

Combating hate speech and hate crime in the EU

In recent times, the European Union (EU) has witnessed a sharp rise in hate speech and hate crime, yet EU law criminalises such conduct only if related to a limited set of protected characteristics, such as race and ethnicity. The Commission, with the support of the Parliament, seeks to address this limitation by extending the list of 'EU crimes' included in Article 83 of the Treaty on the Functioning of the European Union (TFEU), to cover hate speech and hate crime. This can only be done by a Council decision adopted by unanimity, with the Parliament's consent.

Background

According to a 2020 [study](#) conducted for the European Parliament and a 2021 [study](#) supporting the European Commission's [initiative](#) to counter hate speech and hate crime, the incidence of these phenomena has steadily increased across the EU in recent years. Hate speech in particular thrives on social media, whose users, including political figures, tend to express their thoughts without reserve. Citing several other studies and surveys, the Commission study provides examples of hate speech and hate crime experienced by various targeted groups, and offers some statistics. For instance, 63 % of girls surveyed reported some form of online harassment on social media platforms; 38 % of people with disabilities experienced hate speech in the 12 months preceding the survey; and 17 % of such persons fell victim to physical violence, compared to 8 % of persons without disabilities. These developments have been [linked](#) to a perception of increased migration, but also to economic and social crises, the proliferation of conspiracy theories and disinformation, as well as the growing use of the internet, including social media. The coronavirus pandemic – and the insecurity and economic hardship it brought along – seems to have contributed greatly to a [surge](#) in hate speech and hate crime.

At the EU level, Council Framework Decision [2008/913/JHA](#) criminalises hate speech and hate crime based on a range of grounds. It prohibits 'publicly inciting to violence or hatred 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'. It also requires that Member States take measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance by their criminal laws, or alternatively, may be taken into consideration by the courts when setting penalties. The bias motivation is thus the defining element of hate speech and hate crime.

Whereas all EU Member States have criminalised hate speech based on the grounds covered by the 2008 framework decision, national laws differ with regard to other protected characteristics. As for hate crime, it has been broadly criminalised across the EU either as a 'self-standing' offence (defined by the bias motivation) or as an aggravating circumstance for any offence or a range of specific offences.

At present, the EU has no competence to criminalise hate speech and hate crime based on grounds not covered by the 2008 framework decision. [Article 83 TFEU](#) could serve as a legal basis for such action should these offences become part of an exhaustive list of 'areas of particularly serious crime 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' ('EU crimes'). Under this provision, the Parliament and the Council may establish minimum rules regarding the definition of such offences and related sanctions. Moreover, based on 'developments in crime', the Council may adopt a decision (subject to the consent of the Parliament) identifying other areas of crime meeting the criteria specified in Article 83 TFEU. The Commission may trigger such a decision by submitting a communication to the Parliament and the Council.

European Commission initiative

On 9 December 2021, the Commission published a [communication](#) (COM(2021) 777) inviting the Council to adopt a decision identifying hate speech and hate crime as an area of crime under Article 83(1) TFEU. A proposal for such a Council decision is in the form of an [annex](#) to the communication. If adopted, the

Commission would follow up with a proposal for a directive on minimum rules concerning the definition of criminal offences and sanctions in this area of crime, which the Parliament and Council would negotiate under the ordinary legislative procedure.

In its communication, the Commission argues that hate speech and hate crime meet the criteria for inclusion in the list as defined by Article 83 TFEU. The Commission considers these offences 'particularly serious' due to the harm they cause to individual victims, wider communities, and society as a whole. Their 'cross-border dimension' is, in the Commission's view, related to spillover effect across borders (in particular, but not only, with respect to online hate speech). Moreover, the Commission sees a special need for a common approach to combating these phenomena, as divergent national approaches across the EU have resulted in fragmentation that weakens efforts in this regard.

The Commission's initiative is part of a broader set of EU policy actions addressing discrimination and violent extremism, including several strategies, among them the one on the [rights of persons with disabilities 2021-2030](#). Moreover, it complements a legislative [proposal](#) for a directive to prevent and combat violence against women and domestic violence: while it is true that hate speech and hate crime can target victims because of gender-related bias, the proposal for a directive establishes minimum rules on the definition of criminal offences and penalties in the areas of sexual exploitation and computer crime, thus covering a distinct set of criminal acts.

European Parliament position

The Parliament has addressed hate speech and hate crime in numerous resolutions. In its October 2018 [resolution](#) on the rise of neo-fascist violence in Europe ([2018/2869\(RSP\)](#)), it noted a link between the dissemination of hate speech and violence, stressing the negative role that politicians and political parties may play in this respect. It therefore called on the Member States to 'strongly condemn and sanction hate crime, hate speech and scapegoating by politicians and public officials at all levels and on all types of media, as they directly normalise and reinforce hatred and violence in society'.

In a November 2020 [resolution](#) ([2020/2009\(INI\)](#)), the Parliament observed that hate speech and disinformation were increasingly exploited for political purposes as a means of intensifying social polarisation. It recognised a relationship between the business model of social media platforms – which is based on micro-targeted advertising – and the spreading and amplifying of hate speech by these platforms, which may result in radicalisation leading to violent extremism. The Parliament reiterated its calls on the Member States to implement and enforce measures to prevent, condemn and counter hate speech and hate crime. It also pointed to the need of reinforcing the legal framework for tackling hate speech and discrimination, stressing that negotiations on the [horizontal anti-discrimination directive](#), which have been stalled in the Council, should be unblocked to this end.

A March 2021 [resolution](#) ([2021/2557\(RSP\)](#)) dealt specifically with hate speech against LGBTIQ people. The Parliament condemned the creation of 'LGBTI-free zones' as part of a broader context of increased discrimination and attacks against the LGBTIQ community, which includes a rise in hate speech by public authorities and public media. The problem of hate speech targeting LGBTIQ people was further addressed in a Parliamentary [resolution](#) of December 2021 ([2020/2035\(INL\)](#)), which noted that while this form of abuse is 'pervasively common' in particular in the online sphere, some Member States have no laws to address it.

In September 2021, the Parliament adopted a legislative [resolution](#) ([2021/2035\(INL\)](#)) calling on the Commission to submit a related proposal to identify gender-based violence as a new area of crime under Article 83(1) TFEU. It welcomed the initiative to extend the list of the areas of crime to encompass hate crime and hate speech, recommending that the Commission include sexual orientation, gender identity, gender expression and sex characteristics as discrimination grounds specifically covered by this Treaty provision.

The most recent, May 2022, [resolution](#) ([2021/2055\(INI\)](#)) pointed to religious-based hate crimes that remain under-reported and unprosecuted, and called for establishing comprehensive data collection systems on hate crimes and other discriminatory acts against belief- or religious communities.

For more information, please see the file on the Parliament's [Legislative Train Schedule](#).

