

ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have.

TITLE OF THE INITIATIVE	Extension of the list of EU crimes to hate speech and hate crime
LEAD DG – RESPONSIBLE UNIT	DG JUSTICE, Unit C2 Fundamental rights policy
LIKELY TYPE OF INITIATIVE	Communication from the Commission to the European Parliament and the Council
INDICATIVE PLANNING	Q4 2021
ADDITIONAL INFORMATION	https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination_en

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A. Context, Problem definition and Subsidiarity Check

Context

All forms and manifestations of racism, xenophobia and intolerance are incompatible with the values upon which the EU is founded, as enshrined in [Article 2 of the Treaty on European Union \(TEU\)](#). The fight against hate speech and hate crime is a key element of the Commission's mandate. In her [State of the Union speech](#), Commission President von der Leyen stressed that progress on fighting racism and hate is fragile and now is the moment to make change to build a truly anti-racist Union that goes from condemnation to action. She announced that the Commission will propose *"to extend the list of EU crimes to all forms of hate crime and hate speech – whether because of race, religion, gender or sexuality."*

More specifically, as indicated in President von der Leyen's [letter of intent](#), and [the Commission Work Programme 2021](#), the Commission will present, by the end of 2021, an initiative to extend the list of EU crimes in Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) to hate speech and hate crime.

This initiative is part of a broader set of Commission actions. The inclusion in the list of EU crimes of hate speech and hate crime on grounds of sex and sexual orientation was announced, respectively, in the [EU Gender Equality Strategy 2020-2025](#) and in the [LGBTIQ Equality Strategy 2020-2025](#). This initiative will complement the work on a legislative proposal on preventing and combatting gender-based violence against women and domestic violence that the Commission intends to present by the end of 2021, as announced in [the Commission Work Programme 2021](#), by creating an additional legal basis for addressing those specific forms of serious gender-based violence that can also be defined as hate speech or hate crime on grounds of gender. The extension of the list of EU crimes to hate speech and hate crime is part of the EU's response to extremist ideologies online and more specifically to the proliferation of racist and xenophobic hate speech on the internet. The initiative thus complements the [Counter-Terrorism Agenda for the EU](#) and the proposal for a [Digital Services Act](#), whilst also strengthening the Commission's [2020-2025 anti-racism action plan](#) and the forthcoming strategy on combating antisemitism, announced in [the Commission Work Programme 2021](#).

Problem the initiative aims to tackle

Available research and surveys provide indications about the extent and the increase of hate crime and hate speech (including online), as well as the links between the two and their impact on victims and on society at large.

According to the [2019 annual report by the Council of Europe's European Commission against Racism and Intolerance](#): "Europe is facing a shocking reality: anti-semitic, anti-Muslim and other racist hate crimes are increasing at an alarming rate". In its [Hate Crime Report for 2019](#), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) reported a record number of 6964 hate incidents documented in 36 OSCE states in that year.

According to the [FRA Overview of antisemitic incidents recorded in the European Union 2009-2019](#), carried out by the EU Agency for Fundamental Rights (FRA), in 2016, around 2500 officially recorded antisemitic incidents took place in the EU. In 2019, this number had risen to over 3000 incidents and [79% underreporting](#) rate suggests this is only the tip of the iceberg. According to the [2018 FRA survey on discrimination and hate crime](#)

[against Jews in the EU](#), 40% of Jews in the EU worry about being physically attacked in the next 12 months. In parallel, antisemitism is proliferating online. A study of the [Swedish Defense Research Agency](#) concluded that 35% of online posts about Jews contained antisemitism or hatred towards Jews. The FRA [Second European Union Minorities and Discrimination Survey](#) shows that, in 2017, 27% of Muslims had experienced incidents of hate-motivated harassment in the previous 12 months. Only one out of ten reported them. This percentage is higher (31%) among Muslim women wearing the headscarf.

Online hatred spreads both at national level and across borders. Using internal Facebook data and projections, data scientists formerly working in the company published in 2020 [a report](#) which states that roughly 1 of every 1,000 pieces of content — or 5 million of the 5 billion pieces of content posted to the social network daily — violates the company's rules on hate speech. A research by the [Danish Institute for Human Rights](#) found that out of 3000 posts under the Facebook pages of mainstream newspapers, 15% represented alleged illegal hate speech even after moderation by the media outlets and Facebook. The company [estimates](#) that 10 to 11 views of content out of 10 000 contain hate speech. [YouTube reports](#) having removed 47 million hate comments between September and December 2020, while [Facebook/Instagram](#) removed 22,1 million posts between July and September 2020.

According to the 2019 [EU LGBTI Survey II](#), carried out by FRA, one in 10 LGBTI respondents (11 %) in the EU were physically or sexually attacked in the five years before the survey because they are LGBTI. In the year before the survey, two in five LGBTI respondents (38 %) experienced harassment for being LGBTI. "Sexual orientation or gender identity" was the third most common ground among the reported hate crimes (18,35%) in the above mentioned ODIHR [Hate Crime Report for 2019](#) – an increase compared with 2018 (14,61%). Sexual orientation was the most commonly reported ground of hate speech (33.1%) by the civil society organisations monitoring the implementation of the [EU Code of Conduct on countering illegal hate speech online](#) in [2019](#), whilst, in [2018](#), sexual orientation was the second most reported ground (15,6%).

In response to the 2014 FRA [EU Survey on violence against women](#), an estimated 83 million to 102 million women (45 % to 55 %) reported having experienced sexual harassment; 20% of young women (18-29) in the EU had experienced online sexual harassment. According to a global [2020 survey by the World Wide Web Foundation](#), 52% of young women and girls experienced online violence, including threats and sexual harassment. As many as 84% of respondents to a 2020 [U report poll](#) considered that gender-based online harassment is increasing. A [UNWomen report](#) found that online violence and harassment targeting women and girls increased further during the COVID-19 pandemic. There is also an increase in gender-based violence and harassment against women visible in the public life, such as politicians and journalists. In a [survey](#) of 123 European female parliamentarians, 46.9 % reported having received death threats or threats of rape or beatings and 58.2 % had been the target of online sexist attacks on social networks.

As regards hate crimes against people with disabilities, [FRA research](#) paints a picture of discrimination, harassment, bullying and abuse and suggests that people with intellectual disabilities or mental health problems are at a particularly high risk of victimisation. Amongst women with disabilities interviewed in [FRA's study of violence against women](#), 46% stated that they had been subjected to physical, sexual or psychological abuse before the age of 15. The [FRA study on violence against children with disabilities](#) showed that children with disabilities run a 3 to 5 times greater risk of being subjected to some type of violence than other children than that faced by their peers without disabilities. The most vulnerable are children with intellectual or psychosocial disabilities.

Research also shows that expressions of hatred can signal the legitimacy of public hostility towards minority communities and, in particular, that an increase in hate speech on social media leads to more crimes against minorities in the physical world. For example, a study [from Cardiff University's HateLab project](#) found that, when the number of "hate tweets" made from one location increased, so did the number of racially and religiously aggravated crimes - which included violence, harassment and criminal damage.

As regards hate speech on social media, there are indications not only of its harmful effects on the victims themselves but also of its chilling effect on freedom of expression and engagement in democratic debate online. A [2016 Eurobarometer](#) survey showed that three quarters of journalists have experienced hate speech on social media, and for half of them this makes them hesitate to engage in the public debate. A [study](#) from Norway shows that one out of five (19%) of social media users are refraining from engaging in public debates because of hateful content they see. This percentage rises to 36% amongst users belonging to minority groups.

At present, [Council Framework Decision 2008/913/JHA](#), on combating racism and xenophobia by means of criminal law is the only EU criminal law instrument that harmonises the definition of, and criminal penalties for some specific forms of hate speech and hate crime. This piece of legislation requires Member States to criminalise the public incitement to violence or hatred on grounds of race, colour, religion, descent and national or ethnic origin. It aims to ensure that serious manifestations of racism and xenophobia are punishable by effective, proportionate and dissuasive criminal penalties throughout the EU. Additionally, victims of hate speech and hate crime are provided with an effective remedy and recognised as victims of crime entitled to the rights, support and protection provided under the [Victims' Rights Directive](#). To complement the effective enforcement of this legislation by preventing and countering the spread of illegal hate speech online, the Commission encourages IT companies to sign the [EU Code of Conduct on countering illegal hate speech online](#).

As regards hate speech and hate crime on grounds other than those laid down in Framework Decision

2008/913/JHA, there is no harmonisation of criminal offences and sanctions at EU level. Rather, it is up to Member States to provide for a criminal law response to other types of hate speech and hate crime, such as on grounds of sex and sexual orientation.

As a result, legal protection varies significantly across the EU. At present, 21 Member States expressly include sexual orientation in hate speech and/or crime legislation as an aggravating factor, whilst 12 amongst them also include gender identity and 2 cover sex characteristics. In addition, some Member States are looking to criminalise misogynous hate speech and crime, following its perceived increase both globally and in Europe.

Basis for EU intervention (legal basis and subsidiarity check)

Article 83(1) TFEU lays down an exhaustive list of areas of crime where EU level harmonisation of substantive criminal law is possible, namely where the EU legislator can establish minimum rules by means of directives adopted in accordance with the ordinary legislative procedure. These are the so-called 'EU crimes', i.e. particularly serious crimes 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. These areas of crime are terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

Article 83(1), third subparagraph, TFEU provides the possibility for the Council to adopt (by unanimity, after obtaining the consent of the European Parliament) a decision identifying other areas of crime that meet the criteria under the first subparagraph (i.e. particular seriousness and cross-border dimension), based on "developments in crime".

The Commission will therefore present an initiative within the meaning of Article 17(1) TEU aiming to trigger a Council decision identifying hate speech and hate crime as "other areas of crime that meet the criteria specified" in Article 83(1), first subparagraph, TFEU. The initiative will take the form of a Communication to the European Parliament and the Council.

Once such a Council decision has been adopted, the Commission will have the competence to propose, as a second future step, substantive legislation (i.e. a directive) harmonising the definition of and penalties for hate speech and hate crime.

The Commission initiative to trigger a Council decision extending the list of EU crimes, to be presented in 2021, is the first step towards the delivery of the legislative proposal referred to in [the Commission Work Programme](#), which can only be issued once the Council decision is adopted, so at the earliest in 2022.

The respect of the subsidiarity principle and the added value of the Commission initiative are illustrated by the Treaty itself: Article 83(1) TFEU makes it clear that the inclusion in the list of EU crimes of further areas of crime is warranted, amongst others, by their cross-border dimension, resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

As mentioned above, the inclusion of hate speech and hate crime in the list of EU crimes will enable the Commission, in a second step, to establish minimum rules on the definition of criminal offences and sanctions in the areas of hate speech and hate crime, thus providing for a robust common criminal law response to these phenomena. This can only be achieved by providing for common standards of harmonisation applicable across the EU – it cannot be sufficiently achieved by Member States acting alone or in an uncoordinated manner.

B. What does the initiative aim to achieve and how

As mentioned above, the Commission initiative will aim to trigger a Council decision to extend the list of EU crimes in Article 83(1) TFEU to include hate speech and hate crime. Once such a Council decision has been adopted, the Commission will have the competence to propose, in a second step, a legislative initiative –subject to an impact assessment- containing minimum standards providing for a strong common criminal law response to these phenomena.

The need for a common criminal law response at EU level has already been acknowledged in the case of racist and xenophobic hate speech and hate crime. Against this background, the list of EU crimes could be extended to cover hate speech and hate crime on the grounds covered by Framework Decision 2008/913/JHA, i.e. "race, colour, religion, descent or national or ethnic origin". Drawing on [Article 19 TFEU](#) as source of inspiration, further grounds under consideration are sex and sexual orientation, as well as disability and age.

C. Better regulation

Consultation of citizens and stakeholders

The Commission will carry out extensive targeted consultations of stakeholders to gather comprehensive information and factual evidence about the scale, nature and impact of hate speech and hate crime on the grounds under consideration, including the effects of such crimes on the individual victims, perpetrators as well as on society at large (for instance in terms of polarisation or of impacts on freedom of expression), as well as on developments, including any trends identified. Such evidence is necessary to enable an assessment of whether these types of crime meet the criteria referred to in Article 83(1) TFEU, i.e. whether they are particularly serious crimes that have a cross-border dimension, and whether there are "developments in crime" justifying their inclusion in the list of EU crimes in Article 83(1) TFEU.

Main stakeholders identified include:

- National and international public authorities, in particular: judicial authorities as well as other relevant public bodies dealing with enforcement in the Member States, such as ombudspersons; Eurojust, Europol, the European Judicial Network (EJN); the European Network of Equality Bodies (EQUINET);
- International organisations, civil society organisations, networks of experts and research institutions that have expertise on issues related to hate speech and hate crime and collect relevant data.

The specialised data and information that can enable an assessment of whether hate speech and hate crime meet the criteria of Article 83(1) TFEU can only be provided by public authorities and key organisations working in this area, and not by individuals. Moreover, in the case of hate crime/speech, it is relevant to measure their impact on the groups that experience such conducts, and such impact is measured in dedicated surveys such as those carried out by the Fundamental Rights Agency (FRA). These reasons warrant conducting targeted consultations of stakeholders – rather than an open public consultation.

In addition, the Commission would appreciate input - **in the form of feedback to the present Roadmap** - on the scale, nature and impact of the types of hate speech and hate crime under consideration, and in particular on:

1) Whether hate speech and hate crime on the grounds of sex, sexual orientation, age and disability are particularly serious crimes, taking into account, amongst others, their effects on the victims and on society as a whole;

2) Whether hate speech and hate crime on the grounds of sex, sexual orientation, age and disability have 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, taking into account, amongst others, the possible links between the two offences as well as any effects that may spill over from one Member State to the other;

3) Whether there are developments in crime that justify the inclusion of hate speech and hate crime on the grounds of sex, sexual orientation, age and disability in the list of EU crimes in Article 83(1) TFEU.

The targeted consultation will be launched in Q1 2021, in the form of an EU survey that will be distributed to the main stakeholders. A factual synopsis summarising the outcome of all consultation activities will be published as part of the final report of the external study that will be commissioned to support the preparation of the initiative (see below).

Evidence base and data collection

The Commission initiative will have to be corroborated by robust, comprehensive information about:

- i) existing national legal frameworks to tackle hate speech and hate crime in the Member States, and
- ii) the scale, nature and impact of hate speech and hate crime throughout the EU, the development of such crimes and their cross-border dimension.

An external study will be carried out:

- i) to produce a detailed mapping of the legal frameworks in all Member States to tackle hate speech and hate crime on the grounds under consideration, including their implementation;
- ii) to analyse and synthesise all the information, data and views gathered through the planned consultations and through available reports and studies on the seriousness and cross-border dimension of hate speech and hate crime on the grounds under consideration and on developments in this area of crime so as to assess whether the criteria of Article 83(1) TFEU are met. Of particular relevance in this context are reports and surveys by the Fundamental Rights Agency (FRA) and other stakeholders (e.g. Council of Europe, ODIHR/OSCE, Equinet and national equality bodies, EIGE).

Relevant evidence supporting the initiative will be set out in the Communication to be presented by the Commission.

An initiative to trigger the Council decision provided for under Article 83(1) TFEU is the only possible legal avenue with a view to extending the list of EU crimes to hate speech and hate crime. The Commission initiative will not have any identifiable impacts nor will it require transposition, implementation or any other measures to be taken at national or EU level. Rather, it aims to trigger a Council decision extending the list of EU crimes to hate speech and hate crime and thus providing the legal basis for the Commission to propose harmonised criminal law rules to combat such offences. Once the list of EU crimes is extended and the Commission proposes, in a second step, legislative measures to criminalise hate speech and hate crime, an Impact Assessment will have to be undertaken (as indicated in the 2021 Commission Work Programme).