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## TEXTS ADOPTED

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### **P9\_TA(2024)0044**

#### **Extending the list of EU crimes to hate speech and hate crime**

##### **European Parliament resolution of 18 January 2024 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 1, 7, 20, 21, 22, 23, 25 and 26 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 (TFEU), 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’ (COM(2020)0565),
- having regard to the Commission communication of 12 November 2020 entitled ‘Union

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

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 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 Council of Europe's Commission Against Racism and Intolerance (ECRI) General Policy Recommendation No 15 on combating hate speech, adopted on 8 December 2015,
- having regard to the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages,
- having regard to the recommendations, reports and resolutions of the ECRI, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, 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 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, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women, and to the recommendations of the annual UN Forum on Minority Issues,
- having regard to the annual hate crime data published by the OSCE Office for Democratic Institutions and Human Rights every year on 16 November,
- 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>1</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>2</sup>,
- having regard to its resolution of 13 November 2018 on minimum standards for

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<sup>1</sup> OJ C 425, 20.10.2021, p. 28.

<sup>2</sup> OJ C 117, 11.3.2022, p. 88.

- minorities in the EU<sup>1</sup>,
- having regard to Rule 105(5) of its Rules of Procedure,
  - having regard to the opinion of the Committee on Women's Rights and Gender Equality,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0377/2023),
- 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; whereas, within the scope of the Treaties and without prejudice to any of their specific provisions, any discrimination on the grounds of nationality is also prohibited; whereas following the broad interpretation by the CJEU, the grounds of ‘sex’ should be understood broadly to encompass all forms of discrimination related to gender identity, gender expression and sex characteristics<sup>2</sup>;
- B. whereas all forms and manifestations of hatred and intolerance, including hate speech and hate crimes, are incompatible with the Union values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as enshrined in Article 2 TEU; whereas the promotion and protection of those Union founding values depends on the EU institutions, Member States and any other relevant actor countering bias, prejudice and intolerance, as well as on the elimination of hatred;
- C. whereas hate speech and hate crimes are complex and multidimensional phenomena with far-reaching consequences for human rights and the rule of law in democratic societies; whereas tackling xenophobia, racism, misogyny, homophobia, transphobia and other forms of prejudice, intolerance, discrimination, including those based on political or other opinions, and hatred against certain individuals or societal groups requires the EU and its Member States to develop a holistic response in close collaboration with relevant stakeholders, including civil society; whereas criminalisation is one tool to combat hate speech and hate crimes;
- D. whereas fighting hate speech and hate crimes, both online and offline, requires a multidimensional approach and, where appropriate, different means to combat them, including criminal law, civil and administrative proceedings and other significant policies or social measures; whereas the Member States have already committed to adopting legislation and measures that penalise hate crimes, address under-reporting and introduce or further develop capacity-building activities for law enforcement and

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<sup>1</sup> OJ C 363, 28.10.2020, p. 13.

<sup>2</sup> Judgment of the Court of Justice of 30 April 1996, *P v S and Cornwall County Council*, C-13/94, ECLI:EU:C:1996:170; judgment of the Court of Justice of 7 January 2004, *K.B. v National Health Service Pensions Agency and Secretary of State for Health*, C-117/01, ECLI:EU:C:2004:7; judgment of the Court of Justice of 27 April 2006, *Sarah Margaret Richards v Secretary of State for Work and Pensions*, C-423/04, ECLI:EU:C:2006:256; and judgment of the Court of Justice of 26 June 2018, *M.B. v Secretary of State for Work and Pensions*, C-451/16, ECLI:EU:C:2018:492.

judicial officials<sup>1</sup>; whereas in order to effectively combat hate speech and hate crimes, it is essential to tackle their root causes, in particular stereotypes; whereas preventive measures, education, including digital education, literacy and skills to promote safe digital spaces, training, and awareness raising are key in this regard; whereas the EU and the Member States should promote a better understanding of the need for diversity and dialogue within a context of democracy, human rights and the rule of law, raise public awareness of the importance of respecting pluralism and combat negative stereotyping and stigmatisation;

- E. whereas hate speech and hate crimes can constitute particularly serious crimes and affect not only the individual victims and their communities, by causing them suffering and limiting their fundamental rights and freedoms, but also society as a whole, by undermining the foundations of the EU;
- F. whereas not all hate speech constitutes a crime, but it still contributes to normalising manifestations of hatred, violence and intolerance in society;
- G. whereas in the last few decades, there has been a sharp rise in discrimination, hate crimes and hate speech across the EU<sup>2</sup>, an increase in various forms of racism, antisemitism, islamophobia, xenophobia, homophobia, transphobia and other forms of intolerance and an alarming spike in online and offline hate speech and incitement; whereas persons belonging to vulnerable groups, such as LGBTIQ+ people, racialised people, ethnic, religious or linguistic minorities, indigenous communities<sup>3,4</sup>, people with disabilities, people with socioeconomic disadvantaged backgrounds, asylum seekers, refugees and migrants, are recurring targets of hate speech and hate crimes; whereas there has been a significant increase in anti-LGBTIQ hate crimes and hate speech in Europe<sup>5</sup>, as well as a rise in discrimination and hatred against women; whereas multiple and intersectional discrimination is fertile ground for hate speech and crimes to occur; whereas targets of hate speech become increasingly excluded from society;
- H. whereas the rise in discrimination and hatred is being exacerbated in many Member States by extremist and populist movements and the multiplier effect of the online environment and social media, which facilitate revictimisation; whereas this rise is leading to dangerous divisions in society as a whole and threatens democracy;
- I. whereas there is evidence that hate speech and hate-motivated incidents continue to be

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<sup>1</sup> Annual OSCE Office for Democratic Institutions and Human Rights hate crime data.

<sup>2</sup> See, for instance, the annual report on the ECRI's activities covering the period from 1 January to 31 December 2019, the annual report on the 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', published in July 2020.

<sup>3</sup> Lingaas, C., '[Hate Speech and Racialised Discrimination of the Norwegian Sámi: Legal Responses and Responsibility](#)', *Oslo Law Review*, Vol. 8, No 2, 2021, pp. 88-107.

<sup>4</sup> Civil Rights Defenders, '[Joint submission to the UN Universal Periodic Review of Sweden – 35th Session of the UPR Working Group of the Human Rights Council – January 2020](#)', 2019.

<sup>5</sup> ILGA Europe, '2023 Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia', February 2023.

- underreported in the EU<sup>1</sup>, which makes it difficult to quantify the extent of the problem;
- J. whereas media and journalists play a fundamental role in informing society and contributing to democratic processes;
- K. whereas political discourse is increasingly characterised by hate speech; whereas election campaigns provide particularly fertile ground for hate speech and incitement to hatred, which affects not only the political sphere, but the functioning of society at large and deepens political polarisation; whereas hate speech towards women in public roles has reached an alarming level; whereas political leaders have a significant role and responsibility in the fight against hate speech and intolerance; whereas they should lead by example and publicly denounce instances of hate;
- L. whereas minors are particularly vulnerable victims of hate speech and hate crimes, including at schools or online, via cyberbullying; whereas such attacks endanger their physical and mental integrity and affect their development and physical and mental health; whereas particular attention must be paid to them;
- M. whereas the Member States do not address hate speech and hate crime in an equal way in their respective criminal laws, which leaves certain groups with insufficient protection in some parts of the Union; whereas this makes it difficult to define a common European approach to combat hate speech and hate crime; whereas the lack of legal protection can have devastating consequences for victims;
- N. whereas the current EU framework only covers hate speech and hate crimes on the grounds of race, colour, religion, descent and national or ethnic origin; whereas there is currently no comprehensive common legal definition of hate speech and hate crime at the EU level; whereas there is a clear need to effectively address hate speech and hate crimes based on other grounds, such as sex, sexual orientation, gender, gender identity, gender expression, sex characteristics, age, disability and any other fundamental characteristic, in particular those protected under Article 21 of the Charter, and any combination of these characteristics; whereas the EU must protect the most vulnerable in society; whereas particular attention should be given to identifying the persons, groups or communities most vulnerable to hate speech and hate crimes in order to avoid a negative impact on the protection of victims;
- O. whereas Article 83(1) TFEU establishes clear requirements for the inclusion of new areas of crime in the list of cross-border EU crimes; whereas the particular cross-border dimension of online hate speech is clear; whereas the digital transformation highlights the need to address this phenomenon at a European level; whereas there is a need to combat hate speech and hate crimes on a common basis and at the EU level; whereas the EU has the responsibility to act;
- P. whereas the response of EU criminal law to hate speech and hate crimes should be strong, proportionate and tailored to its purpose in order to duly protect the victim and give due weight to freedom of expression and freedom of information, which are cornerstones of democracy; whereas the EU should guarantee that any restrictions on freedom of expression to prevent and counter hate speech should not be misused by the

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<sup>1</sup> European Union Agency for Fundamental Rights, '[Encouraging hate crime reporting – The role of law enforcement and other authorities](#)', 2021.

competent authorities in the Member States to silence minorities or suppress criticism; whereas the European Court of Human Rights' judgments on freedom of expression must be respected when establishing protections against hate speech;

- Q. whereas the fundamental rights that are protected in the fight against hate speech and hate crimes are, foremost, human dignity and the principle of non-discrimination; whereas such protection should be universal; whereas protection against intolerance, be it racial or based on 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 only to certain grounds or motivations;
  - R. whereas changes in social dynamics can generate new motivations for hate speech and hate crimes that have to be addressed by a common EU framework, which requires that Article 83(1) TFEU, which sets the list of EU crimes, be expanded;
  - S. whereas in 2021, the Commission presented a communication entitled '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;
  - T. 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 crimes across the EU; whereas such a common legal framework is urgently needed to establish minimum standards concerning the definition of criminal offences and sanctions and thereby to combat hate speech and hate crimes on a common European basis in order to ensure consistent protection of the potential victims of such acts across the Union;
  - U. 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;
  - V. whereas Article 83(1) TFEU requires unanimity in the Council to identify 'other areas of crime'; whereas this requirement has proved detrimental to achieving necessary common progress in combating hate speech and hate crimes across the Union;
1. Urges the Council to adopt a decision to include hate speech and hate crime among the criminal offences 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 and that minimum harmonised rules at EU level exist only when such crimes are committed against a group or individual based on their race, skin colour, religion, descent or national or ethnic origin, which makes it difficult to implement a successful common strategy to effectively combat hatred;
  3. Strongly regrets that almost two years have passed since the publication of the Commission communication and that the Council has made no progress on it, even though it was able to swiftly expand the list of EU crimes for other purposes; regrets

such inaction in the light of the increase in hate speech and hate crimes;

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. Urges the Member States to support or at least refrain from opposing the adoption of the draft decision;
6. 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;
7. Recommends that Article 83 TFEU be amended to make it subject to reinforced qualified majority rather than the current required unanimity; calls for the 'passerelle clause' to be activated in this regard;
8. Emphasises that future EU legislation to establish minimum standards concerning the definition of criminal offences and sanctions for hate speech and hate crimes must protect human dignity, seek to prevent harm, ensure equality and combat hatred and intolerance, irrespective of the motivation;
9. Recalls that protection must be universal, with a special focus on targeted persons and vulnerable groups and communities;
10. Recalls that freedom of expression, is a foundational value of democratic societies and should not be unjustifiably restricted; further recalls that any legislation on hate speech and hate crime should be grounded in the principles of necessity and proportionality; underlines that freedom of expression must be exercised within the law and in line with Article 11 of the Charter and should not be exploited as a shield for hate speech and hate crimes;
11. Asks the Commission to consider an open-ended approach whereby the list of grounds of discrimination will not be limited to a closed list in order to effectively combat hate speech and hate crimes motivated by new and changing social dynamics;
12. Stresses that misuses of the internet and the business model of social media platforms, which is based on micro-targeted advertising, contribute to spreading and amplifying hate speech, inciting discrimination and violence and increasing the risk of revictimisation; calls on the Commission and the Member States to ensure the correct implementation of current legislation, such as Regulation (EU) 2022/2065<sup>1</sup>, and to make use of all means and instruments at their disposal to counter the dissemination of hate speech online;
13. Recalls public authorities' responsibility in preventing, investigating, prosecuting and reporting hate speech and hate crimes and that they must take into account facts that indicate hate when doing so; stresses that future EU legislation should support and promote strong cooperation with civil society, equality bodies and national human

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<sup>1</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

rights institutions;

14. Calls on the Commission and the Member States to give particular consideration to minors, including those belonging to vulnerable groups, so as to give them special protection from hate speech and hate crimes, to prevent these incidents, including bullying in schools and cyberbullying, from occurring and to minimise their impact on minors' development and mental health;
15. Calls on the Commission to ensure that a robust EU legal protection framework is put in place so that victims are effectively protected, in particular those from all vulnerable groups across the EU; emphasises the need to apply an intersectional approach and the importance of adopting comprehensive measures, including providing training to professionals likely to come into contact with victims, as well as measures to ensure protection, safe access to independent justice, specialised support services and reparations for victims; stresses that victims should be able to report their experiences to the competent authorities and be protected; recalls that ensuring the legal protection of victims would create a safe environment that would contribute to enhanced reporting, which is necessary to document hate speech and hate crimes;
16. Calls on the Commission and the Member States, in cooperation with relevant Union bodies and agencies, to establish adequate data collection systems for obtaining solid, comparable, disaggregated and anonymous data on 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 improve the regular availability, comparability and quality of the data collected and to assess the impact that legislation and policies have on the fight against hate speech and hate crimes;
17. Instructs its President to forward this resolution to the Council and the Commission.