

Opinion of the European Economic and Social Committee on 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

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1. Conclusions and recommendations

1.1. The EESC is deeply worried about the development of hate speech and hate crime in Europe over the last decade. Numerous studies and consultations indicate a serious increase in incidents, and an increasing number of individuals and groups exposed to hate-based attacks. The work of organised civil society in Europe also bears witness to these growing tendencies — the organisations are targeted themselves, and they face a growing need to assist and protect the individuals and communities threatened.

1.2. The EESC supports the initiative of the Commission and encourages the Council and the Parliament to fully cooperate in defending the core values of the EU. The EESC considers that hate speech and hate crime are areas of crime that meet the criteria set out in Article 83(1) of the TFEU. A decision by the Council to define it as such will allow the subsequent setting of minimum rules concerning the definition of criminal offences and penalties in this area of crime.

1.3. More specifically, on the basis of available evidence, the EESC considers that there is a significant and worrying development of hate-based crimes, that there is a clear cross-border dimension at the level of drivers, enablers and impact and that these types of crimes cannot be efficiently prevented and combated in the absence of EU-level legislative and institutional action.

1.4. Along with the European Court of Human Rights, the EESC considers that when acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal law mechanisms can ensure adequate protection and serve as a deterrent factor.

1.5. Hate speech and hate crime must be combated irrespective of where the expression or action takes place, i.e. whether it is in the context of work, public manifestations, hobbies, private or public services, etc. More targeted actions can be considered where hate-based incidents are more likely. A more general objective, pursued through various means and instruments, would be to make public spaces in Europe free of hate speech and hate crime.

1.6. The EESC calls for the Commission to also pay attention to and explore direct and indirect impacts of hate speech and hate crime on the conditions for entrepreneurship and employment, and their implications for economic and social development.

1.7. Specific attention should also be paid to the awareness and skills of people in professions with an essential role in combating hate speech and hate crime, for example teachers, journalists and law enforcement personnel. For law enforcement personnel, following best practices from EU Member States, the information and training should be compulsory and part of an overall strategy to strengthen the capacities of involved institutions.

1.8. Victims' access to information and to the special protection measures given to the most vulnerable victims of crime under the Victims' Rights Directive should be properly guaranteed.

1.9. Civil society organisations, including social partners, also play an essential role in combating hate speech and hate crime: on the one hand as societal watchdogs, and on the other hand as promoters of the value-based way of acting in their own activities. They should be protected and supported in their role in making places, communities, groups, organisations and media safe from hate and discrimination, including through promoting voluntary codes of conduct and sharing good practices. More financing is needed to mobilise their capacities and expertise in this respect.

1.10. The importance of safe online interactions should be stressed. The development of social media platforms and online forums created a space in which some believe they can act with impunity. There is a pressing need to work with national regulators and social media platforms to ensure that online hate is swiftly identified, and eliminated and investigated.

2. General comments

2.1. The EESC acknowledges the integral part of protecting dignity, fundamental rights and equality in the design of the EU and the democratic regimes of the Member States. Democracy, and the EU in itself, are not possible if people are living in fear and shame, if they are harassed or attacked while living, working, studying or participating in society and politics. With the spread of social media, hate and stigmatisation are gaining traction easier and more quickly and the risk to children and youngsters is constantly growing. There is no choice but to strongly and actively prevent and combat the spread of hate speech and hate crime.

2.2. In the context of the military aggression of the Russian Federation on Ukraine, an act that the EESC fully condemns, there is an increase in disinformation and the spread of hate speech in Europe. This is not new and the EU members became more aware and resilient in the face of it. The Russian Federation makes efforts to create confusion, spread propaganda and delegitimise the support for democracy and human rights. Preventing and combating hate speech and hate crime is thus an existential responsibility for the EU and the Member States.

2.3. To efficiently combat hate speech and hate crime, a common basis is indispensable. European societies are intertwined, and freedom of movement creates an increasingly integrated social and public sphere. Member States have the main tools to fight hate speech and hate crime, but their success is unlikely without a clear commitment, cooperation and synergy, with proper EU legislative instruments in place and coordinated definitions, approaches and opportunities for policy learning and transfer. All of the efforts to this end should respect the fundamental rights enshrined in the EU Charter.

2.4. The EESC has stated, on many occasions, that the EU and the Member States must act more decisively to protect fundamental rights and combat the whole range of discriminatory and hate-based behaviours. In this respect, it recommends that the Commission align the proposal with other key policy documents like the New Strategy for the Implementation of the Charter of Fundamental Rights, A Union of equality: EU anti-racism action plan 2020-2025, the Equality Strategies on Gender and LGBTIQ, the Roma Strategic Framework, the EU Strategy on combating antisemitism and fostering Jewish life, the Strategy for the Rights of Persons with Disabilities and the Strategy on Victims' Rights.

2.5. The Commission's proposal comprehensively identifies the characteristics that individuals and groups exposed to hate speech and hate crime might share: race, ethnicity, language, religion, nationality, age, sex, sexual orientation, gender identity, gender expression, sex characteristics or any other fundamental characteristic, or a combination of such characteristics. We should also add any ideological and political reasons, and also other conscience related beliefs and values. The EESC considers that risks and threats should also be mapped and addressed in relation to their social and cultural context. Existing and new research could indicate what the most common situations are in which hate speech and hate crime happen.

2.6. Hate speech and hate crime may target entrepreneurs or the personnel of an enterprise, for example, those serving customers. This has a damaging impact both on the individuals and on the enterprise in question. Hate speech and hate crime may also have an indirect negative impact on the general business and economic environment by increasing uncertainty, instability and conflicts.

2.7. The EESC considers that there is a great need for awareness-raising and education on understanding the impacts and seriousness of hate speech and hate crime and on identifying and combating them in everyday life. This applies to people of all ages: children, young people and adults alike. All awareness raising and education (info materials, training, products) should be provided in accessible formats.

2.8. Specific attention should also be paid to the awareness and skills of people in professions with an essential role in combating hate speech and hate crime. For example, teachers have an important role to play in the behavioural education of school children. Journalists play a unique role from the point of view of freedom of expression. Law enforcement personnel, police, prosecutors, judges and civil servants play a central role in dealing with cases and developing a preventive legal framework and other measures.

2.9. Politicians have the core responsibility of the overall system of the rule of law and fundamental rights. Their responsibility starts from the moment they ask the support of the citizens, and unfortunately some politicians and parties do it by spreading fear and targeting minorities and social groups. This type of electoral mobilisation is dangerous and must be curbed. With even more serious effects, while holding public office, some politicians could be tempted to use institutional and legal instruments to promote discrimination or avoid fighting it. The EESC urges all political leaders and parties to act responsibly, in the framework and the spirit of inclusive democracy.

2.10. Related to that, leaders of political parties or even heads of governments, who are supposed to guarantee the civility of the public space, have also indulged in insults and verbal attacks against journalists, taking the risk of provoking violence against them. The EESC urges political leaders and parties to respect journalists and media organisations and refers to a solemn acknowledgment of the gravity of that issue made by the four international Special Rapporteurs on freedom of expression.

2.11. Civil society organisations, including social partners, also play an essential role in combating hate speech and hate crime: on the one hand as societal watchdogs, and on the other hand as promoters of the value-based way of acting in their own activities. Voluntary codes of conduct and the sharing of good practices should be encouraged and promoted.

2.12. The EESC highlights the important role local and regional authorities have in preventing and combating hate crimes. They are the closest to the communities and can monitor if such risks and incidents might become reality. They also can harness the power of solidarity and empathy, through community and educational programs, with the support of central governments, civil society organisations and social partners.

2.13. It is the responsibility for states to create an enabling environment for the rights to freedom of expression, equality and non-discrimination. States can take positive policy measures to tackle discrimination, to address the root causes driving hate.

3. Specific comments

3.1. The facts and arguments set out in the Commission's Communication seem to be valid in assessing that hate speech and hate crime fulfil the criteria set for EU crimes, including their seriousness, scale and development, as well as their cross-border dimension.

3.2. The Communication rightly describes the serious nature of hate speech and hate crime, based on the fact that they run counter to EU common values and fundamental rights, and due to their harmful impacts on individuals, communities and society at large. EU values work for an open society, which is important for people, businesses and organisations. Equality is deeply rooted in EU values, and the equality of opportunities lays the groundwork for social progress. Diversity and pluralism are an integral part of it. Equality acts as a source of innovation and generates economic added value.

3.3. Considering the growing efforts by Member States to address hate speech and hate crime in their criminal law, and the need to avoid fragmentation between Member States and to enhance a level playing field across the EU, a common EU criminal framework seems reasonable in addressing hate speech and hate crime, while respecting the national juridical systems and Article 2 of the Treaty.

3.4. At the same time, the competencies of the EU in the field of criminal law need to be respected, which allow for setting minimum rules by means of directives to be implemented in national legislation.

3.5. The EESC finds it relevant to consider hate speech and hate crime as an area of crime having a common 'substance' based on a bias motivation of hatred targeting persons or groups. This leads to the requirement to consider hate speech and hate crime in a holistic way, and to avoid a silo approach to different forms or targets of hatred, especially in regard to differences between the Member States. It also calls for considering hate speech and hate crime in relation to EU values and fundamental rights as a whole. Moreover, it calls for identifying the linkages of hate speech and hate crime with existing EU crimes. In this context, information sharing between law enforcement agencies and governments should be stepped up.

3.6. The EESC looks forward to creating a definition of hate speech and hate crime as a next step and is willing to contribute to the inter-institutional consultation. This definition is crucial for the sake of legal certainty, but also for the protection of fundamental rights and ensuring solid general communication. The Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law provides a relevant starting point for developing a definition that could be applied in this wider context, while also making use of the definitions used by the Council of Europe.

3.7. The definitions of hate speech and hate crime should cover all relevant protected characteristics grounded in EU fundamental rights, including sex/gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation, but also ideological and conscience related beliefs. While the protected characteristics differ from each other, the definition should address the various characteristics according to the same principles. One should also avoid a fragmented approach to various minorities and groups and instead use general expressions applicable to the whole spectrum of the protected characteristic in question. Moreover, the definition should be inclusive enough to respond to new kinds of societal phenomena emerging over time.

3.8. The definitions should cover any form of action and expression, whether oral or written, irrespective of where the expression or action takes place, i.e. whether it is in the context of work, public manifestations, or accessing private or public services etc. It should also cover both online and offline expressions.

3.9. While the definitions should be comprehensive, they cannot be unambiguously perfect, and should always require judgement, based on evidence placed in the relevant context when implemented. Common guidance on factors to be considered here would be one means of enhancing the uniform implementation of the definitions and rules.

3.10. It is also important to ensure that the definitions and rules do not work against their purpose. For example, one should not stigmatise words that have been traditionally used in a neutral way. This is also related to the objective of developing common rules for protecting any groups rather than pointing the finger at certain groups.

3.11. In defining hate speech and crime, and the respective sanctions, it is important to clarify their relationship with fundamental rights as a whole. This is particularly relevant with respect to freedom of expression and information, including the conditions that justify limiting the freedom of expression of individuals and the media. Correspondingly, there might be a need for clarification with respect to other fundamental rights as well.

3.12. While hate speech and hate crime can be considered as an area of crime in its own right, they also entail some overlapping with existing EU crimes. Existing EU crimes do not however cover all hate speech and crime, due to the various forms and diverse content of this area of crime. This is also well illustrated by the 'pyramid of hate' that starts from bias-motivated speech and moves, via discrimination, to physical violence and even terrorism.

3.13. As stated in the Communication, addressing hate speech and hate crime is not only a matter of substance but also of procedure. Due attention must therefore be paid to issues related to access to information, justice and remedies. Even though hate crime and hate speech is recognised and regulated at national level there are lots of gaps in implementation/reporting/investigation. If not reported and properly investigated as bias crimes, data on the prevalence of those crimes at MS at EU level is unreliable.

3.14. Having hate crime and hate speech listed as an EU crime list is essential in terms of the protection of victims' rights. If the grounds of hate incidents are not recognised, for example disability, then the rule of the EU Directive on victims' rights (covering victims of crime) would not necessarily apply. Facing an increasing number of incidents, more attention should be dedicated to the protection of victims. Therefore, victims' access to information and to the special protection measures given to the most vulnerable victims of crime under the Victims' Rights Directive should be properly guaranteed.

3.15. As in the case of the Framework Decision, transposed into national law by all Member States in order to criminalise hate speech, we see that not all the countries are advancing at the same pace. The transposition and enforcement have not always been correct or complete, forcing the Commission to launch infringement actions against some Member States. This is a scenario that could be repeated. More work with Member State governments, parliaments and civil society actors is needed to ensure cooperation and commitment.

3.16. The importance of safe online interactions should be stressed. The development of social media platforms and online forums created a space in which some believe they can act with impunity. As shown in various research reports, there is a direct link between hate speech online and the offline proliferation of hate-base behaviour. There is a pressing need to work with national regulators and social media platforms to ensure that online hate is swiftly identified and eliminated and investigated.

Brussels, 18 May 2022.

The President
of the European Economic and Social Committee
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