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The European Union's Response to Islamophobia: An Assessment

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Abstract

The European Union (EU) is home to more than 25 million Muslims who form an integral part of its society. However, in the aftermath of 9/11 and several other terrorist attacks in Europe - most of which were perpetrated by Islamic fundamentalists - there has been evidence of strong anti-Muslim sentiments among members of the larger community which is reflective of an underlying sense of Islamophobia. This has manifested itself in a variety of forms ranging from hostility against Islam to negative discrimination against Muslims and the use of violence to target them, thereby increasing the potential for greater societal cleavages and conflict. The EU as a supranational entity strives to create an inclusive and tolerant society and as such is committed to the ideals of human rights, equality and non-discrimination. Tackling the challenges posed by Islamophobia and its various manifestations then becomes a priority for this organisation. Against this backdrop, the objective of this research paper is to assess the EU's response to Islamophobia by examining the initiatives undertaken by it, and focusing on their adoption by the Member States of France and Germany.

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Introduction

The EU recognizes the prevalence of racism, xenophobia and other forms of intolerance based on race, religion, ethnicity, descent, national origin, skin colour, sexual orientation and more. Home to more than 25 million Muslims who form an integral part of its society, this supranational entity has experienced the emergence of strong anti-Muslim prejudices in the post-9/11 era which is rooted in Islamophobia. This has been acknowledged in its contribution to the report of the Special Rapporteur on Freedom of Religion or Belief (2020)[2] which highlights the persistence of anti-Muslim hostility, discrimination and hate crimes against Muslims. The EU firmly rejects all such attitudes and behaviours as incompatible with its core principles that strive to create an inclusive and tolerant society and is committed to the ideals of human rights, equality and non-discrimination. In this context, the objective of this research article is to unpack the EU's response to Islamophobia in the first two decades of the 21st century.

Review of Literature

Pre-existing literature on Islamophobia refers to this phenomenon as "unfounded hostility towards Islam" (Runnymede Trust 1997, 4), which results in sentiments not only of dread or hatred of Islam as a religion but also a "fear or dislike of all or most Muslims" (Runnymede Trust 1997, 1). As Elahi and Khan (2017, 7) point out, this translates into hostility against Islam, negative discrimination against Muslims, and the exclusion of the community and its members from mainstream society and politics.

It has been argued that Islamophobia is a new and more sophisticated form of biological and cultural racism (Marranci 2004; Rana 2007; Ciftci 2012; Lauwers 2019; Mirza 2019) with one reinforcing the other. Muslims are perceived to be a group of individuals who are visibly 'different' because of their innate and unchangeable biological and/or cultural characteristics which form the building blocks of their identity. Biologically, this difference is highlighted through physical features like skin colour and hair or bone structure (Marranci 2004, 106; Mirza 2019, 310) which creates the identity of Muslims as a 'foreign' race, different from the 'native' Europeans. Culturally, the 'foreignness' is marked by language, religion, ethnicity, customs and heritage (Lauwers 2019, 307-11; Mirza 2019, 310) with Islam's violent, intolerant, theocratic, and sexist nature being deemed incompatible with Europe. The element of 'foreignness' in Islamophobia connects it to xenophobia i.e., the dislike and fear of strangers or foreigners who are perceived to be the "carriers of a different culture", and have the potential to jeopardize the integration of the host society by altering the existing national cultural identity through their differing practices (De Master & Le Roy 2000, 425). This results in an 'attitude of hostility' against the non-natives of a given population (Yakushko 2018: 13). Practitioners of Islam in a non-Islam majority state are perceived as threatening foreigners irrespective of their race, nationality and legal status (Poole and Richardson 2010), implying that even Muslims who have been settled in Europe for generations are perceived to be outsiders.

According to Taras (2008), xenophobic attitudes have further been strengthened by immigration and the projection of immigrants and asylum-seekers as potential sources of threat to the security

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[2]The EU. 2020. *EU Contribution to the Report of the Special Rapporteur on Freedom of Religion or Belief 2020*. Accessed October 04, 2021. https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Regional%20Institutions/EuropeanUnion.pdf

and wellbeing of the EU and the European society. It has been linked to the wider debates on socio-economic insecurity, unemployment, and criminal activities such as drug trafficking, illegal trade, home-grown terrorism and the sexual exploitation of young Caucasian women (Lazaridis & Wadia 2015, 4; Lazaridis & Tsagkroni 2015, 209). These concerns form the crux of the anti-immigrant rhetoric of right-wing political parties, which have, in the past few years enjoyed electoral successes both at the supranational level of the EU and the national level of the Member States, indicating proliferation of their views. While the number of far-right Members of the European Parliament (MEP) increased by 50 percent after the European parliamentary elections 2014 (Isal 2014), at the national level, right-wing parties like the National Rally (France), the Freedom Party (Austria), the Sweden Democrats, the Northern League (Italy), the People's Party (Denmark), Vlaams Belang (Belgium), and Pim Fortuyn List and the Freedom Party (the Netherlands) have experienced electoral gains (Leonard & Kaunert 2019). The construction of immigration as a national security threat in the post-9/11 era, especially by right-wing leaders like Viktor Orbán, the Prime Minister of Hungary who dubbed it as 'Trojan wooden horse of terrorism' (Wintour 2017) has reinforced the 'migration-security' nexus.

While Boswell (2007, 590) argues that the securitization of migration is largely absent in the context of Europe, others like Squire (2015), Karamanidou (2015), and Leonard and Kaunert (2019) strongly believe in the prevalence of securitization of migration. According to Karamanidou who traces the securitization of migration to the pre-9/11 era (2015, 40), the narrative has been institutionalized through the establishment of agencies like the FRONTEX, as well as through domestic laws and policies, all of which only heightens the notion of migrants as security threats (Karamanidou 2015, 37). Further, it has concretized the identities of natives and immigrants as mutually opposing and irreconcilable, and paved the way for exclusionary politics based on 'Otherness' (Squire 2009; Lazaridis & Wadia 2015, 2). The use of surveillance techniques and policing focusing on immigrants and ethnic minorities makes the members of these communities more vulnerable to exploitation and has contributed towards higher levels of insecurity among them. This has especially been the case for individuals from Muslim majority countries or resident Muslim minority communities (Lazaridis & Wadia 2015: 2).

The Twin Tower bombings coupled with subsequent terrorist attacks carried out by the Islamic fundamentalists in parts of the Western world has led to the conflation of Islam as a religion with international terrorism and created the perception of Muslims being the 'enemy within'. A 2011 report titled *Intolerance, Prejudice and Discrimination* which compared attitudes regarding Islam in eight countries found that in most of the Member States surveyed, Islam was perceived as a religion of intolerance (Zick et al. 2011, 13). A similar study also found that a staggering 83 percent of those surveyed in Spain, 70 percent in Germany and 50 percent in France believed Muslims to be religious fanatics (Ciftci 2012, 300). More recently, it has been found that within the EU Member States, an average of 37 percent of the population shares an unfavourable opinion of Muslims (The European Commission 2019b, 13). This negative perception of Islam has translated into social, economic and political practices (Lauwers 2019, 310) that are tantamount not only to marginalization, exclusion or negative discrimination but also result in aggression and violence against the group. Several studies published by the EU Agency for Fundamental Rights (FRA) along with those like *the European Union Minorities and Discrimination Survey Reports* (EU-MIDIS and EU-MIDIS II of 2009 and 2017 respectively) have highlighted the nature and extent of Islamophobia.

Nevertheless, a critical survey of the available literature reveals that although there has been an in-depth analysis of Islamophobia as a phenomenon, its connection to the wider debates on immigration and asylum, and its numerous manifestations, there appears to be little discussion on how the EU has responded to this challenge. The objective of this research is to make a contribution to the existing body of literature by providing an analysis of the EU's efforts to combat this phobia.


Methodology

The study investigates two research questions: first, what initiatives have been taken by the EU to combat Islamophobia and second, are these effective ways of approaching the issue?

To answer the first question, the study will look at the various initiatives undertaken by the EU to tackle Islamophobia. The EU does not define the term Islamophobia but instead chooses to address it collectively along with other forms of prejudices like Afrophobia, Colourism and others under the broader rubric of racism and xenophobia. Hence, the study looks at initiatives that directly relate to anti-Muslim prejudices and those that address categories like religion or belief, ethnicity and race. Based on Elahi and Khan's (2017) markers of Islamophobia, the initiatives are broadly categorized into two, namely, those that address hostility and negative discrimination. 'Exclusion from mainstream' has been deliberately omitted since addressing hostility and negative discrimination automatically tackles the issue of marginalization.

With the EU being a supranational entity, the effectiveness of the EU's measures depends on its adoption by the Member States. Hence, in answering the second question, the study investigates the implementation of the EU's initiatives by the Member States of France and Germany, which have the highest and second-highest Muslim population in Western Europe respectively. Both countries have also experienced an overall increase in hate crimes between 2016 and 2020 as is reflected in *Figure 1* which has been compiled using data from the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE)[3].

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[3] Data used for France: OSCE-ODIHR Hate Crime Reporting "France" 2016, 2017, 2018, 2019, 2020;
   Data used for Germany: OSCE-ODIHR Hate Crime Reporting "Germany" 2016, 2017, 2018, 2019, 2020.

Figure 1: Hate Crimes Recorded by the Police for France & Germany
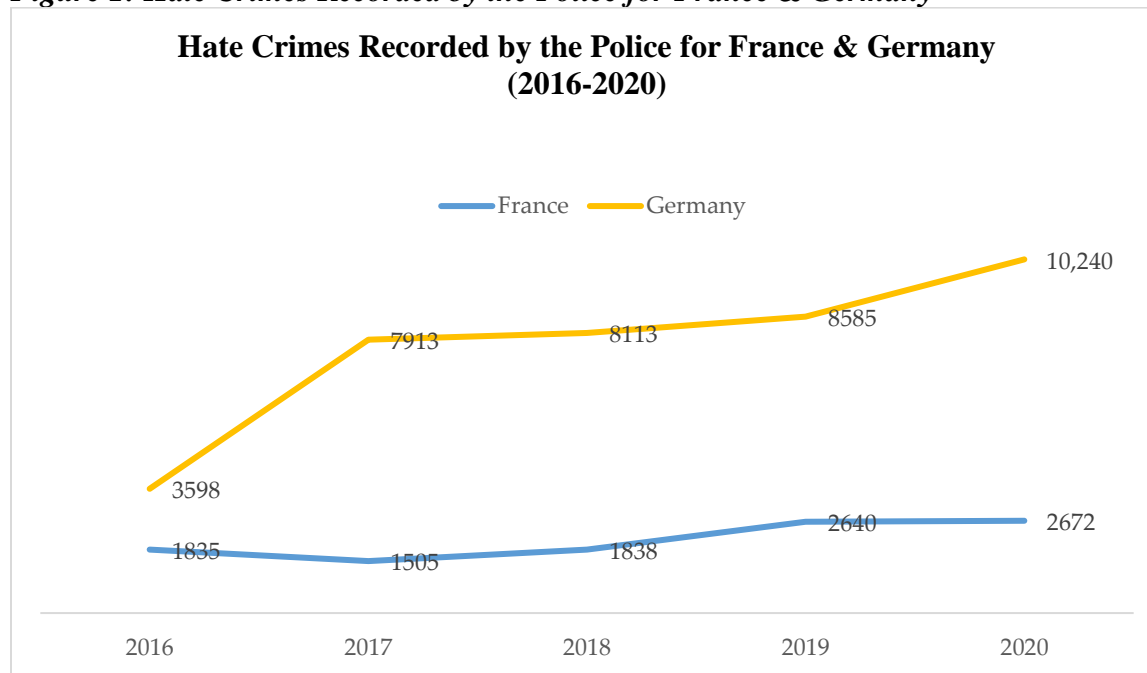
Hate Crimes Recorded by the Police for France & Germany (2016-2020)

Compiled using data from the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) .

The research covers a time period between 2000 and 2020. It focuses on sources of primary data, especially those published by the EU such as the Council Directives, reports of the European Commission and the European Parliament among others. For the Member States of France and Germany, greater reliance has been placed on the documents issued by governmental agencies such as the Premier Ministre in France and the Federal Anti-discrimination Agency (ADS) of Germany. Country reports published by the European Commission between 2016 and 2021 along with studies by the FRA also provide key insights. However, with regard to data on hate crimes, OSCE-ODIHR provides invaluable data. Finally, the study does refer to some secondary sources such as reports by Human Rights First and Human Rights Watch as well because of the detailed data collected by them.

Measures to Combat Islamophobia in the EU

The EU condemns any form of rejection, exclusion, and vilification of individuals or groups based on the perception of their being outsiders or foreigners, and inciting violence or hatred against them (Council of the European Union Framework Decision 2008, Article 1). At the supranational level, the EU has made sincere efforts to promote greater discussion on xenophobia and racism to create greater awareness and sensitivity about the issues. Indirectly, the EU's measures to tackle racism and xenophobia address Islamophobia as well. Specific measures to deal with this form of prejudice has been rare. The following section highlights some of the important initiatives undertaken by the EU.

Hostility

A prominent manifestation of Islamophobia is hostility directed against Muslim individuals, their property, and institutions of the Islamic faith. This is reflected through hate crimes which are criminal acts motivated by prejudices based on fundamental characteristics like religion, language or ethnicity that is shared by members of the target group (FRA 2018b, 16; Council of the European Union 2008, Article 4) and can incorporate within its ambit both physical violence and the threat thereof as well as hate speech. The EU has emphasized the prevention and countering of anti-Muslim hatred by making it a priority funding area under the EU's Rights, Equality and Citizenship Programme (The European Commission 2019b, 14). Moreover, its First Colloquium on Fundamental Rights on "Tolerance and Respect: Preventing and Combating Antisemitic and anti-Muslim Hatred in Europe" (2015) resulted in the establishment of the EU High Level Group on Combating Racism, Xenophobia and Other Forms of Intolerance, which now plays a pivotal role in combating Islamophobia.

Despite lacking a uniform definition of hate crimes, the EU has strived to provide a common response to it through the Framework Decision on Combating Racism and Xenophobia (2008/913/JHA) which provides for the criminalization of specific forms and expressions of racism and xenophobia. It necessitates the Member States to criminalize the disquisition and dissemination of print or electronic materials that encourage hatred and incites violence against groups based on their fundamental characteristics like race or religion, skin colour, ethnicity, descent and so on, both physically as well as in online spaces (The European Commission 2019b, 3).

The EU's concern with hate crimes has also paved the way for stronger cyber legislations. Muslims have been identified as the most vulnerable group (The European Commission 2019b, 13) with the maximum number of flagged contents online being related to anti-Muslim hatred (FRA 2017b, 82). The "Code of Conduct on Countering Illegal Hate Speech Online" (2016) has resulted in voluntary agreements between the European Commission and organizations like Facebook, Twitter, Microsoft, YouTube, and several others, enabling these organizations to review and remove illicit content within 24 hours of notification (The European Commission 2016a). This has been complemented by the Commission's "Tackling Illegal Content Online: Towards an Enhanced Responsibility of Online Platforms", which along with promoting good practices to deter, detect and remove damaging content also lays down guidelines to fight against hate speech on the internet with the cooperation of the Member States and other relevant stakeholders (European Commission, 2017c).

Comprehending the nature and extent of hate crimes depends upon the availability of related data and as such the European Commission works closely with the FRA to collect and analyse data on discrimination, racism, intolerance and hate crimes. The EU's efforts on data collection have also been reflected through the Subgroup on Methodologies of the EU High Level Group on Combating Racism, Xenophobia and Other Forms of Intolerance which not only brings together all the Member States for recording hate crime data but also involves regional organizations like the ODIHR, the European Commission against Racism and Intolerance (ECRI) as well as civil society organizations. The High Level Group's elaborate guideline titled "Improving the Recording of Hate Crime by Law Enforcement Authorities Key Guiding Principles" covers five key areas ranging from the very necessity to collect data on hate crimes to flagging such crimes as soon as

they are reported, and developing indicators to identify 'motivation bias' while investigating them (The European Commission 2017b, 6-10).

The EU has also identified the importance of providing support to victims of hate crimes through the Victims' Rights Directive, which establishes a minimum standard of rights for the victims and is responsive to their needs for protection and support. Article 22 of the Directive acknowledges that victims of such prejudice based crimes, especially children and the disabled, are often vulnerable to repeated attacks, intimidation and retaliation, which necessitates individual assessments based on the victim's personal characteristics, the nature and type of the crime as well as the circumstances of it (The EU 2012, Victims' Rights Directive 2012/29/EU).

While the victims of hate crimes often choose not to report them, national law-enforcement authorities also fail to identify them largely due to a lack of understanding or awareness on their part. The EU has undertaken sincere efforts to build trust and confidence among the victims by creating measures that can help strengthen the recording of such crimes. The EU Agency for Law Enforcement Training has introduced a variety of both offline and online training courses that strike a balance between policing and the protection of fundamental rights to create greater sensitivity among rank and file. The ten key guiding principles introduced by the European Commission play an important role in identifying targets and building synergies, ensuring positive impact and sustainability of the strategy in the long run, and monitoring and appraising the outcomes (The European Commission 2017a). Moreover, engaging with civil society organizations also boosts the capacity building of law enforcement agencies. Since these organizations actively engage with victims of hate crimes by providing support, they are not only able to offer insight into the local patterns of such crimes but also encourage the victims to report the same. The European Commission itself has introduced training on anti-Muslim hostility to educate its staff members regarding the stereotyping of Islam and Muslims to create greater awareness (The European Commission 2019b, 14). Some progress was also made with the creation of the post of a coordinator to deal with anti-Muslim hatred in 2015 and the appointment of Afzal Khan as special representative for Muslim communities for the Socialists and Democrats Group in the European Parliament.

Hostility against Muslims often translates into negative discrimination against individuals and groups in spheres such as housing and the labour market which has been taken up by the following section.

<u>Negative discrimination</u>

The EU has two main anti-discrimination laws which indirectly address Islamophobia, namely, the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). The Racial Equality Directive established a framework to ensure that individuals are treated equally irrespective of their race and ethnicity in both public and private sectors in areas related to employment, social security and protection, healthcare, education, and access to goods and services (Council Directive 2000/43/EC). The Employment Equality Directive also establishes a guideline for equal treatment, but specifically in the area of employment and occupation, and prohibits discrimination by employers directly, indirectly or through harassment on the grounds of religion[4] (Council Directive 2000/78/EC). It further encourages social dialogue to promote equal

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[4] When it is irrelevant to the occupation.

treatment at the workplace and emphasizes equal access to employment as a crucial means to social integration (Council Directive 2000/78/EC).

The EU's equality directives have encouraged the establishment of equality bodies like the Bodies for the Promotion of Equal Treatment by the Member States (The European Commission 2019b, 3). The European Commission has also adopted the "Recommendation on Standards for Equality Bodies" to improve their performance in addressing discrimination on the grounds of religion, ethnicity, skin colour and more, especially in the field of employment. Focus has also been directed to promoting workplace diversity and creating more inclusive atmospheres by encouraging employers to promote diversity and equal opportunities in the workplace. The EU Platform too has played a pivotal role in supporting the sharing of good practices and guidelines to create more inclusive workplaces that respect socio-cultural diversity (The European Commission 2019b, 6).

To summarise, the EU's response to Islamophobia is a combination of general measures addressing xenophobia and racism coupled with certain Islamophobia-specific measures, though the former by far outnumber the latter. While the variety and scale of measures have undoubtedly been commendable, the effectiveness of these initiatives to counter Islamophobia remains to be determined.

Effectiveness of the EU's Measures

To gauge the effectiveness of the EU's measures, this study first focuses on their implementation by the Member States of France and Germany and complements the discussion through a critical assessment of the initiatives at the supranational and national levels.

<u>Adoption of the EU's Initiatives by France & Germany</u>

Both France and Germany have undertaken multiple measures to ensure the implementation of the EU's guidelines. They have ensured the criminalization of hate crimes through their respective national laws. Incitement to either discrimination or hate and harm of individuals or groups because of their ethno-religious background and race was already prohibited under the French Law on the Freedom of the Press (1881)[5]. France's Criminal Code further charges act motivated by ethnicity, race and religion as felonies and misdemeanours[6]. The country has also encouraged reforms in the criminal justice system which would enable faster prosecution of hate crime cases as was highlighted by 2015 report of the *Délégation Interministérielle à la Lutte Contre le Racisme, l'Antisémitisme* (DILCRA). The 2017 amendment further simplified hate crime laws and strengthened the penalty provisions related to it (OSCE-ODIHR 2017a). In a first, the vulnerability of Muslims as targets of such crimes was recognized and initiatives have been undertaken to protect mosques, Muslim schools and meeting places (DILCRA 2015). Unlike France, hate crimes were not treated as a separate category in Germany prior to 2017. Instead, they were perceived to be 'politically motivated crimes' which included those driven by race, religion and belief, ethnicity and origin. After 2017, hate crimes have come to be tracked separately. The country's efforts to combat these is reflected in the Federal Government Strategy to Prevent Extremism and Promote Democracy (The Federal Government 2016), the National Action Plan to Fight Racism (The

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[5] Government of France. N.d. "Everything you need to know about freedom of expression in France". Accessed March 03, 2022. https://www.gouvernement.fr/en/everything-you-need-to-know-about-freedom-of-expression-in-france

[6] It provides an exhaustive list of such behaviours which includes acts ranging from murder and physical assault to any form of sexual aggression, the desecration of corpses and graves, and property damage (Criminal Code of France).

Federal Government 2017) and the country's efforts to improve the recording and prosecution of hate crimes. For example, the Federal Ministry of Justice in 2020 funded a project of the German Institute for Human Rights to foster improvements in hate crime prosecution and pave the way for cooperation between the relevant stakeholders such as the police and public prosecutor's office (OSCE 2020b). Further, both countries have implemented the Counter-Islamophobia Kit (CIK)[7] which analyses prevalent anti-Muslim narratives and attempts to create a directory of the best practices in countering Islamophobia across the EU that would also act as a guideline for policy-makers.

Following the EU, France and Germany have undertaken significant steps to combat hate speeches. France's National Plan Against Racism and Anti-Semitism 2018-2020[8] (DILCRAH n.d., 5) addresses offline as well as internet-based hatred while the Avia Law (2020) strives to ensure the quick removal of hate-related content from online platforms. Similarly, Germany's Network Enforcement Act (NetzDG) 2018 strives to combat online hate speeches and provides for the reporting of specific types of "criminal content" to the police (Lomas 2020). It mandates social media operators with over 2 million users to remove "clearly illegal" content within 24 hours of receiving a complaint and "other illegal content" within 7 days, with the failure to comply resulting in hefty fines of as much as €50M (FRA 2019, 96; Lomas 2020). In a major development, hate-motivated insults too have come to be categorized as a criminal offence to protect vulnerable groups like Muslims (AP News 2021, German government makes hate-motivated insults a crime).

Recognizing the importance of collecting data on hate crimes, both countries have put in place mechanisms for the collection of such data which includes the recording of anti-Muslim hate crimes specifically. Regular surveys have been conducted by the French authorities to gather and publish data on hate crimes (FRA 2017b, 79-80). The country has also proposed an annual survey of victims to gain better knowledge of racism (DILCRA 2015). Interestingly, there has been an emphasis on reforming the methodology of data collection to ensure the inter-connectedness between databases (Human Rights First 2016, 13). In Germany too, procedures for recording hate crime data by the police has become more detailed since 2017.

These two Member States have also transposed the Victim's Rights Directive into their respective national laws. Both France and Germany provide for the protection of victims in general and during criminal investigations under Articles 18, 19 and 20 of the Directive (European Parliament 2017, 61). In France, victims are given a special status (European Parliament 2017, 66) and supported through organizations such as the National Victim Support and Mediation Institute (INAVEM), which strives to promote and coordinate victim support missions, and encourages awareness of victims' rights (European Parliament 2017, 54). The German government has also sought to strengthen provisions for the protection and support of hate crime victims as a part of its project on combating racism to which it has committed €1B between 2021-2024 (European Commission 2021b, 7).

They have also taken note of the EU's efforts to sensitize law enforcement agencies regarding hate crimes. In France, the prosecution system has been made more victim-centric through efforts to develop a network of magistrates and investigators specializing in hate crimes by the Ministries of Justice and the Interior (OSCE-ODIHR 2018a). The Ministry of the Interior's "national office to

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[7] University of Leeds. N.d. Counter-Islamophobia Kit. Accessed December 4, 2020. https://cik.leeds.ac.uk/
[8] *Délégation Interministérielle à la Lutte Contre le Racisme, l'Antisémitisme et la Haine anti-LGBT* (DILCRAH).

combat hatred" aims to coordinate intelligence gathering and investigations related to anti-Muslim hate crimes among others (FRA 2020b, 66). Similar attempts have also been undertaken in Germany which has sought to sensitize its law-enforcement agencies to improve police response and equip the judicial system to better deal with such crimes. The German Federal Ministry of the Interior (BMI) along with the Criminological Research Institute of Lower Saxony (KFN) and the German Police University (DHPol) have developed a study on the "Best practices of co-operation between safety authorities and civil society concerning the avoidance of crime guided by prejudices" (OSCE-ODIHR 2017b) to train the police in good international practices and to improve collaboration with civil society organizations.

Both have also been mindful of the EU's anti-discrimination Directives. While France has transposed them through multiple legislations like the Law 2001-1066, Law 2004-1486 and Law 2008-496 (European Commission 2021a, 6), Germany has incorporated the EU's Directives into labour, civil and public law through the General Equal Treatment Act (AGG) of 2006. France's Law 2001-1066 strengthened the prohibition of distinction among people based on race or religion and guarantees respect for all beliefs as highlighted in the French Constitution of 1958 (European Commission 2016b, 33). It amended both the Penal and the Labour Codes by extending and elaborating the grounds prohibiting discrimination outlined by Article 19 of the Treaty on the Functioning of the European Union (European Commission France 2016, 34). Together, the three laws have come to incorporate employment-related-discrimination as well (European Commission 2021a, 6) which has been complemented by Article 158 of the Law on Social Modernisation (2002-73) to cover discrimination in the sphere of housing (European Commission France 2016, 32) and Law No. 2008-496 which focuses on the protection of race and ethnic origin in all other areas covered by the Directive 2000/43/EC, such as access to supply of goods and services, healthcare and education, social protection and more (European Commission 2021a, 14). The German AGG (2006) provides the most extensive protection for discrimination based on race and ethnic origin (Federal Anti-discrimination Agency n.d.) although, it also prohibits discrimination based on religion or belief and more. The Act has brought about amendments in Germany's pre-existing legislations and covers a variety of areas from employment and education to the provision of goods and services, and housing (Federal Ministry of Justice General Act on Equal Treatment, 2006). In line with the EU's efforts, both French and German laws provide a broader understanding of discrimination which includes direct and indirect discrimination as well as harassment and the instruction to discriminate (European Commission 2021a, 6-7).

Similarly, the countries have also established equality bodies to tackle all discrimination related cases. France's Organic Law No. 2011-333 created a constitutional equality body (European Commission France 2016, 32) which consolidated the French Ombudsman, the Children's Defender, the National Commission on Security Ethics and the former High Authority for the Fight against Discrimination and for Equality (European Commission 2021a, 10). In Germany, the AGG 2006 paved the way for the establishment of the Federal Anti-discrimination Agency that not only helps people protect their rights against negative discrimination but also provides related information and legal aid, and works closely with other government organizations such as the Ministry of Family Affairs, Senior Citizens, Women and Youth (European Commission 2021b, 13). Additionally, Germany has other specialized equality bodies as well, such as the Federal Government Commissioners for Migration, Refugees and Integration, and for Matters Related to Ethnic German Resettlers as well as National Minorities (European Commission 2021b, 13).

The above discussion reveals that both France and Germany have followed the EU's initiatives and created elaborate provisions at the national level to enforce them. The final section of this research critically assesses the developments and caveats in the EU's response to Islamophobia.

<u>An Assessment</u>

A thorough examination of the EU's initiatives and their adoption by the Member State yields a mixed report card marked by both positive developments, and challenges hampering further progress.

In accordance with the EU, both France and Germany have made alterations to their existing legislative frameworks to criminalize incitement of hatred or discrimination against any community based on religion, ethnicity, race or nationality. The EU has been able to make a significant impact on addressing hate speech online. Its initiatives have paved the way for the swift response to racist and xenophobic comments in cyberspace. According to the Fourth Monitoring Exercise of the Code, companies were estimated to assess 89 percent (The European Commission 2019a, 1) of the flagged content within 24 hours and removed nearly 72 percent (2019a, 1) of what was deemed to be hate speech. The results of the Sixth Evaluation further reveal that 90.4 percent and 81 percent of the flagged content was reviewed within 24 hours in 2020 and 2021 respectively (European Commission 2021c). The EU's success in this sphere has also encouraged other platforms such as Instagram, Snapchat, Dailymotion, TikTok and LinkedIn to participate in the Code of Conduct as well, which together cover over 85 percent of Europe's social media (The European Commission 2019b, 6; European Commission 2021c). Based on data from the Sixth Evaluation, the performance of three such platforms have been highlighted in *Figure 2*. The removal of hate speech increased from 28 percent to 59 percent in the Second Evaluation of the Code of Conduct (FRA 2018a, 79) in some EU Member States in over six months and further increased to 72 percent in 2019 (The EU 2019, 2). France and Germany have also experienced positive developments in this regard, which is reflected in *Figure 3*, compiled using data from the Sixth Monitoring Exercise. Facebook has been known to delete hundreds of hate-motivated contents ranging from insults and incitement to hatred or violence (FRA 2019, 96) in both countries. Furthermore, France has also attempted to make hate crime reporting easier by creating a user-friendly interface on the Platform for Receiving, Processing, and Referring Notifications of Unlawful Content (PHAROS). It was estimated that the number of cases reported on PHAROS has increased by 73 percent between 2014 and 2016 (Human Rights First 2016, 13).

Figure 2: Rate of Removals for TikTok, Twitter, and Instagram
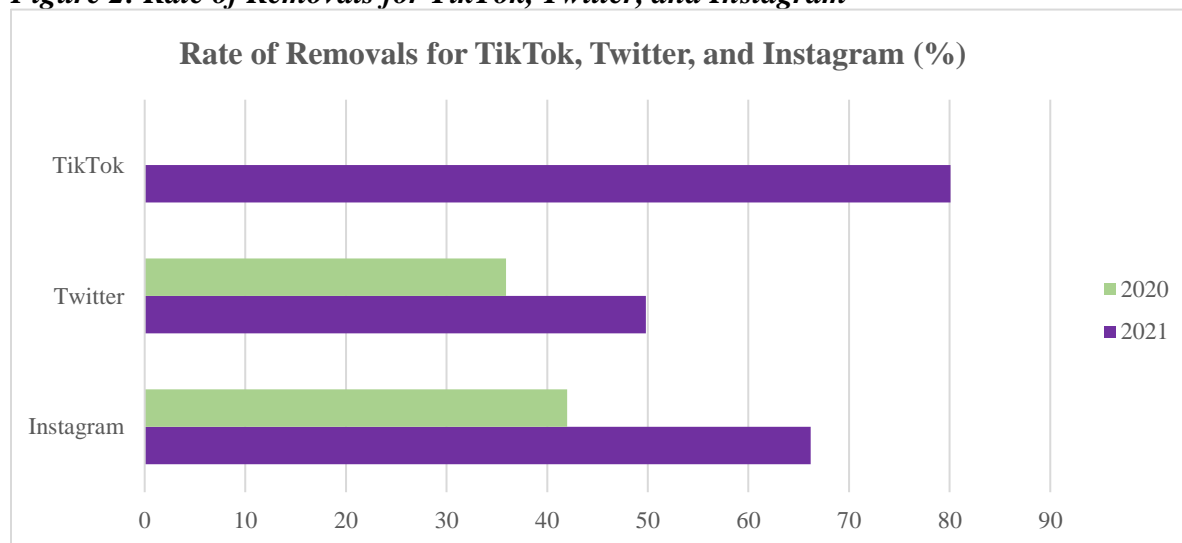
Compiled based on data from the Sixth Evaluation.

Figure 3: Rate of Removals for France and Germany
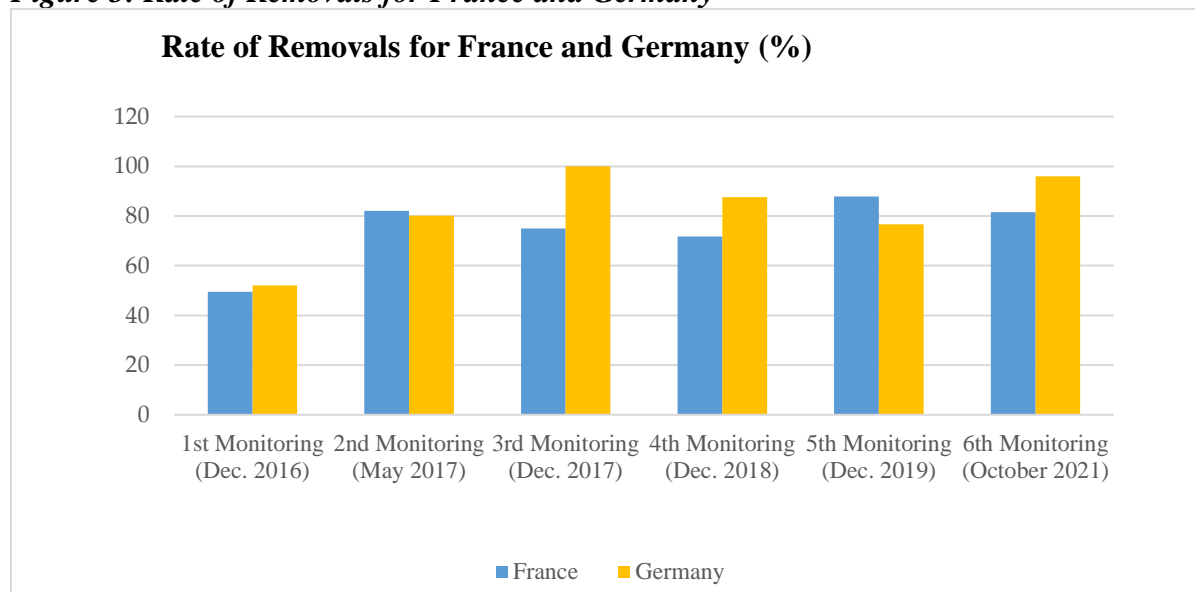
Compiled using data from the Sixth Monitoring Exercise

However, in spite of the transposition of the EU's directives, their effectiveness appears to be limited. In France, the very grounds of discrimination like race, ethnicity and religion or beliefs remain undefined as these concepts are not recognized as legal categories (European Commission 2016b, 34-35). Moreover, Law 2001-1066 is directed solely towards the protection of individuals, their beliefs and allegiances and does not extend to groups. Consequently, religious minorities like Muslims are not recognized as a legal category because of which minority rights granted to individuals by virtue of their membership of a minority ethno-religious or cultural group remain jeopardized (European Commission 2021a, 13). In Germany, stronger protection against discrimination based on ethnicity indicates its precedence over other grounds. Additionally, the exclusion of nationality as a basis for discrimination (Federal Anti-discrimination Agency n.d.) because of the non-recognition of the 'existence of different human races' by the state also leads

to a narrower interpretation. Nationality often becomes linked to ethnicity and religion, resulting in multiple discrimination regarding which neither the EU nor France and Germany have elaborate mechanisms. Additionally, the AGG has been found to be inadequate in protecting Muslims in the fields of education and labour. The 2013 report of the German Federal Anti-discrimination Agency highlighted that approximately 700,000 Muslim students experienced disadvantages due to their faith (Arani 2015, 22). In the sphere of employment, data reveals that prospective candidates who identify with their faith on their CV receive fewer calls for job interviews as compared to equally qualified candidates who do not (The European Commission 2019b, 13). According to the FRA (2017), almost one in three Muslims experienced such discrimination. Twenty-two percent of the EU population feel negatively about having a Muslim neighbour while roughly three in ten persons were found to be uncomfortable having a Muslim colleague (FRA 2020a). In fact, 21 percent of the respondents were not even open to employing Muslim women because of their headscarves (FRA 2020a). These findings are substantiated by other studies as well. Research published in 2015 confirms that employers are much less likely to contact Muslim job applicants than their Jewish and Catholic counterparts (Abdelkader 2017, 46). While job applicants with authentic German surnames received interview requests from 18 percent (Abdelkader 2017, 55) of the companies, only three percent (2017, 55) of the businesses extended similar invitations to applicants from the Muslim community. It has been reported that discrimination on race and ethnicity while accessing employment is high in the case of France as well (FRA 2021, 99). The Special Eurobarometer 393 on Discrimination in the EU (2012) found that discrimination based on religion or beliefs were 66 percent in France, which was the highest figure recorded by the survey (Howard 2016). Both French and German Muslims have found it difficult to procure long-term stable employment (2017, 55)[9] and grapple with issues in the labour market such as observing Friday congregational prayer or wearing the hijab.

In reference to the Victims' Rights Directive, both countries already had comprehensive victim support services in place well before its transposition. Even so, in France, the directive led to a greater focus on the individual assessment of victims and the growth of integrated referral systems while in Germany, it made the criminal justice system more victim-oriented (European Parliament 2017, 66-68). Noticeably, Germany has not adopted the directive in its entirety. It has implemented a few provisions like those related to the right to interpretation and translation, and legal aid (European Parliament 2017, 52 & 57) while most of the other measures remain only partially transposed or completely absent. Like France, it has not adopted the definition of 'victim' as per the directive (European Parliament 2017, 50-51) but unlike France, which has provided for the right to information and support by victims, the right to access victim support services through referral mechanisms, guarantees on the return of victims' property and measures to promote restorative justice (European Parliament 2017), it was found to be lacking in these areas. Germany argues that the right to access victim support services were already in place before the directive, but the European Parliament (2017, 54) has been unable to locate specific legal statutes, ordinances or acts dealing with the same. The country was also found to lack measures related to the accompaniment by a relative, the right to be heard, rights in the event of a decision not to prosecute, and cooperation with the other Member States to coordinate actions on victims' rights (European Parliament 2017 54-59 & 64). Other provisions, like the victims' rights to receive information about their case has only partially been transposed (European Parliament 2017, 54). Moreover, though it penalizes hate crimes more severely, there exist no special provisions for the victims and

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[9] As compared to the German workforce, the number of marginally employed Muslim workers having very low income was estimated to be around 11 percent higher in Germany (Arani 2015, 31).

generalized support was found to be less developed than specialized support (European Parliament 2017, 66).

On the sensitization of law enforcement, no information could be found on France but for Germany, victims and their support organizations have expressed concerns regarding the role of the German police. It was reported that police interrogation was directed more towards the victims rather than the accused. Allegedly, the police failed to identify hate crimes, discouraged victims from lodging formal complaints and neglected to start investigations (Human Rights Watch 2011, 3 & 16). Such experiences lead to an erosion of trust in the system and impede the ability to provide victim support. It also results in a devastating number of unreported hate crimes. According to EU-MIDIS, 82 percent (FRA 2009, 13) of the hate-motivated crimes remained unreported in the year preceding the survey. In the EU-MIDIS II survey, nearly 64 percent (FRA 2017a) of the participants did not report their most recent experience of discrimination. In both cases, a lack of trust was identified as the principal cause coupled with a pervasive belief that reporting such crimes would not lead to any changes in their circumstances and might even lead to further harassment by the authorities. Redressal against negative discrimination also appears to suffer from similar challenges. The rate of reporting negative discrimination has been low. The FRA (2017) found that only around 12% of Muslims report incidents of discrimination across the EU. Another study reveals that of the 79 percent Muslim respondents who did not report their discrimination experience, 59 percent believed it would not lead to positive changes while 38 percent thought of it as a 'normal' incident and 33 percent were unaware of the procedures to report it (Arani 2015, 19). For Muslim women, reporting anti-Muslim hatred and discrimination becomes more challenging because of the intersectional discrimination faced by them. Indeed, equality bodies have faltered either due to the lack of staff and funding or because of the absence of a political will and concerns have been raised about their independence in several Member States including Germany (FRA 2021, 104) where the AGG has failed to establish easily accessible institutions to handle complaints (Arani 2015, 34).

Hence, while several initiatives to address xenophobia and racism have been undertaken, there is a considerable lack of awareness and knowledge about such measures at the grassroots level. The EU-MIDIS survey revealed that 39 percent (FRA 2009, 10) respondents were unaware of the existence of anti-discrimination legislation in the employment sphere while 44 percent (2009, 10-11) of the respondents were unaware of anti-discriminatory legislation in the sphere of housing. There was also little to no awareness about the availability of support systems to victims of hate crimes. Only 16 percent (2009, 13) of the respondents were aware of organizations that supported hate crime victims. In EU-MIDIS II, 71 percent of the respondents (FRA 2017a, 15) had no knowledge of victim support systems while 62 percent (2017a, 15) remained unaware of the existence of equality bodies. This highlights the gap between policy-making and policy implementation which coupled with the lack of detailed data collection on hate crimes and discrimination in various spheres makes it difficult to assess the actual impact of these measures.

The European Commission monitors the implementation of the EU's directives and can initiate infringement procedures in the event of non-compliance. However, it has largely been unable to tackle the non-conformation or half-hearted conformation by the Member States. Although the EU has undertaken several measures and the Commission has pushed for action, there appears to be a lack of political will among the EU countries to comply. This becomes explicit in the failure of the EU to establish a uniform understanding of hate crimes which would pave the way for a common criminal-law approach by which the same hate crime would be tagged as a punishable offence in

all the Member States (Council of the European Union 2008). The Commission's efforts to ensure the authentic implementation of the Framework Decision on Racism and Xenophobia (2008/913/JHA) has largely been unsuccessful (FRA 2020b, 63). With hate crimes being essentially a matter of criminal justice that is the jurisdiction of the Member States, there is also tension regarding who has the final say on hate crimes. The recording and penalization of hate crimes depend on the ability to identify them which is then adversely impacted by the lack of a uniform definition. The EU has encouraged the Member States to develop their individual practices in terms of data recording based on their varying experiences and the availability of resources. There is thus no single methodology that is used to collect this type of data, making information collected by the Member States incomparable. Some progress has been made relating to data collection on hate crimes with 19 EU countries collecting and publishing such data, and 15 de-constructing the figures in terms of bias motivations, circumstances of the offences, vulnerable population groups, and police responses (FRA 2018b, 11). Even among those that collect data, the progress has not been uniform. Only a few countries like France and Germany have established procedures for data collection while the rest have largely been recalcitrant in this regard (FRA 2018a, 77; FRA 2019, 92). Additionally, there exists no record of the sentencing of hate-motivated crimes even in France and Germany which would demonstrate the extent to which recorded cases are prosecuted by the state.

The EU's initiatives like the Code's Code of Conduct on Countering Illegal Hate Speech Online, the Race and Employment Equality Directives and the Victim's Rights Directive have largely been left to the Member States for implementation. It has been found that none of the Member States, including France and Germany, have completely transposed the directives. In fact, in less than 50 percent of the Member States (FRA 2018a, 77; FRA 2019, 92), little attempt has been made to implement strategies and dedicated action plans against racial or ethnic discrimination and related intolerance, particularly in the sphere of employment. They were also unable to reach a consensus regarding the implementation of the long-pending Equal Treatment Directive (FRA 2020b, 32; FRA 2021, 69).

The greatest challenge to the EU perhaps comes from institutional racism. In the post 9/11 period, Muslims have come to be perceived as the 'enemy within' in many European countries and have been known to be disproportionately targeted by the state's security measures. After the 2015 Paris attacks, 3594 Muslim houses, mosques and prayer halls were raided (ENAR 2016). However, such intensive operations resulted in only six criminal investigations for terrorism and only one ongoing trial (ENAR 2016). Both the EU-MIDIS II and a national survey in France reveal that a higher proportion of Muslims was stopped and searched as compared to other communities. This is especially the case for young men of Arab and African descent, who are twenty times (FRA 2018a, 79) more likely to be stopped and searched than any other male group. Similar kinds of religious profiling were also found to be prevalent in Germany regarding black and minority communities (Open Society Justice Initiative 2009, 82). These coupled with other measures such as prohibitions on the building of mosques, minarets and prayer rooms, restricting the entry of foreign clerics, and subjecting Muslim institutions to intensive surveillance run the risk of undermining fundamental rights and paves the way for increasing hostility and discrimination against them since it gives the rest of the society the 'permission to hate' (Poynting and Mason, 2006) and creates a continuous cycle of intolerance which generates more and more violence. Since such measures are justified by the states on the grounds of national security, there is little political will or scope for the EU's intervention.

Conclusion

To conclude, the EU's response to Islamophobia has been feeble at best. It has introduced a substantial number of measures that are relevant to combating the phenomenon, however, these have largely missed their mark and failed to create a positive impact.

The EU recognises Islamophobia as a challenge to societal stability. Nonetheless, it chooses to address them through more general measures on racism and xenophobia. This coupled with the lack of EU-wide data on anti-Muslim incidents reduces its visibility.

The EU's efforts have been commendable in as much that they cover a wide range of issues from the criminalization of hate crimes and prohibition of negative discrimination to the sensitization of law enforcement agencies, the establishment of equality bodies and victims' rights. However, in reality, these measures have had limited effectiveness.

There has undoubtedly been some progress concerning stronger cyber legislations addressing hate speeches on the internet and in creating safer online spaces. It has motivated social media platforms and Member States like France and Germany to be more proactive in removing hate-related content. However, the lack of political will and the limited implementation of the EU's measures have jeopardized most of the initiatives and adversely affected future progress. Since all of the initiatives are centred around the understanding of hate crimes, the lack of consensus on its understanding has been a major setback. Moreover, the EU has been unable to ensure the participation of all Member States in collecting hate crime-related data. Such data is not categorized to reflect the number of anti-Muslim incidents or related cases handled by the equality bodies. As a result, any assessment of the effectiveness of the EU's measures has to depend on general data related to racism and xenophobia. Additionally, although the EU monitors these bodies regularly and has even introduced infringement procedures against some, in several of the Member States they have collapsed. It is also important to note that despite the adoption of the EU's measures, France and Germany, have experienced an overall increase in hate crimes in the past few years which questions the effectiveness of these measures. In both Member States, equality bodies have come to be criticized because of their ineffectiveness as well.

Finally, the EU has also been unable to take a strong stand against racial profiling by its Member States. It also recognizes 'gendered Islamophobia' and multiple discrimination, but has nevertheless failed to undertake specific measures to mitigate its effects. Since Islamophobia is driven by misperceptions regarding Islam, programmes disseminating education and awareness on Islam can also play a positive role in breaking down prejudices and combating intolerances. However, this has largely been absent in the EU's efforts.

As Europe continues to grapple with the complexities of xenophobia and racism, particularly rising Islamophobia in the 21st century, its greatest challenge will come in terms of generating a political will strong enough to resist anti-Muslim prejudices not only at the societal level but also at the institutional level of policy-making in the Member States. Looking towards the future, as society continues to grapple with Islamophobia, increasing the visibility of this phenomenon coupled with stronger measures that specifically address anti-Muslim prejudices and ensuring stricter compliance by the Member States will be indispensable in fostering greater cohesion.

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