudio Radaelli 2000; Mazey 2002).

Mainstreaming can occur in different ways. Beveridge and Nott (2002) categorize two methods of mainstreaming: expert-bureaucratic and participatory-democratic. The expert-bureaucratic method is dependent upon current decision makers that receive special training or receive some outside assistance to address the kind of mainstreaming sought. On the other hand, the participatory-democratic style of mainstreaming incorporates involvement of the communities that are affected. Thus, decision makers rely heavily on external expertise (Bell 2008). So far, the mainstreaming of antisemitism policy has incorporated both of these models, but with a strong emphasis on the participatory-democratic method, including various Jewish organizations to participate in formulating and executing programs.

The Commission has sought to mainstream antisemitism and fostering Jewish life across Commission DGs and through EU funded programs. For instance, the European Commission has awarded some funds through the 1.5 billion EUR, Citizens, Equality, Rights and Values (CERV) Programme, the largest fund for programmes related to fundamental rights inside the EU, to address antisemitism and fostering Jewish life. For instance, under the [Programme’s European Remembrance call](#), the European Commission has made 8 million EUR available to support museums, memorial and education sites, as well as civil society organizations with a particular focus on strengthening Holocaust remembrance, education and research and combating Holocaust denial and distortion. Another example is the Networks Overcoming antisemitism (NOA) program, which brings together several Jewish NGOs under the

coordination of A Jewish Contribution to an Inclusive Europe (CEJI) including: B'nai B'rith Europe, European Association for the Preservation and Promotion of Jewish Culture and Heritage (APEJ), European Union of Jewish Students (EUJS), European Union for Progressive Judaism and the World Jewish Congress (WJC). The NOA project “provides a mechanism to support Member States in the development and implementation of national action plans and provide a wealth of socio-cultural educational resources that can reverse the tide of antisemitic attitudes”(NOA 2020). Using EU funding NOA provides anti-bias training, workshops for public officials to develop and evaluate national action plans and creating National Report Cards to hold public leaders accountable throughout Europe.

The European Union of Jewish Students (EUJS), was also awarded a CERV grant, being only one of three youth organizations to receive this grant. EUJS has been very active in formulating EU policy in the Commission serving as part of the Working Group to combat antisemitism and the more informal round tables. The organization is dedicated to empowering Jewish university students across Europe “to strengthen European society and Jewish communities through Jewish student activism.” (European Union of Jewish Students 2022)⁵

The Commission’s combatting antisemitism coordinator’s office in 2022 also launched a seminar in Brussels with about 250 participants from EU institutions and Jewish communities from across all EU member states and candidate countries “to discuss cooperation on new joint initiatives towards a European society free of antisemitism where Jewish life prospers in Europe” (Apelblat 2022). The event initiated the establishment of a Civil Society Forum and a network of Young Ambassadors for Holocaust Remembrance. The Civil Society Forum will bring together European and International Jewish and non-Jewish civil society organizations, member state officials, EU officials and experts in various areas to promote dialogue build bridges among various fields, “grant access to information and inspire ... cooperation on new joint initiatives

⁵ One of the groundbreaking and innovative current actions of the EUJS, has been to sue Twitter. On January 25, 2023, the EUJS teamed up with HateAid, a legal justice organization. The two organizations brought a suit against Twitter in the German courts claiming the platform violated its own rules and policies. The case rests on six pieces of content, which HateAid and the EUJS say include sedition under German law and illegal and antisemitic comments (Killeen 2023). The content was flagged, including a comment of Holocaust denial, but Twitter did not remove the content. “The lawsuit argues that this violated Twitter’s own policies on hateful conduct and abusive behaviour, which respectively commit the platform to “combatting abuse motivated by hatred, prejudice or intolerance” and prohibiting content that “denies mass murder or other mass casualty events that took place”, such as the Holocaust.” (Killeen 2023)⁵

advancing towards a European society free of antisemitism where Jewish life prospers”(European Commission, DG Justice 2022). Whereas, “The network of Young European Ambassador, part of the European Year of Youth 2022, provide access and accurate information about the Holocaust. Included in this initiative will be Holocaust commemoration in communities and teaching young people how to recognize and dispute Holocaust distortion online (Apelblat 2022).

Through the coordinators office on antisemitism has also been an attempt to mainstream antisemitism across DGs and across EU institutions. In February of 2022 the European Economic and Social Committee (EESC) held a meeting to discuss the Commission strategy to combat antisemitism. Katharina von Schnurbein, leaders from civil society organizations including the European Jewish Congress (EJC) and CEJI were present. EESC president Christa Schweng stated, “As the representative of organised civil society in the European Union, the EESC sees an urgent need for action to ensure that Jews across Europe can live their lives in accordance with their religious and cultural traditions. Through comprehensive EU policies we should ensure that antisemitism, racism and xenophobia have no place in the EU and beyond. We want a tolerant, non-discriminative and plural society.”(European Economic and Social Committee 2022). In March, 2022 the EESC endorsed the EU’s strategy to combat antisemitism and foster Jewish Life. Likewise in June 2022, the Committee of the Regions also endorsed the strategy. Thus demonstrating how the Commission was expanding adoption of the ideals of the strategy across various EU institutions with the support of Jewish organizations to further endorse the need for a strategy. It is not clear if statements from the EESC or Committee of the Regions are merely window dressing, but these declarations do allow Jewish organizations recourse should an issue emerge that is within the purview of these institutions.

The coordinator’s office has also worked with other DG’s to ensure mainstreaming across policy areas. As part of the coordinator’s office’s efforts they invited all commissioning director generals, about 23 or 24 and about 17 committed to specific actions related to the strategy (von Schnurbein 2022). For instance, on environmental issues, DG Environment has committed to planting 30 million trees by the end of 2030. In doing this program, they will incorporate education and inclusion of the Jewish festival of Tu’Bishvat, a tree planting holiday, in order to further education on Jewish culture (von Schnurbein 2022). There have also been important initiatives related to education and sport. Regarding education, the DG for Research and

Innovation in coordination with the DG on Justice and Consumer Affairs contracted a report to study the need to create a research hub on contemporary antisemitism and Jewish life (Directorate-General for Research and Innovation (European Commission) et al. 2023). This initiative will complement the ongoing research of the Holocaust, which was started in 2010. The EU funded the creation of the European Holocaust Research Infrastructure. Also, there are initiatives in the EU strategy to combat antisemitism, discussed later in this paper, that includes spreading Holocaust education.

Related to sports the CERV program funded the Changing the Chants initiative, which was a two-year project. The project is an international cooperation between Borussia Dortmund, Feyenoord Rotterdam, Fare Network and the Anne Frank House. “The goal is to deepen the understanding of approaches that football clubs can use to educate fans on antisemitic behaviour in the football stands” (Changing the Chants 2021). In March 2023, Margaritas Schinas spoke at a side event at the United Nations Human Rights Council, organized by the civil society group, the World Jewish Congress. The event was entitled “Combating Antisemitism in and through Sports”. There Schinas announced a new call for proposals to combat antisemitism in sport with a total budget of 11.5 million euro available (Combating Antisemitism in and through Sports 2023).

The Commission in April 2023 announced the funding of a joint effort led by UNESCO and supported by the OSCE Office for Democratic Institutions and Human Rights to provide education initiatives in 12 EU member states including Austria, Belgium (Wallonie-Bruxelles), Croatia, Czech Republic, France, Germany (led by the states of Baden-Wurttemberg and Schleswig-Holstein), Greece, Italy, Romania, Slovenia and Spain. With this two-year program UNESCO will work with authorities “to train teacher trainers, policy-makers and civil society organizations to address antisemitism in the school environment. The goal is to reinforce the capacity of education systems to address issues such as conspiracy theories, antisemitic prejudices and stereotypes, online hate speech and to respond to incidents of antisemitism”(UNESCO Press Office 2023).

These examples show the myriad of programs the EU is funding to address antisemitism across various policy arenas. In 2024, the coordinators office will be evaluating the impact of the programs that have been launched, but at this early stage it is unclear of the impact. However, it is clear that the Commission has made a concerted effort to include addressing antisemitism in

several policy venues and to get other EU institutions to also include the concern about antisemitism in its own policy analyses and formulation.

Soft law: EU and National Strategies

The main instrument that has set forth the parameters and agenda to address antisemitism, is the EU's and national strategies to combat antisemitism. In 2018 the Council passed the Declaration on the fight against antisemitism and the development of a common security approach to better protect Jewish communities and institutions in Europe. The 2018 declaration invited member states to “adopt and implement a holistic strategy to prevent and fight all forms of antisemitism as part of their strategies on preventing racism, xenophobia, radicalisation and violent extremism” and it called for member states to improve security of Jewish sites (Council of the European Union 2018). The 2020 Council Declaration on mainstreaming the fight against antisemitism across policy areas, reiterated the 2018 Declaration and its call for national strategies and calls for the Commission to continue its work and to create a comprehensive strategy to address antisemitism (Council of the European Union 2020). On October 05, 2021, the coordinator's office for combating antisemitism unveiled its comprehensive strategy.

The comprehensive strategy contains three pillars: (1) Preventing and combating all forms of antisemitism; (2) Protecting and fostering Jewish life in the EU; and (3) Education, research and Holocaust remembrance (European Commission 2021b). As part of the strategy, the Commission called for member states to create national strategies by the end of 2022 and for those strategies to be evaluated by the end of 2023. Thus far sixteen member states have adopted strategies, and the Fundamental Rights Agency (FRA) will be assisting in the formulation and implementation of these strategies. Moreover, member states have also been encouraged to create special envoys or coordinators to address antisemitism and to adopt the International Holocaust Alliance for Remembrance (IHRA) definition of antisemitism as a working, non-legally binding definition for antisemitism. Having a definition of antisemitism has facilitated the EU in its efforts (Dudek 2022).

The EU's comprehensive strategy highlights the importance of including civil society, especially Jewish organizations into the policy formulation and implementation. To the coordinator's office's credit, Jewish organizations were very involved in the creation of the strategy as part of the Working Group, which has now been upgraded as a permanent Working

Group on Antisemitism, which meets regularly. In addition the coordinator's office also has more frequent meetings with round tables, which also include several Jewish organizations. Leaders of Jewish organizations have credited the coordinator's office with being truly inclusive and engaging and listening to many different kinds of Jewish organizations (Bricman 2022; Naftaniel 2022; Sclafani 2022)

The EU's comprehensive strategy as well as national strategies are for the Commission to bring together national leaders, policy experts (including FRA) and engage civil society to share best practices. The Commission and FRA will be working with member states on the implementation of the strategies. National strategies could be seen as window dressing where member states make bold statements and promises but do little. However, civil society as well as Commission and FRA oversight will help to ensure implementation.

The EU and national strategies like the Open Method of Coordination (OMC) is an opportunity for member states to share best practices, however, unlike the OMC, the national strategies are not voluntary. Member states are supposed to create strategies, yet there is no enforcement mechanism to ensure this. Member states with larger Jewish populations, i.e. France, Germany, and Italy have all created strategies. EU and national strategies on addressing antisemitism and fostering Jewish life engage governance at the EU, national and local levels and also includes an important inclusion of civil society. It shows the federal nature of this policy implementation and the significance the EU has made to highlight the importance of combating antisemitism and fostering Jewish life.

The EU and national strategies commit member states to not just a policy, but to embracing values based on inclusion and anti-discrimination and also a recognition of past and present injustices that have been committed against Jews in Europe. National strategies, like the EU strategy call for legal action, better security, education on contemporary and historic Jewish life and cultural contributions, Holocaust education, and better recording and measurement of antisemitic acts. For instance, the Italian national strategy calls for "expanding the implications for and sanctions applied to conduct defending fascism", which includes production, distribution of Nazi propaganda, including objects, symbols, etc. and possibly expanding the criminal code which currently does not cover antisemitic discrimination or hatred or antisemitic prejudice (Presidenza del Consiglio dei Ministri 2022) p.19-20.

National strategies adopt the IHRA definition of antisemitism, which includes denying the right of the state of Israel to exist. The German National Strategy specifically states that organizations that question Israel's right to exist will be excluded from national funding as well as projects that call for a boycott of Israel or those that actively support the Boycott, Divestment and Sanctions (BDS) movement. This aspect of the German National Strategy is a profound statement understanding the many facets of antisemitism.

The national strategies follow the framework set out by the EU's strategy, yet each strategy reflects their own country's legal system, history and condition of the existing Jewish community. Moreover, these strategies work with local Jewish civil society organizations to achieve the goals of the national strategies. The national and EU strategies engage various levels of government and civil society organizations and with the EU coordinator's office and the Working Group on antisemitism as well as the assistance of FRA, there will be constant oversight and sharing of best practices to promote an EU wide policy that also reflects the specific issues in member states.

Conclusion

The precarious position of today's European Jewish community provides a warning to what can happen when democracy is undermined and discrimination takes hold. Due to Europe's history, addressing antisemitism is an important commitment no matter how small that minority may be. The EU's novel combating antisemitism policy is important for understanding the development of the EU and the European integration project. The EU was a liberal economic endeavor to promote free trade, but it has evolved into much more. Antisemitism policy demonstrates significant policy creep into social policy that specifically promotes European values, which is something a polity does. States often set forth the values that underpin their society. With the EU's Action Plan on Racism and its antisemitism policy, the EU is signaling what Europe stands for. It is not simply a free market or regulatory body, but a set of institutions built upon values including democracy, inclusion and antidiscrimination.

The EU's attempt to address antisemitism also demonstrates how hard and soft law can be utilized, as well as various levels of government and civil society in order to create an EU level policy that also reflects the unique aspects of member states through a federal structure.

Hard law has been established through the 2008 Framework and the Lisbon Treaty and the CFR. However, it has taken over a decade to enforce these European level legal provisions. As discussed, member states were slow to create laws to criminalize hate speech, identify and criminalize hate crimes and prosecution of the condoning, denying or trivialization of genocide like the Holocaust, which both relate to antisemitism. One hard law tool at the EU's disposal is infringement, which was finally utilized in 2020.

In the digital age, the spread of antisemitism has been exponential. The Commission has employed both hard and soft law policies to stop the toxic spread of online hate. The soft law COC employed in 2016 focused on content-based regulation of digital platforms; whereas, the hard law DSA created systems-based regulation. The COC allowed platforms to self-regulate, but also employed third party flaggers and some Commission oversight. The DSA took regulation forward creating both national and EU level regulators, thus emphasizing the federal nature of regulating the internet within the EU for a digital network that that has no borders.

The EU's strategy to combat antisemitism and foster Jewish life is unique in that it is the first of its kind for the EU, and even for other western countries. What is unique about this policy compared to any other antidiscrimination policy, i.e. anti-gypsyism, is that it adds the ideal of fostering Jewish life. Moreover, the EU's strategy to combat antisemitism has had policy transference outside of the EU. The EU's strategy and national strategies caught the attention of the US. In December 2022, the Biden administration called for the creation of a US national action plan to counter antisemitism. January 2023, Doug Emhoff, the second gentleman of the US traveled to Poland and Germany to observe with European leaders International Holocaust Remembrance Day as part of his desire to promote an effort to address antisemitism that has been growing in the US. During his visit he met with Katharina von Schnurbein and met with antisemitism coordinators like Felix Klein of Germany. Following his visit, a meeting with antisemitism special envoys was organized in February 2023 in the US. Katharina von Schnurbein along with antisemitism coordinators of Germany, the Netherlands, the UK, Norway and the Organisation of American States were invited to share best practices with members of the administration and Congress. Von Schnurbein continues to dialogue with the US on this issue (Buga 2023).

The EU's strategy and the national strategies are examples of soft law tools the EU has employed to share best practices and to engage in dialogue across member states with civil

society organizations. Again, the EU has utilized a federal structure creating EU level policies, but also having member states create their own. In this way, the EU can ensure some basic standards are met, while also allowing member states to create antisemitism policies that reflect their legal system and history. Considering Europe's past and the current increase in antisemitism that threatens democracy in Europe, the EU's policy and ten-year program is a good start. The EU has employed tools to utilize both hard and soft law and to engage various levels of government and civil society in order to address antisemitism. Ursula von der Leyen has expressed in many speeches why antisemitism threatens the European project, because the European project is not just about markets, it is about values. European integration came out of the ashes of the Holocaust. If the EU is to flourish, then the EU needs to stave off forces, like antisemitism, that contributed to the destruction of Europe and the decimation of the European Jewish community in the 20th century.

Works Cited

- AlgorithmWatch. 2023. "A Guide to the Digital Services Act, the EU's New Law to Rein in Big Tech." *AlgorithmWatch*. <https://algorithmwatch.org/en/dsa-explained/> (April 24, 2023).
- Anti-Defamation League. 2021. "Choosing Antisemitism: Instrumentalization and Tolerance of Antisemitism in Contemporary European Politics." *Anti-Defamation League*. <https://www.adl.org/antisemitism-in-contemporary-european-politics> (March 30, 2021).
- Apelblat, Mose. 2022. "EU Launches Network of Young Ambassadors and Civil Society Forum on Combating Antisemitism." *The Brussels Times*. <https://www.brusselstimes.com/325006/eu-launches-network-of-young-ambassadors-and-civil-society-forum-on-combating-antisemitism> (March 24, 2023).
- Bell, Mark. 2008. *Racism and Equality in the European Union*. Oxford, New York: Oxford University Press.
- Beveridge, Fiona, and Sue Nott. 2002. "Mainstreaming: A Case for Optimism and Cynicism." *Feminist Legal Studies* 10(3): 299–311.
- Börzel, Tanja A. 1970-. 2021. *Why Noncompliance : The Politics of Law in the European Union*. Ithaca [New York]: Cornell University Press. <https://doi.org/10.1515/9781501753411>.
- Bricman, Alina. 2022. "B'nai B'rith International EU Affairs Director."
- Buga, Daniella. 2023. "Assistant Secretary, European Commission, DG Justice and Consumers."
- Changing the Chants. 2021. "Changing the Chants." *Changing the Chants*. <https://changingthechants.eu/> (April 25, 2023).
- Claudio Radaelli. 2000. "Whither Europeanization? Concept Stretching and Substantive Change." *Europe Integration Online Papers* 4(8).
- Combating Antisemitism in and through Sports*. 2023. World Jewish Congress. <https://www.worldjewishcongress.org/en/events/combating-antisemitism-in-and-through-sports> (April 25, 2023).
- Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin*. 2000. 180 OJ L (CONSIL) <http://data.europa.eu/eli/dir/2000/43/oj/eng> (February 10, 2022).
- Council of the European Union. 2008. 328 OJ L (CONSIL) *Council Framework Decision 2008/913/JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*. http://data.europa.eu/eli/dec_framw/2008/913/oj/eng (May 11, 2022).

- . 2018. “Council Declaration on the Fight against Antisemitism and the Development of a Common Security Approach to Better Protect Jewish Communities and Institutions in Europe.” <https://www.consilium.europa.eu/en/press/press-releases/2018/12/06/fight-against-antisemitism-council-declaration/>.
- . 2020. “Council Declaration on Mainstreaming the Fight against Antisemitism across Policy-Areas.” <https://www.consilium.europa.eu/en/press/press-releases/2020/12/02/antisemitism-council-declaration-on-fighting-antisemitism/>.
- Directorate General for Justice and Consumers. 2016. “Code of Conduct on Countering Illegal Hate Speech Online: First Results on Implementation.” https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.
- Directorate -General for Justice and Consumers. 2020. “Countering Illegal Hate Speech Online 5th Evaluation of the Code of Conduct.” https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.
- Directorate-General for Justice and Consumers. 2022. “Countering Illegal Hate Speech Online 7th Evaluation of the Code of Conduct.” https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.
- Directorate-General for Justice and Consumers, Institute for Strategic Dialogue, Milo Comerford, and Lea Gerster. 2021. *The Rise of Antisemitism Online during the Pandemic: A Study of French and German Content*. LU: Publications Office of the European Union. <https://data.europa.eu/doi/10.2838/671381> (September 17, 2021).
- Directorate-General for Research and Innovation (European Commission), Keith Kahn-Harris, Jonathan Boyd, and Daniel Staetsky. 2023. *The Field of Research on Contemporary Antisemitism and Jewish Life: Working towards a European Research Hub*. LU: Publications Office of the European Union. <https://data.europa.eu/doi/10.2777/925965> (April 10, 2023).
- Dudek, Carolyn M. 2022. “Addressing Europe’s Past and Present: The EU’s Combatting Antisemitism Policy.” In Miami, FL. <https://www.eustudies.org/conference/papers/17>.
- Elman, R. Amy. 2015. *The European Union, Antisemitism, and the Politics of Denial*. Lincoln: University of Nebraska Press.
- Euro-Lex. 2014. “Council Framework Decision 2008/913/JHA of 28 November 2008 ... - EUR-Lex.” <https://eur-lex.europa.eu/EN/legal-content/summary/framework-decision-on->

combating-certain-forms-and-expressions-of-racism-and-xenophobia-by-means-of-criminal-law.html (March 19, 2023).

- European Commission. 2014. "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."
- . 2020a. "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Commission Work Programme 2021 A Union of Vitality in a World of Fragility COM (2020)690." <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0690> (February 7, 2023).
- . 2020b. "EU Anti-Racism Action Plan 2020-2025." https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en (March 22, 2023).
- . 2020c. "October Infringements Package: Key Decisions." *European Commission - European Commission*. https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687 (February 7, 2023).
- . 2020d. "The Code of Conduct on Countering Illegal Hate Speech Online."
- . 2021a. "December Infringements Package: Key Decisions." *European Commission - European Commission*. https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201 (February 7, 2023).
- . 2021b. "EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030)." *European Commission - European Commission*. https://ec.europa.eu/info/files/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030_en (January 10, 2022).
- . 2021c. "February Infringements Package: Key Decisions." *European Commission - European Commission*. https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441 (July 7, 2022).
- . 2022. "3rd Meeting of the Working Group on the Implementation of the EU Strategy on Combating Antisemitism and Fostering Jewish Life." https://commission.europa.eu/document/9308e313-f088-4685-9a42-3b6932547230_en (March 20, 2023).

- . 2023. “January Infringements Package: Key Decisions.” *European Commission - European Commission*.
https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142 (March 23, 2023).
- European Commission, DG Justice. 2022. “Civil Society Forum on Combating Antisemitism).” *Civil Society Forum on Combating Antisemitism*. <https://www.forum-combating-antisemitism.eu/> (April 24, 2023).
- European Commission Press Room. 2021. “February Infringements Package: Key Decisions.” *European Commission - European Commission*.
https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_441 (March 22, 2023).
- European Economic and Social Committee. 2022. “EESC Joins EU Efforts on Battling Antisemitism.” *European Economic and Social Committee*.
<https://www.eesc.europa.eu/en/news-media/press-releases/eesc-joins-eu-efforts-battling-antisemitism> (April 24, 2023).
- European Union of Jewish Students. 2022. “EU Activism Seminar 2022.” *EUJS*.
<https://eujs.org/programmes/eu-activism-seminar-2022/> (April 24, 2023).
- Garben, Sacha. 2019. “Competence Creep Revisited.” *Journal of Common Market Studies* 57(2): 205–22.
- Garland, Jon, and Neil Chakraborti. 2012. “Divided by a Common Concept? Assessing the Implications of Different Conceptualizations of Hate Crime in the European Union.” *European Journal of Criminology* 9(1): 38–51.
- Givens, T.E., and R.E. Case. 2014. *Legislating Equality: The Politics of Antidiscrimination Policy in Europe*. OUP Oxford. https://books.google.com/books?id=eTY_AwAAQBAJ.
- Goodey, Jo. 2007. “Racist Crime in the European Union: Historical Legacies, Knowledge Gaps, and Policy Development.” In , 16–28.
https://tandis.odihr.pl/explore?bitstream_id=23356&handle=20.500.12389/20731&provider=iiif-image#c=0&m=0&s=0&cv=16&xywh=-3141%2C-197%2C8758%2C3897
 (February 7, 2023).
- Gormley, Laurence W. 2017. “Infringement Proceedings.” In *The Enforcement of EU Law and Values: Ensuring Member State’s Compliance*, eds. András Jakab and Dimitry Kochenov. Oxford University Press, 65–78.
- Hartlapp, Miriam, and Gerda Falkner. 2009. “Problems of Operationalisation and Data in EU Compliance Research.” *European Union Politics* 10(2): 281–304.
- Hayes, Alexander Rossell, and Carolyn Marie Dudek. 2019. “How Radical Right-Wing Populism Has Shaped Recent Migration Policy in Austria and Germany.” *Journal of Immigrant & Refugee Studies* 18(2): 133–50.

- Kantola, Johanna, and Kevät Nousiainen. 2012. "The European Union: Initiator of a New European Anti-Discrimination Regime?" In *Institutionalizing Intersectionality*, 33–58.
- Killeen, Molly. 2023. "Twitter Faces Lawsuit in Germany for Failure to Remove Anti-Semitic Content." *www.euractiv.com*.
<https://www.euractiv.com/section/platforms/news/twitter-faces-lawsuit-in-germany-for-failure-to-remove-anti-semitic-content/> (April 24, 2023).
- de La Baume, Maïa, and David M. Herszenhorn. 2020. "Von Der Leyen: 'We Need to Talk about Racism, and We Need to Act' – POLITICO." *Politico*. <https://www.politico.eu/article/von-der-leyen-we-need-to-talk-about-racism-and-we-need-to-act/> (April 26, 2023).
- von der Leyen, Ursula. 2019. "Speech by President von Der Leyen against Anti-Semitism." *European Commission - European Commission*.
https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6734 (December 13, 2022).
- . 2020. "State of the Union 2020." https://state-of-the-union.ec.europa.eu/state-union-2020_en (February 7, 2023).
- Mazey, Sonia. 2002. "Gender Mainstreaming Strategies in the E.U.: Delivering on an Agenda? Special Issue: Mainstreaming Gender in European Public Policy." *Feminist Legal Studies* 10(3): 227–40.
- Naftaniel, Ronald. 2022. "Board Member of A Jewish Contribution to an Inclusive Europe."
- Nina Peršak. 2022. "CRIMINALISING HATE CRIME AND HATE SPEECH AT EU LEVEL: EXTENDING THE LIST OF EUROCRIES UNDER ARTICLE 83(1) TFEU." *Criminal Law Forum* 33: 85–119.
- NOA. 2020. "About NOA | NOA Networks Overcoming Antisemitism." <https://www.noa-project.eu/about-noa/> (April 24, 2023).
- Podstawa, Karolina. 2020. "Self-Regulation of Fundamental Rights? The EU Code of Conduct on Hate Speech, Related Initiatives and Beyond." In *Fundamental Rights Protection Online*, eds. Teresa Quintel and Carsten Ullrich. Edward Elgar Publishing, 167–84.
<https://www.elgaronline.com/display/edcoll/9781788976671/9781788976671.00019.xml> (April 11, 2023).
- Presidenza del Consiglio dei Ministri. 2022. "Strategia Nazionale per la lotta contro l'antisemitismo." *www.governo.it*.
<https://www.governo.it/it/noantisemitismo/strategia-nazionale-la-lotta-contro-l-antisemitismo/18983> (April 28, 2023).
- Quintel, Teresa, and Carsten Ullrich. 2020. "Self-Regulation of Fundamental Rights? The EU Code of Conduct on Hate Speech, Related Initiatives and Beyond." In *Fundamental Rights Protection Online*, Edward Elgar Publishing, 197–229.

<https://www.elgaronline.com/display/edcoll/9781788976671/9781788976671.00019.xml> (April 13, 2023).

Scharpf, Fritz W. 2002. "The European Social Model." *JCMS: Journal of Common Market Studies* 40(4): 645–70.

von Schnurbein, Katharina. 2022. "European Commission Coordinator for Combatting Antisemitism."

Sclafani, Robin. 2022. "Director of A Jewish Contribution to an Inclusive Europe."

Senden, Linda A. J. 2006. "Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?" <https://papers.ssrn.com/abstract=943063> (February 9, 2023).

Tuck, Henry. 2023. "Head of Digital Policy, Institute for Strategic Dialogue."

UNESCO Press Office. 2023. "UNESCO Joins Forces with European Commission to Tackle Rising Antisemitism through Education in 12 EU States | UNESCO."

<https://www.unesco.org/en/articles/unesco-joins-forces-european-commission-tackle-rising-antisemitism-through-education-12-eu-states> (April 25, 2023).

Whine, Michael. 2022. "Is Europe Finally Coming to Grips with Antisemitism?" *Justice* (68): 14–19.

Interviewed by author

Bricman, Alina. 2022. "B'nai B'rith International EU Affairs Director."

Buga, Daniella. 2023. "Assistant Secretary, European Commission, DG Justice and Consumers."

Naftaniel, Ronald. 2022. "Board Member of A Jewish Contribution to an Inclusive Europe."

von Schnurbein, Katharina. 2022. "European Commission Coordinator for Combatting Antisemitism."

Sclafani, Robin. 2022. "Director of A Jewish Contribution to an Inclusive Europe."

Tuck, Henry. 2023. "Head of Digital Policy, Institute for Strategic Dialogue."