



**2023/2068(INI)**

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## **DRAFT REPORT**

on the proposal for a Council decision on extending the list of EU crimes to hate speech and hate crime  
(2023/2068(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Maite Pagazaurtundúa

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on extending the list of EU crimes to hate speech and hate crime (2023/2068(INI))

*The European Parliament,*

- having regard to the Charter of Fundamental Rights of the European Union (the ‘Charter’), and in particular Articles 20, 21, 22 and 23 thereof,
- having regard to the Treaty on European Union (TEU), and in particular Articles 2, 3 and 6 thereof,
- having regard to the Treaty on the Functioning of the European Union, and in particular Articles 19 and 83(1) thereof,
- having regard to the European Convention on Human Rights and the related case-law of the European Court of Human Rights,
- having regard to the Universal Declaration of Human Rights,
- having regard to the case-law of the Court of Justice of the European Union (CJEU),
- having regard to the Commission communication of 9 December 2021 entitled ‘A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime’ (COM(2021)0777) and the proposal for a Council decision annexed thereto,
- having regard to 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<sup>1</sup>,
- having regard to the Commission communication of 5 March 2020 entitled ‘A Union of Equality: Gender Equality Strategy 2020-2025’ (COM(2020)0152),
- having regard to the Commission communication of 18 September 2020 entitled ‘A Union of Equality: EU anti-racism action plan 2020-2025’ (the EU anti-racism action plan) (COM(2020)0565),
- having regard to the Commission communication of 12 November 2020 entitled ‘Union of Equality: LGBTIQ Equality Strategy 2020-2025’ (COM(2020)0698),
- having regard to the Commission communication of 3 March 2021 entitled ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’ (COM(2021)0101), and to the United Nations Convention on the Rights of Persons with Disabilities, ratified by the EU and all its Member States,
- having regard to the Commission communication of 24 June 2020 entitled ‘EU Strategy

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<sup>1</sup> OJ L 328, 6.12.2008, p. 55.

- on victims' rights (2020-2025)' (COM(2020)0258),
- having regard to the Council of Europe recommendation of 20 May 2022 of the Committee of Ministers to Member States on combating hate speech (CM/Rec(2022)16),
  - having regard to the Commission Against Racism and Intolerance (ECRI) General Policy Recommendation No 15 on combating hate speech, adopted on 8 December 2015,
  - having regard to the recommendations, reports and resolutions of the ECRI, the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), the Parliamentary Assembly, the Venice Commission and other bodies of the Council of Europe,
  - having regard to the guidelines on improving the collection and use of equality data drawn up by the Subgroup on Equality Data of the Commission High Level Group on Non-discrimination, Equality and Diversity 2018 and published in 2021,
  - having regard to the UN Human Rights Treaties and the UN instruments on the protection of human rights and fundamental freedoms, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRDP),
  - having regard to its resolution of 25 November 2020 on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms<sup>2</sup>,
  - having regard to its resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU<sup>3</sup>,
  - having regard to Rule 105(5) of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2023),
- A. whereas any form of 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 as laid down in Article 21 of the Charter is prohibited;
- B. whereas all forms and manifestations of hatred and intolerance, including hate speech and hate crime, are incompatible with the Union values of human dignity, freedom,

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<sup>2</sup> OJ C 425, 20.10.2021, p. 28.

<sup>3</sup> OJ C 117, 11.3.2022, p. 88.

democracy, equality, rule of law and respect for human rights, as enshrined in Article 2 of the TEU;

- C. whereas hate speech and hate crime are particularly serious crimes and affect not only the individual victims and their communities, causing them suffering and limiting their fundamental rights and freedoms, but also society as a whole, undermining the foundations of the EU;
- D. whereas not all hate speech constitutes a crime but it does contribute to normalising manifestations of hatred and intolerance;
- E. whereas in the last few decades there has been a sharp rise in discrimination, hate crime and hate speech across the EU<sup>4</sup>, an increase in various forms of racism, xenophobia and other forms of intolerance and an alarming spike in online and offline hate speech and incitement; whereas this is being exacerbated in many Member States by extremist and populist movements and the multiplier effect of the online environment and social media, which favours revictimisation;
- F. whereas minors are particularly vulnerable victims of hate speech and hate crime and whereas such attacks endanger their physical and mental integrity and affect their development and mental health;
- G. whereas Member States do not address hate speech and hate crime in the same way in their respective criminal laws, which makes it difficult to define a common European strategy to combat it;
- H. whereas the current EU framework only covers hate speech and hate crimes on the grounds of race, skin colour, religion and national or ethnic origin; whereas there is a clear need to effectively address hate speech and hate crimes based on other grounds, such as sex, sexual orientation, age and disability;
- I. whereas the cross-border component of hate speech and hate crime is clear; whereas the digital transformation highlights the need to address this phenomenon at a European level;
- J. whereas the response of EU criminal law to hate speech and hate crime should be strong and proportionate in order to duly protect the victim and give due weight to freedom of expression;
- K. whereas the fundamental right that is protected in the fight against hate speech and hate crime is human dignity; whereas such protection should be universal; whereas protection against intolerance, be it racial, national origin, sexual orientation, religion, ideology, age, opinion or any other personal, physical or social condition or circumstance, whatever its form of expression, must not be limited to certain grounds or

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<sup>4</sup> See, for instance, the Annual Report on ECRI's activities covering the period from 1 January to 31 December 2019 and the Annual Report on ECRI's activities covering the period from 1 January to 31 December 2020, and the study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs entitled 'Hate speech and hate crime in the EU and the evaluation of online content regulation approaches', July 2020.

motivations;

- L. whereas social dynamics change and can generate new motivations for hate speech and hate crime that have to be addressed by the common EU framework;
  - M. whereas in 2021, the Commission presented a communication on ‘A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime’ with a view to adding hate crime and hate speech to the list of areas of crime where Parliament and the Council may establish minimum rules concerning the definition of criminal offences and sanctions applicable in all EU Member States as provided for in Article 83(1) TFEU; whereas the Council must adopt a decision in this regard;
  - N. whereas this Council decision would be a first step in creating the necessary legal basis to adopt, as a second step, a common legal framework to combat hate speech and hate crime across the EU; whereas such a common legal framework is urgently needed to combat hate speech and hate crime on a common European basis in order to ensure consistent protection of the potential victims of such acts across the Union;
  - O. whereas the Council has yet to adopt a decision; whereas some Member States have been blocking concrete progress on this specific file in the Council;
  - P. whereas Article 83(1) TFEU requires unanimity in the Council to identify ‘other areas of crime’; whereas this requirement proved detrimental to achieving necessary common progress in an area where the common European interest should prevail;
1. Urges the Council to adopt a decision to include hate speech and hate crime as a criminal offence within the list under Article 83(1) TFEU, so that the Commission can initiate the second stage of the procedure;
  2. Recalls that Member States’ criminal laws deal with hate speech and hate crime in different ways, that minimum rules exist only when such crimes are based on race, skin colour, religion or national or ethnic origin, which makes it difficult to implement a successful common strategy to combat hatred;
  3. Strongly regrets that almost two years have passed since the publication of the Commission communication and that no progress has been made;
  4. Calls on the Member States to work together responsibly and constructively to resume negotiations within the Council in order to adopt a Council decision before the end of the current parliamentary term;
  5. Recalls that successful negotiations require concessions in order to achieve a result that satisfies the common interest and respects European values;
  6. Urges the Member States to agree with the draft decision or at least not to oppose its adoption;
  7. Calls on the current and future Presidencies of the Council of the Union to consider the Commission’s proposal as a priority when drawing up their agenda and defining objectives;

8. Deplores the fact that Article 83 TFEU requires unanimity in the Council, and calls for the *passerelle* clause to be activated;
9. Emphasises that future EU legislation to cover hate speech and hate crimes must protect human dignity and combat hatred and intolerance irrespective of the motivation; recalls that protection must be universal, with a special focus on targeted persons, groups and communities;
10. Recalls that freedom of expression should not be exploited as a shield for hate speech and hate crimes, but neither should it be unjustifiably restricted;
11. Asks the Commission to consider an open-ended approach whereby the list of grounds of discrimination will not be limited in order to effectively combat hate speech and hate crimes motivated by new and changing social dynamics;
12. Calls on the Commission to take additional measures in countering the dissemination of illegal hate speech in online content on account of the impact of the multiplier effect of the online environment and social media on revictimisation;
13. Calls on the Commission to give particular consideration to minors so as to give them special protection from hate speech and hate crimes, to prevent these incidents from occurring and to minimise their impact on minors' development and mental health;
14. Calls on the Commission and the Member States to establish adequate data collection systems for obtaining solid and homogenous data on anonymous hate incidents, including hate crimes, in accordance with the relevant national legal frameworks and EU data protection legislation, as well as adequate monitoring mechanisms to assess the impact that policies and regulations have on the fight against hate speech and hate crimes;
15. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY STATEMENT

The Commission presented almost two years ago the Communication on ‘A more inclusive and protective Europe: extending the list of EU offences to include hate speech and hate crimes’. While fighting hate speech and hate crimes should be a clear priority for our Union, the Council still has not adopted its proposal for a Decision.

In order to be able to add hate speech and hate crimes to the list of Euro-crimes, and in the near future to establish minimum standards for defining criminal offences and sanctions applicable in all Member States of the Union, this first phase needs to be completed.

Unfortunately, insufficient progress has been made within the Council of the Union and the unanimity required to adopt this decision has not been reached.

The aim of this draft report is to make a strong political call to the Council to adopt this needed decision and to bring recommendations to the Commission for the drafting of the future European legislation to combat hate speech and hate crime.

The current EU framework only covers hate speech and hate crime based on race, skin colour, religion and national or ethnic origin, so there is a clear need to effectively address hate speech and hate crime based on, but not limited to, sex, sexual orientation, age and disability, as proposed by the Commission.

Hate speech and hate crimes attack human dignity, weaken society as a whole and undermine the foundations of the Union, which is fuelled by extremist and populist movements and the multiplier effect of social media.

The social dynamics of intolerance, stigmatisation and discrimination are growing and their ‘normalisation’ requires the attention of the authorities and society as a whole. Any old or new motivation for hatred must be combated at the social, administrative or criminal level, if necessary.

This dynamism also requires protection that does not exclude new social motivations for hatred, since it is the dignity of the victims that must be protected as a universal human right. It is necessary to underline that minors are particularly vulnerable victims when it comes to this type of crime.

Criminal protection against hatred must be proportionate, which implies protecting freedom of expression in an exquisite manner and only limiting it when it is fully justified to do so. It should be noted that not all hate speech constitutes a crime but contributes to normalise manifestations of hatred and intolerance, and is therefore not harmless.

There is a need for Member States to take collective responsibility for the proliferation of such incidents and to unlock the possibility of adequate and sufficient coercive elements. Considering these areas of crime also as Euro-crimes will help to design a common and more effective strategy to combat hate crimes with a social motivation.