

# Hate speech and hate crime: Time to act?

## SUMMARY

Over the last 20 years, there has been a marked increase in hate speech and hate crime in Europe. Expressing hate has become socially acceptable, stigmatising and dehumanising individuals and groups of people for characteristics ranging from age, ethnicity, gender identity, language, nationality, race, religion, and sex to sexual orientation. Widespread use of the internet and social media has increasingly brought hate speech online.

EU law criminalises hate speech and hate crime, but only if it relates to a limited set of characteristics, such as race and ethnicity. The European Commission, with the European Parliament's support, would like to widen the scope of the prohibition. In December 2021, the Commission proposed to extend the list of EU crimes under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) to hate speech and hate crime. This would allow the Commission to propose a common legal framework to combat hate speech and hate crime across the EU. With this initiative, the Commission hopes to address Member States' current divergent and fragmented approaches to hate speech and hate crime and to ensure consistent protection of victims across the EU. While the Parliament has enthusiastically welcomed the Commission's proposal, Member States (in Council) have been unable to agree on the plan.

More recently, the terrorist attacks by Hamas in Israel on 7 October 2023 and Israel's military response in Gaza have triggered an alarming rise in threats and violence against both Jews and Muslims, across the EU. In November 2023, a Commission communication called on the Council to move quickly to adopt a decision to include hate speech and hate crime among the criminal offences listed in Article 83(1) TFEU, to allow the Commission to propose legislation in this area. Parliament echoed this message in a January 2024 resolution.

This briefing builds on a 2019 [paper](#) by Piotr Bakowski. It should be read in conjunction with a forthcoming briefing on legislation on hate speech and hate crime in EU Member States.



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# Incidences of hate speech and hate crime in the EU

## A general increase in recent decades

Hate speech and hate crime have proliferated over the past two decades. This [increase](#) has variously been [attributed](#) to perceived rising migration, a succession of economic and social crises (which contributed to social divisions and extremism), the COVID-19 pandemic (accompanied by a rise in conspiracy theories, disinformation and fake news) and, more generally, more widespread use of the internet and social media. In 2019, at the launch of the [United Nations Strategy and Plan of Action on Hate Speech](#), the Secretary-General of the United Nations, António Guterres spoke of 'alarming trends of growing xenophobia, racism and intolerance, violent misogyny, antisemitism and anti-Muslim hatred around the world'.

During the COVID-19 pandemic, people of Asian descent, as well as older people, became particular targets of [hate speech](#). Hate directed at [lesbian, gay, bisexual, transgender, and intersex](#) (LGBTI) people – and particularly against transgender people – has also increased in Europe (see below). Hate speech and hate crime also frequently have a gender dimension (see below). [Studies](#) have shown, for example, that women and girls are highly exposed to cyber violence. Verbal, and to a lesser extent, physical [violence against women](#) active in politics in the EU has been identified as contributing to the underrepresentation of women in politics. Research by the [European Union Agency for Fundamental Rights](#) (FRA) published in 2024 also identified a worsening trend of racism against [people of African descent](#), as well as pervasive anti-Roma discrimination.

According to the [European Observatory of Online Hate](#), following a review of nearly eight million online messages, the level of hateful toxicity [increased](#) by 30% from January to September 2023. A message is considered 'toxic' to varying degrees if it contains illegal hate speech such as discrimination based on protected categories (race, sexual orientation, religion, etc.), death threats and other types of harmful and dangerous content. The review found the most toxic messages are reported to be related to Judaism, followed by Islam, Ukraine and refugees.

## Alarming rise in anti-Jewish and anti-Muslim hate speech and hate crime

However, the most dramatic surge in hate speech and hate crime in Europe in recent years, specifically targeting Muslim and [Jewish](#) communities, occurred in the wake of the terrorist attacks by Hamas in Israel on 7 October 2023 and Israel's military response in Gaza. On 5 November 2023, the European Commission issued a [statement](#) deploring 'the spike of antisemitic incidents across Europe' (Molotov cocktails thrown at a synagogue in Germany, stars of David sprayed on residential buildings in France, a Jewish cemetery desecrated in Austria, Jewish stores and synagogues attacked in Spain, and demonstrators chanting hate slogans against Jews). The Commission termed these incidents 'reminiscent of some of the darkest times in history'. A [statement](#) of the Special Envoys and Coordinators Combating Antisemitism (including the European Commission Coordinator on combating antisemitism and fostering Jewish life) on 7 November 2023, condemned the acts of violence against Jewish communities in Europe. According to the 2024 [Annual Report](#) of the [European Commission against Racism and Intolerance](#) (ECRI), the number of reported antisemitic incidents in the last three months of 2023 in several European countries far exceeded those usually reported for an entire year and was, in some cases, even much higher.

According to the same report, the number of hate incidents against Muslims, including online anti-Muslim hate speech, also proliferated in the last quarter of 2023. On 29 November 2023, a [Joint Statement](#) of the Coordinators, Special Representatives, Envoy and Ambassadors on Combating Anti-Muslim Hatred and Discrimination (including the European Commission Coordinator on combating anti-Muslim hatred and the European Commission Coordinator on combating racism) denounced all forms of bias, discrimination, and hatred against Muslims and those perceived to belong to this group. Attacks against mosques and Muslim cemeteries, as well as against individuals and organisations, and a spike in anti-Muslim rhetoric online were [reported](#).

In the [conclusions](#) adopted at the European Council meeting on 14 and 15 December 2023, EU leaders expressed serious concern about alarming incidences of antisemitism, racism and xenophobia in the months leading up to the meeting. EU leaders reiterated their condemnation in the strongest possible terms of all forms of antisemitism and hate, intolerance, racism and xenophobia, including anti-Muslim hatred. Confirming the alarming trend on 7 February 2024, European Commission Vice-President Margaritis Schinas told the [European Parliament](#) that antisemitic and anti-Muslim hate crime had 'exploded' across Europe.

## Gender-based hate speech and hate crime

According to the [Office of Democratic Institutions and Human Rights](#) (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE), [gender-based hate crimes](#) are 'criminal offences motivated by bias against a person's gender, which means that the offender selected her or his target based on the victim's gender, or demonstrated hostility towards it throughout the attack'.

Gender-based hate is not only expressed through physical violence, but also in the form of sexist harassment, as well as sexist hate speech, which the [Council of Europe](#) defines as speech that 'relates to expressions which spread, incite, promote or justify hatred based on sex'. The phenomenon of gender-based hate speech manifests in various forms in Europe both online and offline, but data remains scarce. Studies and reports concur that women remain the main victims, and therefore focus on female victims. Some European countries provide the ODIHR with [data](#) on gender-based hate crimes, as reported to the authorities. According to this data, the number of gender-based hate crimes reported is smaller than of those motivated by racial hatred or hatred of LGBTI persons. A recent study by FRA has examined popular social media platforms, trying to identify cases of hate speech in four selected countries, Bulgaria, Germany, Italy and Sweden. The 'Online Content Moderation – Current challenges in detecting hate speech' [study](#), published in 2023, collected data from platforms including X, Reddit, YouTube and Telegram from 25 January to 25 July 2022, filtering it for posts that matched specified keywords. Of the posts collected, 36 % contained discriminatory words targeted at women. A 2018 [study](#) commissioned by the Committee on Women's Rights and Gender Equality (FEMM) of the European Parliament on 'Cyber violence and hate speech online against women' found that women asserting their views online, such as journalists, academics, feminists or human rights defenders, are particularly at risk of being the target of hate speech.

Studies have found that cyber violence and online hate speech are perceived differently by, and have a different impact on women and men. Cyber violence and hate speech can have long-lasting psychological, physical and economic effects on women victims and on their families, as well as a chilling effect on women who express their views publicly. However, a 2022 [study](#) by the European Institute for Gender Equality, analysing the relevant legislation in Member States, found that 'gender is only referenced explicitly as one of the grounds of hate speech in Estonia, Greece, Spain, Latvia, Lithuania, Hungary, Malta, Austria, Portugal and Slovenia'.

## Hate speech and hate crime targeting LGBTI people

The term LGBTI describes a diverse group of lesbian, gay, bisexual, transgender and intersex people who do not conform to conventional or traditional notions of male and female gender roles. LGBTI people are sometimes referred to as 'sexual, gender and bodily minorities'. The acronym sometimes extends to cover [queer](#) people explicitly (LGBTIQ) or other groups of individuals (LGBTIQ+).

In the [global context](#), the [rights of LGBTI people](#) can be considered relatively well-protected in the EU. The EU Member States are parties to a variety of international instruments – including the [European Convention on Human Rights](#) (ECHR) – which establish a catalogue of fundamental rights for all. At the same time, the EU has created one of the most extensive sets of anti-discrimination laws in the world.

However, LGBTI people in Europe still experience discrimination on a large scale. For a number of years, the Eurobarometer discrimination survey has captured public opinion on the extent of discrimination against and social acceptance of LGBTI people. The most [recent survey](#), covering perceptions of discrimination based on sex characteristics as well as sexual orientation and gender identity, shows that 54 % of Europeans consider discrimination against gay, lesbian and bisexual people to be widespread in their country; 57 % say the same about discrimination towards transgender people, and 47 % about being intersex. Overall, social attitudes towards LGBTI people have become more positive across the EU, but there is also a wide variation between EU countries when it comes to how comfortable respondents feel around LGBTI persons, and about LGBTI families or LGBTI individuals in high political office. In 2023, 72 % of Europeans agreed that [same-sex marriage](#) should be allowed throughout Europe.

Within the LGBTI community itself, the perception and experience of discrimination is widespread. In May 2024, FRA published the results of its third EU-wide survey on the extent and nature of discrimination, violence and hate speech experienced by gay, lesbian, bi-, trans- and intersex people across the EU, following up on previous surveys in [2012](#) and [2020](#). This third survey covered 100 577 respondents identifying as LGBTI from the EU 27 Member States, Albania, North Macedonia and Serbia.

The [LGBTIQ at a crossroads: progress and challenges](#) report finds that more LGBTI people are now open about their sexual orientation, gender identity, gender expression and sex characteristics. However, the report also shows that LGBTI people still experience hate-motivated violence and discrimination. Trans and intersex people face even greater victimisation. LGBTI persons experience everyday harassment, bullying in schools, hate crime and alarmingly high rates of violence. Online campaigns inciting hate against LGBTI people spread disinformation. Trans and intersex people, LGBTI people with disabilities and those who are unemployed or belonging to minorities face the most critical hardship.

The FRA report found that in 2023, 14 % of LGBTI people had experienced a physical or sexual attack for being LGBTI in the five years leading up to the survey, an increase from the 11 % who experienced this in the five years leading up to the 2019 survey. However, intersex and transgender persons experienced much higher levels of violence: in 2023, 34 % of intersex respondents had experienced one or more physical or sexual attacks in the five years before the survey, compared to 23 % in 2019. For transgender persons, the figure had risen from 17 % in 2019 to 20 % in 2023. Moreover, the frequency of hate-motivated violence reported by survey respondents increased for all LGBTI groups between the 2019 and 2023 surveys: in 2023, 33 % said that they had experienced three or more violent attacks in the five years before the survey compared with 26 % in 2019.

The report also found that in 2022, every second respondent (54 %) experienced hate-motivated harassment because of being LGBTI. The rates are higher than average among trans women (77 %), trans men (72 %), non-binary (66 %) and pansexual (62 %), as well as intersex (67 %) respondents. The report found that the most common form of hate-motivated harassment reported by respondents is a personal incident (52 %). The majority of all respondents (63 %) said they also regularly experience negative statements about LGBTIQ people online. However, the overall prevalence of hate-motivated cyber-harassment online is lower (16 %) than that of personal incidents in real life or public spaces.

## Definitions of hate speech and hate crime

### EU law

Existing EU legislation defines hate speech as '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' (Article 1(1)(a) of [Council Framework Decision 2008/913/JHA](#), see below). Public incitement to violence can take place offline and online, with the latter referring to any type of hate speech committed via the internet. Hate crime is defined 'as any criminal offence, other than

hate speech, committed with a racist and xenophobic motivation' (Article 4). Therefore, a hate crime is 'a criminal offence committed with a bias motive'.

## Council of Europe

In a 2022 [recommendation](#) to Member States on combating hate speech, the Council of Europe [defined](#) hate speech as 'all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as "race", colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.'

## European Convention on Human Rights

The [European Convention on Human Rights](#) (ECHR) guarantees freedom of expression, but imposes limits on its exercise by prohibiting 'discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status' (Article 14). The Convention does not explicitly define hate speech or hate crime.

## European Court of Human Rights

In its [case law](#), the European Court of Human Rights has ruled that 'tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ... provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued.'

## United Nations

### International Covenant on Civil and Political Rights (ICCPR)

Article 20, para. 2, of the [International Covenant on Civil and Political Rights](#) (ICCPR) of 1966 – a key international human rights treaty – established that 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'.

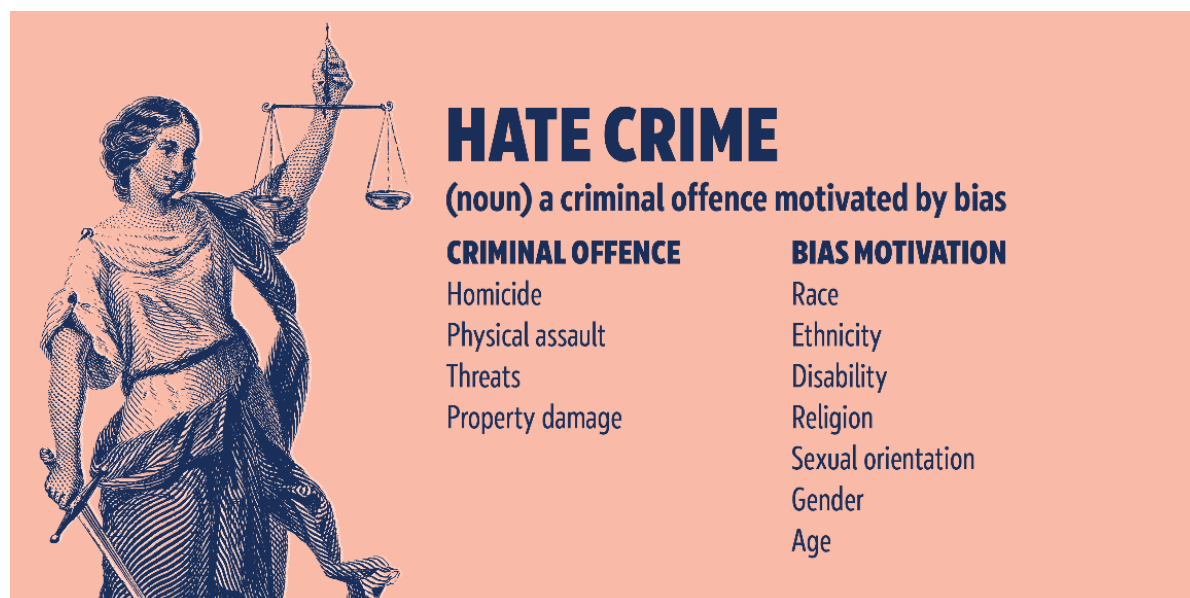
### International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD) of 1965 prohibits discriminatory speech and action. It obliges states to criminalise certain forms of hate speech and the commission of or incitement to acts of violence against any race, group of persons of another colour or ethnic group. It also obliges states to prohibit organisations and propaganda activities that promote and incite racial discrimination.

### UN Strategy and Plan of Action on Hate Speech

The 2019 United Nations Strategy and Plan of Action on Hate Speech [defines](#) hate speech as 'any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.'

Figure 1 – Hate crime



Graphic by Samy Chahri, EPRS, based on Organisation for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), [Hate Crime Reporting](#), 13 June 2024.

## Existing EU legal framework

### Equality and non-discrimination in the EU Treaties

[Article 2](#) of the Treaty on European Union (TEU) states that '[t]he [European] Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These 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'.

[Article 10](#) of the Treaty on the Functioning of the European Union (TFEU) states further that 'in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.' Moreover, [Article 19](#) TFEU gives the Union the power to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'.

[Article 21](#) of the EU Charter of Fundamental Rights prohibits 'any 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'. The EU Charter also provides that the 'Union shall respect cultural, religious and linguistic diversity', ([Article 22](#)), the rights of the elderly ([Article 25](#)) and the rights of persons with disabilities ([Article 26](#)).

### Equality and non-discrimination in EU secondary law

#### EU anti-discrimination directives

Over the years, the EU has [adopted](#) a set of directives prohibiting discrimination on a variety of grounds. These include:

- [Directive 2000/43/EC](#) against discrimination on grounds of race and ethnic origin.
- [Directive 2000/78/EC](#) against discrimination at work on grounds of religion or belief, disability, age or sexual orientation.

- [Directive 2006/54/EC](#) equal treatment for men and women in matters of employment and occupation, and
- [Directive 2004/113/EC](#) equal treatment for men and women in the access to and supply of goods and services.

In 2008, the European Commission presented a [proposal](#) for a Council directive on implementing the principle of equal treatment outside the labour market, irrespective of age, disability, sexual orientation or religious belief, which aimed at extending protection against discrimination through a horizontal approach. However, Member States in Council failed to reach a unanimous decision to adopt the directive and the proposal was not adopted at that time.

## Victims' Rights Directive

The [Victims' Rights Directive](#) was adopted in 2012 to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Member States must ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings.

Member States are obliged to carry out individual assessments to identify the specific protection needs of victims of crimes committed with a bias or discriminatory motive (Article 22 of the directive), in particular if it is related to their personal characteristics. It includes the grounds of sexual orientation, gender identity, gender expression and disability when recognising the rights of victims. Sexual and gender-based violence and hate crime are recognised as grounds for specific protection needs.

In July 2023, the Commission published a [proposal](#) for a revision of the Victims' Rights Directive, including Article 22.

## Provisions specifically targeting hate speech and/or hate crime

### Council Framework Decision 2008/913/JHA

[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 (the 2008 Council Framework Decision) 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, such as gender,<sup>1</sup> disability, sexual orientation and age, for example. 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.

### Directive on Combating Violence against Women and Domestic Violence

[Directive \(EU\) 2024/1385](#) of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence lays down rules to prevent and combat violence against women. The directive requires Member States to criminalise hate speech against women alongside other forms of gender-based cyber-violence. Article 8 of the directive requires Member States to make it a crime to intentionally incite violence or hatred against a group of persons or a member of such a group, defined by reference to gender, by publicly disseminating material containing incitement online.

## Digital Services Act

The [Digital Services Act](#) (DSA), which entered into force in November 2022, puts a framework of layered responsibilities in place, targeted at different types of online intermediary services. These include network infrastructure services (e.g. cloud and webhosting), online platform services (e.g. app stores and social media platforms), and services provided by very large online platforms and very large online search engines that pose particular risks in the dissemination of illegal content and societal harms. Under the DSA, all providers offering such online intermediary services in the EU have to comply with a range of obligations to ensure transparency, accountability and responsibility for their actions according to their role, size and impact in the online ecosystem.

The [High-Level Group on Hate Speech and Hate Crime](#) (see box) has described the DSA as 'ground-breaking' legislation to tackle online hate speech. It requires all online platforms to have notice and action systems in place to allow for user reports on illegal content, including hate speech. It also requires online platforms to inform law enforcement agencies if they become aware of a serious criminal offence involving a threat to life or safety. This means that the most serious cases of online hate speech not only have to be removed, but they must also be reported to the police.

Moreover, the DSA introduced strict rules for [very large online platforms](#) with more than 45 million users per month in the EU. These platforms and search engines must assess and mitigate systemic risks, also concerning the spread of illegal hate speech. Large online platforms also need to increase transparency, including by providing information on the functioning of their algorithms and recommending systems.

### Code of Conduct and Code of Conduct +

To tackle the spread of illegal hate speech online, the Commission has drawn up a '[Code of conduct on countering illegal hate speech online](#)', first introduced in 2016. Major internet companies – including Facebook, Microsoft, Twitter (but not X),<sup>2</sup> YouTube, Instagram, Snapchat, Dailymotion, Jeuxvideo.com, TikTok, LinkedIn, Rakuten Viber and Twitch – have signed up to the Code of Conduct. By signing up, these companies commit to ensuring that online platforms do not offer opportunities for illegal online hate speech to spread virally. More specifically, they agree to put in place clear and effective processes to review notifications regarding illegal hate speech on their services so they can remove or disable access to such content. Upon receipt of a valid removal notification, companies commit to review such requests against their rules and community guidelines and, where necessary, national laws transposing Framework Decision 2008/913/JHA, with dedicated teams reviewing requests. Moreover, they agree to review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary.

The European Commission regularly monitors and evaluates the implementation of the Code of Conduct, in collaboration with a network of organisations located in the different EU countries. Using a commonly agreed methodology, these organisations test how IT companies are implementing the commitments in the Code. In November 2022, the Commission [deplored](#) a 'slow-down in progress',

### EU High Level Group on Hate Speech and Hate Crime

In 2016, the European Commission set up the [High-Level Group on Hate Speech and Hate Crime](#). The group supports the enforcement of the 2008 Council Framework Decision on combating racism and xenophobia by means of criminal law, through guidance and sharing good practice. The group [organises](#) in-depth expert discussions on horizontal issues common to the fight against hate speech and hate crime and has developed [practical guidance](#), standards and tools and seeks to build capacity to improve responses at the national and local level. The work of the group is organised around four thematic areas, hate crime recording, reporting and data collection; hate crime training and capacity building for national law enforcement; hate crime victims support; and countering hate speech online. The group is made up of experts from national authorities, international organisations (Council of Europe, OSCE/ODIHR, UN), EU agencies (FRA, CEPOL) and some EU-wide civil society organisations.



with a 'decrease in companies' notice-and-action results'. However, a [meeting](#) of the High-Level Group on Combating Hate Speech and Hate Crimes held in October 2023 [concluded](#) that the Code of Conduct had 'become an efficient and successful instrument to tackle online hate speech over the years'.

To [take account](#) of the [provisions](#) of the Digital Services Act (see above), the Commission has started to discuss the features of a forthcoming enhanced code, the '[Code of Conduct+](#)', together with the signatories of the original Code of Conduct, national authorities and civil society organisations. Under the new Code of Conduct+, the Commission wants online platforms to enhance prevention and anticipate threats. For this reason, the Commission proposes to establish exchange fora and a knowledge hub, to enable platforms to receive timely information on possible trends and developments in hate speech or threats to freedom of expression.

## EU initiatives to counter discrimination and violent extremism

During her first term as President of the European Commission (2019–2024), Ursula von der Leyen made 'equality for all and equality in all of its senses' one of the European Commission's [major priorities](#). She also appointed the first-ever Commissioner for Equality, Helena Dalli from Malta. Building a '[Union of Equality](#)' where all people can live free from discrimination included adopting five 'Union of Equality' strategies in 2020 and 2021, aiming to create the conditions for true equality among citizens. These included:

- a [gender equality strategy](#) (2020–2025),
- an [anti-racism action plan](#), (2020–2025),
- an [EU Roma strategic framework for equality, inclusion, and participation](#), (2020–2030),
- a [lesbian, gay, bisexual, transgender, intersex and queer \(LGBTIQ\) equality strategy](#), (2020–2025), and
- a [strategy for the rights of persons with disabilities](#), (2021–2030).

Separately, the Commission adopted an [action plan on integration and inclusion](#).

In October 2021, the Commission also adopted the first-ever [EU strategy on combating antisemitism and fostering Jewish life](#) (2021–2030). The strategy provides for a range of actions to address [holocaust denial and distortion](#).

The Commission's initiative to include hate speech and hate crime as an area of crime under Article 83(1) is part of this broader set of EU policy actions addressing discrimination and violent extremism (see below).

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

At present, the EU has no competence to criminalise hate speech and hate crime based on grounds not covered by the 2008 Council Framework Decision. [Article 83\(1\) TFEU](#) could serve as a legal basis for criminalising hate speech and hate crime on other grounds, provided 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', (also known as 'EU crimes'). Article 83(1) TFEU allows the Parliament and the Council to establish minimum rules regarding the definition of EU crimes and related sanctions. Moreover, taking account of 'developments in crime', the Council may adopt a decision (subject to the Parliament's consent) that identifies other areas of crime meeting the criteria specified in Article 83(1) TFEU. The Commission may trigger such a decision by submitting a communication to the Parliament and the Council.

## European Commission proposal

On 9 December 2021, the Commission published a communication entitled: 'A more inclusive and protective Europe: extending the list of EU Crimes to hate speech and hate crime' ([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 proposed Council decision is [annexed](#) to the communication. If adopted, the Commission will 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 (OLP).

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.

## European Parliament and Council

In March 2022, the Council [examined](#) the proposal, with a very broad majority in favour of the initiative. However, the file has stalled in the Council, which has not reached the unanimity required to adopt a decision extending the list of crimes.

In January 2023, the European Parliament appointed a rapporteur for an [own-initiative report](#) on extending the list of EU crimes to hate speech and hate crime. The Committee on Civil Liberties, Justice and Home Affairs (LIBE) was responsible for the preparation of the report, while the FEMM committee prepared an opinion. The LIBE committee [adopted](#) its [report](#) on 13 November 2023 and the Parliament endorsed it in plenary on 18 January 2024. Parliament's January 2024 [resolution](#) bemoans the lack of progress on the file in the Council, urging it to adopt the decision so that the Commission can initiate the second stage of the procedure. Parliament called on the Member States to work together responsibly and constructively to resume negotiations within the Council in order to adopt a Council decision. Regretting that Article 83 TFEU requires unanimity in the Council, Parliament called for the '[passerelle clause](#)' to be activated.

Parliament encouraged the Commission to consider an open-ended approach with the list of grounds of discrimination not being limited to a closed list so it can adapt to changing social dynamics. Moreover, the resolution addresses specific aspects of hate speech and hate crimes. It calls on the Commission and the Member States to act against misuses of the internet and social media, stressing that the social media platforms' business model, based on micro-targeted advertising, contributes to spreading and amplifying hate speech. It also notes that particular attention should be paid to minors to protect them from hate speech and hate crime and prevent incidences of bullying in schools and cyber-bullying.

In May 2022, the European Economic and Social Committee adopted an [opinion](#) on the subject, as did the [European Committee of the Regions](#) in November 2022.

## A new call to action

In December 2023, the European Commission and the High Representative renewed efforts to tackle hatred in all its forms in the EU, by [addressing](#) a joint communication to the European Parliament and the Council entitled [No place for hate: a Europe united against hatred](#). In this communication, the European Commission set out a series of actions it plans to implement across a variety of policy areas, including security, digital, education, culture and sport. These actions include providing more funds with the aim of protecting people and the places in which they worship, issuing

a new Code of Conduct on countering illegal hate speech online and engaging society as a whole to ensure the various initiatives at EU level can reach their full potential. The Commission also called on the Council to rapidly adopt the decision to extend the list of EU crimes to include hate speech and hate crime, two years after the Commission first proposed the measure.

## European Parliament position on hate speech and hate crime (2019–2024)

During its ninth term, Parliament addressed hate speech and hate crime in numerous resolutions, some of which are detailed below:

In a November 2020 [resolution](#), 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 social media platform business model and the spreading and amplifying of hate speech by these platforms, which may result in radicalisation leading to violent extremism. 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 to reinforce the legal framework for tackling hate speech and discrimination, stressing that negotiations on the stalled horizontal anti-discrimination directive should be unblocked to this end. In its [resolution](#) of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU, Parliament called, once again, for the adoption of the directive.

A March 2021 [resolution](#) dealt specifically with hate speech against LGBTIQ people. Parliament condemned the creation of 'LGBTIQ-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 Parliament's [resolution](#) of December 2021, which noted that while this form of abuse is 'pervasively common' in particular online, some Member States have no laws to address it. On 20 October 2022, Parliament adopted a [resolution](#) on growing hate crime against LGBTIQ+ people across Europe.

In February 2024, Parliament adopted a [resolution](#) on the implementation of the 2020–2025 EU LGBTIQ equality strategy, in which it expressed deep concern at the rise of hate speech, hate crimes and violence against LGBTIQ+ persons, including online. Parliament recalled the need for preventive and protective public policy to combat bias-motivated hate speech, hate crimes and violence against LGBTIQ+ persons.

Parliament has been a strong advocate of EU action to fight violence against women in general and cyber-violence in particular. In September 2021, Parliament adopted a legislative [resolution](#) calling on the Commission to submit a 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.

In a separate [resolution](#) on combating gender-based violence and cyberviolence, adopted in December 2021, Parliament called on the Commission and Member States to include 'misogyny' among the grounds for hate speech, and 'misogynistic assaults' among the list of hate crimes. Parliament also called on the Commission and Member States to expand the scope of gender-based cyberviolence to include sexist hate speech. Parliament also highlighted that feminists are often the targets of defamation campaigns, online hate speech and cyberbullying.

A May 2022 [resolution](#) pointed to religion-based hate crimes that remain under-reported and unprosecuted, and called for comprehensive data collection systems to be established on hate crimes and other discriminatory acts against belief-based or religious communities.

On 18 January 2024, Parliament adopted a [resolution](#) on extending the list of EU crimes to hate speech and hate crime (cited above). In the resolution, Parliament urged the Council to adopt a decision to include hate speech and hate crime among the criminal offences within the list of Article 83(1) TFEU, as this would allow the Commission to propose a directive on the matter.

## MAIN REFERENCES

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Marzocchi O. and Sandu G., [The EU as a 'Union of Equality'?](#), Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, March 2024.

## ENDNOTES

<sup>1</sup> [Directive \(EU\) 2024/1385](#) of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, which entered into force on 3 June 2024, requires Member States to criminalise hate speech against women along other forms of gender-based cyber-violence.

<sup>2</sup> Twitter originally signed up to the Code of Conduct, but following Elon Musk's takeover of the company and the subsequent name change to X, the [platform](#) withdrew from the Code of Conduct in May 2023.

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