



Commission's initiative to Extend the list of EU crimes to Hate speech and hate crime

Ingrid Bellander Todino
Head of Unit for Fundamental Rights Policy
DG Justice and Consumers, European Commission

Outline

1. Current state of the legal and policy context
2. A two-step approach initiative (Article 83(1) TFEU)
3. Mapping of the Member States' legal frameworks
4. Preliminary evidence about the scale, nature and impact of hate speech and hate crime
5. Assessment of the criteria under Article 83(1) TFEU
6. Conclusion

1. Current state of the legal and policy context

- Hate speech and hate crime are only criminalised at EU level through the Framework Decision on combating racism and xenophobia by means of criminal law, which covers grounds of race, colour, religion, descent, or national or ethnic origin.
- Criminalisation of other forms of hate speech and hate crime, for example on the grounds of sex, sexual orientation, age and disability, varies in EU MS.
- Currently, the Treaties do not provide for a legal basis to criminalise hate speech and hate crime at EU level.

Communication from the Commission to the European Parliament and the Council, adopted on 9 December 2021



Brussels, 9.12.2021
COM(2021) 777 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

**A more inclusive and protective Europe: extending the list of EU crimes to hate speech
and hate crime**

2. A two-step approach initiative

The list of **EU crimes** in Article 83(1) TFEU can be extended to include *areas of crime* that are:

- “**particularly serious**”
- “with a **cross-border dimension**, resulting from the **nature** or **impact** of such offences or from a **special need to combat them on a common basis**”
- based on “**developments in crime**”

Two consecutive steps:

1. Initiative to **trigger a Council Decision** to extend the list of EU crimes to hate speech and hate crime: *Commission Communication, adopted on 9 December 2021.*
2. Once Council Decision is adopted, a **proposal for a Directive** harmonising the definition of criminal offences and sanctions in the areas of hate speech and hate crime.

Preparatory mapping and analysis



I. Detailed mapping of the Member States' legal frameworks on the criminalisation of hate speech and hate crime.



II. In-depth analysis of the information and data collected concerning the **scale, nature and impact of hate speech and hate crime** in the Member States.



III. Assessment of the fulfilment of the criteria under Article 83(1) TFEU and of the **added value of the EU action.**

3. Mapping of the Member States' legal frameworks

- National legislation criminalising hate speech and hate crime:
 - i. without reference to any specific ground;
 - ii. on the specific grounds of:
 - sex/gender, sexual orientation, gender identity/sex characteristics, disability and age;
 - race, colour, religion, descent, or national or ethnic origin, as required by the Framework Decision on racism and xenophobia;
 - other grounds.
- Relevant definitions of the different grounds at the national level.
- Undergoing **legal reforms** in 2021, in particular, addition of new forms of hate speech and hate crime as regards grounds (in **11 MS** until September 2021).

Overview of Member States' legislation on hate speech and hate crime

	No specific ground criminalised in the national legal framework	Specific grounds criminalised in the national legal framework					
		Sex/gender	Sexual orientation	Age	Disability	Race, colour, religion, descent, or national or ethnic origin	Other grounds explicitly criminalised
Criminalisation of hate speech	8 Member States CZ, DE, FI, HR, HU, LV, RO, SI.	17 Member States AT, BE, CY, EE, EL, ES, FR, HR, HU, LT, LU, LV, MT, NL, PT, SE, SI.	20 Member States AT, BE, CY, DK, EE, EL, ES, FI, FR, HR, HU, IE, LT, LU, MT, NL, PT, SE, SI, SK.	6 Member States AT, BE, ES, LT, LU, LV.	14 Member States AT, BE, EL, ES, FI, FR, HR, HU, LT, LU, LV, NL, PT, SI.	26 Member States All Member States, except RO.	13 Member States AT, BE, CZ, EE, ES, FI, IE, LT, LU, MT, PL, SI, SK.
Criminalisation of hate crimes	15 Member States AT, BG, CZ, DE, DK, EE, FI, HR, HU, LV, PL, PT, RO, SE, SI.	17 Member States AT, BE, CY, EL, ES, FI, FR, HR, HU, LT, LU, MT, PT, RO, SE, SI, SK.	19 Member States AT, BE, CY, DK, EL, ES, FI, FR, HR, HU, LT, LU, MT, NL, PT, RO, SE, SI, SK.	10 Member States AT, BE, ES, FI, FR, HR, LT, LU, MT, RO.	13 Member States AT, BE, EL, ES, FI, FR, HR, HU, LT, LU, MT, NL, RO.	25 Member States All Member States, except EE and IE.	17 Member States AT, BE, BG, CY, CZ, ES, FI, FR, HR, LT, LU, MT, PL, PT, RO, SI, SK.

4. Available evidence about the scale, nature and impact of hate speech and hate crime

- Increase in the **scale** of hate speech and hate crime is a **concern in many Member States** and targets many groups, *for example*:
 - **LGBTIQ**: 1 in 10 of LGBTIQ respondents to a EU survey have been physically or sexually attacked because they were LGBTIQ;
 - **Women and girls**: 52% of young women and girls experienced online violence, including threats;
 - **Ethnic and religious minorities**: FRA 2018 survey on antisemitism showed 40% of Jews in the EU fear being physically attacked; 30% of people of Roma origin and 27% of Muslims experienced hate-motivated harassment;
 - **Persons with disabilities** are particularly exposed to violent crimes, including hate crimes, and hate speech;
 - **Older persons** being targeted by hate speech during COVID.

4. Available evidence about the scale, nature and impact of hate speech and hate crime

- **Developments** in the phenomena (migration, economic and social crises, COVID pandemic, increased use of the internet and social media).
- Particularly **harmful impact** on:
 - ✓ **individual victims** (significant psychological distress);
 - ✓ **society at large** (threat to democratic values, erosion of social cohesion, exacerbated polarisation);
 - ✓ **fundamental rights** (chilling effect on freedom of expression, human dignity, equality).

5. Assessment of the criteria under Article 83(1) TFEU

a) Area of crime:

Hate speech and hate crime **constitute an area of crime**: they share an intrinsic special feature, i.e. “**hatred**” targeting persons or groups of persons sharing (or perceived as sharing) the same protected characteristics (grounds).

b) Particularly serious crimes:

- i. hate speech and hate crime are incompatible with fundamental rights and common EU values under Article 2 TEU;
- ii. harmful impact on individuals and society at large;
- iii. seriousness acknowledged by criminalisation at national level and targeted consultations.

5. Assessment of the criteria under Article 83(1) TFEU

c) Cross-border dimension:

- by their **nature** (hate speech online by its very nature, and offline via different forms of dissemination);
- and **impact** (hate crime ideologies shared internationally and replicated, spill over effects);
- by the **special need** to address them on a **common basis** (e.g. hate crimes committed by international networks).

d) Developments in crime:

steady rise in hate speech and hate crime, in connection with changes in the social, economic and technological environment.

6. Conclusions

The mapping and analysis carried out in preparation of the 9 December Communication clearly points to the **added value of the extension of the list of EU crimes to hate speech and hate crime**:

1. this initiative is the most effective response at EU level to the identified challenges: only a **common initiative at EU level** can effectively **protect the common values** enshrined in Article 2 TEU;
2. only a **joint effort** can effectively respond to the challenges raised by the cross-border nature, the scale and the increasing trend of the phenomena;
3. only a **common approach** to criminalisation of hate speech and hate crime at the EU level can ensure a **consistent protection of the victims of such acts across the EU**.

Thank you !

Ingrid.bellander-todino@ec.europa.eu

For further information on the Commission's initiative:

[@ Extending EU crimes to hate speech and hate crime | European Commission \(europa.eu\)](#)

[@ Study to support the preparation of the European Commission's initiative to extend the list of EU crimes in Article 83 of the Treaty on the Functioning of the EU to hate speech and hate crime - Publications Office of the EU \(europa.eu\)](#)



© European Union 2021

Unless otherwise noted the reuse of this presentation is authorised under the [CC BY 4.0](#) license. For any use or reproduction of elements that are not owned by the EU, permission may need to be sought directly from the respective right holders.

