



Council of the
European Union

Brussels, 10 December 2021
(OR. en)

14919/21
ADD 1

JAI 1403
FREMP 297

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 777 final
Subject:	ANNEX to the 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



EUROPEAN
COMMISSION

Brussels, 9.12.2021
COM(2021) 777 final

ANNEX

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to the

**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**

ANNEX

COUNCIL DECISION on adding hate speech and hate crime to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 17(1) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1), third subparagraph, thereof,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) All forms and manifestations of hatred and intolerance, including hate speech and hate crime, are incompatible with the Union values of human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities enshrined in Article 2 of the Treaty on European Union ('TEU'). Those values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
- (2) The Union constitutes an area of freedom, security and justice with respect for fundamental rights and different legal systems and traditions of the Member States. It aims to ensure a high level of security, through measures including preventing and combating crime, racism and xenophobia.
- (3) Under Article 83(1) of the Treaty on the Functioning of the European Union ('TFEU'), the European Parliament and the Council may establish minimum rules concerning the definition of criminal offences and sanctions in the 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. Those areas of crime are listed in that Article.
- (4) That list of areas of crime, as it currently stands, does not allow for establishing minimum rules concerning the definition and sanctions of hate speech and hate crime.
- (5) Council Framework Decision 2008/913/JHA² provides for effective, proportionate and dissuasive criminal sanctions for racist and xenophobic hate speech and hate crime, applicable across the Union. It requires Member States to criminalise hate speech, i.e. the public incitement to violence or hatred, on grounds of race, colour, religion, descent or national or ethnic origin. The same requirement applies to all crimes, other than hate speech, committed with a racist or xenophobic motivation.

¹ OJ C , , p. .

² 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 (OJ L 328, 6.12.2008, p. 55)

- (6) The need to effectively address hate speech and hate crime on other grounds beyond those covered by Framework Decision 2008/913/JHA, and in particular on the grounds of sex, sexual orientation, age and disability has been identified in the Union of Equality strategies, namely the Gender Equality strategy 2020-2025³, the LGBTIQ Equality strategy 2020-2025⁴ and strategy for the Rights of Persons with Disabilities 2021-2030⁵.
- (7) The EU and all its Member States are party to the UN Convention on the Rights of Persons with Disabilities. Its Article 16 on freedom from exploitation, violence and abuse states that parties should take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities. Persons with disabilities should be protected both within and outside the home, from all forms of exploitation, violence and abuse. Parties should also take all appropriate measures to prevent all forms of exploitation, violence and abuse. Article 17 on protecting the integrity of the person states that all persons with disabilities have a right to respect for their physical and mental integrity on an equal basis with others.
- (8) As also recognised at international level⁶, hate speech and hate crime are characterised by the bias motivation that triggers the perpetrator's action against persons or groups, sharing or perceived as sharing protected characteristics. Hatred is an intrinsic special feature of both phenomena, connecting this broader group of crimes.
- (9) Hate speech and hate crime undermine the fundamental rights and values upon which the Union is founded, in particular human dignity and equality. In addition, they cause harm not only to the individual victims, but also to wider communities and society at large, including by having a chilling effect on freedom of expression. They impede pluralism and tolerance, by leading to polarisation and negatively affecting public debate and democratic life.
- (10) The freedom of expression and information is enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and is one of the essential foundations of a democratic society. Establishing hate speech as a crime is necessary to protect the rights and freedoms of others and genuinely meets objectives of general interest recognised by the Union. Any Union legislation requiring Member States to criminalise hate speech and thus affecting the right to freedom of expression should be proportionate and respect the essence of the right to freedom of expression.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Union of Equality: Gender Equality Strategy 2020-2025', of 5.03.2020, [COM\(2020\)152](#).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Union of Equality: LGBTIQ Equality Strategy 2020-2025', of 12.11.2020, [COM\(2020\) 698](#).

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Union of Equality Strategy for the Rights of Persons with Disabilities 2021-2030' of 3.03.2021, [COM\(2021\) 101](#).

⁶ See for example Council of Europe Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "hate speech" and OSCE Ministerial Council Decision No. 9/09 on combating hate crimes, of 2 December 2009.

- (11) Hate speech can lead not only to conflict, but also to hate crimes. Both spread across national borders. Hate speech is easily reproduced and widely shared online through the internet, including social media, and offline through television broadcasts, public events, written press and political speech. Hate crimes can be committed or facilitated by networks with members from several countries, who inspire, organise, or carry out physical attacks. More broadly, hate crime has a spill over effect across Member States, which contributes to a climate of fear, and can trigger social conflicts.
- (12) Hate speech and hate crime are widespread across the Union and have been increasing over the last years. In particular, the COVID-19 pandemic has heightened the feelings of insecurity, isolation and fear. This has created an atmosphere in which hate speech has flourished, while being also used to target already marginalised populations, also resulting in hate crime.
- (13) Hate speech and hate crime undermine the very foundations of a democratic and pluralistic society and the common values enshrined in Article 2 of the TEU. The particular gravity of these conducts, given their impacts on the fundamental rights and values, and their cross-border nature call for common action at Union level. A common Union criminal law response is necessary to effectively address the challenges raised by hate speech and hate crime. It would also ensure a consistent protection of the victims of hate crime, as well as access to the special protection measures granted to the most vulnerable victims of crime. A common approach should also enhance judicial cooperation between Member States, which is rendered indispensable by the cross-border dimension of these phenomena.
- (14) Hate speech and hate crime therefore meet the criteria set out in Article 83(1) of the TFEU and can be identified as another ‘area of crime’, in addition to those already listed in that provision.
- (15) Therefore, extending the list of areas of crime in Article 83(1) of the TFEU to cover hate speech and hate crime is necessary, as a first step, to enable, as a second step, the adoption of substantive secondary legislation establishing minimum rules on the definitions and sanctions of hate speech and hate crime.
- (16) This Decision should not affect the actions that may be undertaken in a second step. In particular, it does not pre-empt or prejudice the scope and content of the secondary legislation to be subsequently proposed.
- (17) The Commission proposal of such secondary legislation should be prepared in line with Better Regulation requirements, including an impact assessment and a broad consultation. In particular, the Commission should consult Member States when preparing such secondary legislation, including on the specificities of national legislative frameworks relating to criminal law and fundamental rights,

HAS ADOPTED THIS DECISION:

Article 1

Hate speech and hate crime shall be an area of crime within the meaning of Article 83(1) of the TFEU.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President