

## OPINIONS

## COMMITTEE OF THE REGIONS

152ND COR PLENARY SESSION, 30.11.2022-1.12.2022

**Opinion of the European Committee of the Regions on extending the list of EU crimes to hate speech and hate crimes**

(2023/C 79/03)

<b>Rapporteur:</b>	Aleksandra DULKIEWICZ (PL/EPP), Mayor of the City of Gdańsk
<b>Reference document:</b>	Communication from the Commission to the European Parliament and the Council on A more inclusive and protective Europe; extending the list of EU crimes to hate speech and hate crime COM(2021) 777 final

**POLICY RECOMMENDATIONS**

THE EUROPEAN COMMITTEE OF THE REGIONS (CoR),

1. notes that the way hate speech and hate crime are criminalised at EU level is currently set out in the 2008 Council Framework Decision on combating racism and xenophobia (Council Framework Decision 2008/913/JHA<sup>(1)</sup>). The catalogue of hate crimes covered by EU-wide legislation is limited to grounds related to race, skin colour, religion and national or ethnic origin;
2. notes that the criminalisation of other forms of hate speech and hate crime, particularly on grounds of gender, sexual orientation, age and disability, varies from one EU Member State to another. As there is currently no Treaty basis for a common Europe-wide criminal law response to tackle all forms of hate speech and hate crime, the CoR calls on the Council to swiftly extend the list of EU offences under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) by setting common minimum standards for the relevant national criminal provision in full respect of the subsidiarity principle;
3. warmly welcomes in this regard the European Commission proposal for a Council Decision on adding hate speech and hate crime to the areas of crime laid down in Article 83(1) of the TFEU, annexed to the Communication of December 2021 on *A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime*;
4. points out that hate speech, hate crime, fake news, disinformation and conspiracy theories are phenomena that need to be addressed through resolute action. It should also be underlined that the fight against hate speech and hate crime is also the fight against prejudice, racism, chauvinism, homophobia and anti-Semitism. Hate speech and hate crime affect not only the individual victims, causing them suffering and seriously curtailing their fundamental rights and freedoms, but also society at large;

<sup>(1)</sup> 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).

5. is concerned about the huge scale of this phenomenon and the peculiar indifference towards it, which poses the danger of normalisation of hate speech and hate crime, and even of it being a constant presence in our daily lives;

### **Policy recommendations**

6. condemns situations where hate speech has become part of the language of political conflict and is concerned about extreme views and the brutalisation of language becoming mainstream in public debate. There is a danger that the aggressive language of political disputes in the hands of populists will help to create a climate where radicalism, fake news and disinformation can develop, risking to lead to hate crimes;

7. is aware that hate speech and hate crime affect all age groups, the only difference being the environment in which they learn it; calls for special attention to be paid to young people who, on one hand, are particularly vulnerable to virtual and in-person hate speech and incitement to commit hate crimes, and on the other hand could also be strong allies in the fight against it; notes that although the most frequent targets of hate speech are refugees, people who are not heteronormative and national and religious minorities, in recent years the proportion of people facing hate speech in the media, social media and everyday situations has increased sharply;

8. notes that verbal and physical violence driven by hate is not only a concern for minority communities. In this context, authority figures — persons holding electoral mandates or exerting public responsibilities, and institutions — are increasingly often the victims of hate speech and hate crime. Local and regional politicians are hit particularly hard by this, for example when defending the rights of refugees, migrants or LGBTIQ+ persons, as well as more recently, in the face of the fight against global threats such as the Russian invasion of Ukraine or the COVID-19 pandemic;

9. believes that politicians and public authorities are particularly capable of influencing public opinion and discourse, and therefore calls on political leaders at all levels to refrain from using language that may give rise to hate speech or hate crimes against specific groups;

10. is concerned that third countries are knowingly using hate speech and hate crime to carry out organised campaigns that influence polarisation and build divisions within the EU. Hate speech and hate crime play a role in fuelling armed conflicts. They are no longer a local phenomenon but are becoming a threat on a global scale. Such an example of hate speech is the current message from President Putin's administration about the reasons for the aggression against Ukraine and the scale of violence and hate crimes committed during this war;

11. draws attention to the global dimension of hate speech and hate crime which is partly a result of the ease of disseminating ideas through various digital channels. Therefore, there must be a cross-border dimension to prosecuting them effectively. The Committee fully agrees to this effect with the European Commission's assessment that the gravity of such crimes, together with their cross-border nature, can be addressed only through common action at EU level, translating into a common Union criminal justice response and enhanced judicial cooperation between Member States. Such action would not run counter to the principles of subsidiarity and proportionality;

12. highlights the negative side-effects that hate speech spread online can have on local communities and, as a result, on divisions between people and disrupting the process of social cohesion; believes that the consequences of hate crime and hate speech are most felt among local communities;

13. is concerned that hate-based crimes spread fear and stigmatisation with a greater destructive impact that goes beyond the boundaries of a specific city or region and have the potential to escalate into greater conflicts;

14. stresses the great responsibility of regional and local authorities in actively countering hate crime and hate speech and preventing discrimination and exclusion, including politically and ideologically motivated violence; notes that inaction and failure to take it seriously can lead to escalation and exacerbation of the situation;

15. stresses that mayors and other regional and local leaders are in a crucial position and can play a key role in identifying early signs of such incidents in their communities; calls for specialised recommendations to be drawn up for regional and local authorities on how to effectively prevent this phenomenon within local communities; also believes that local and regional authorities should be encouraged to take preventive action on the basis of their local circumstances; calls for harmonious cooperation with law enforcement bodies, which are expected to consistently and effectively fight against hate speech and hate crime;

16. recommends introducing legislation on combating hate speech in digital services so that social media do not contribute to spreading and amplifying the impact of both hate speech and crimes. The current rules are not sufficient to ensure that internet service providers contribute to effectively combating and preventing hate speech in the services they provide. Research <sup>(?)</sup> shows that digital services providers and platforms often do not enforce or do not have the capacity to enforce their own community guidelines;

17. notes that the Digital Services Act (DSA), which is currently in the legislative phase, is an opportunity for setting minimum standards in terms of transparency on the resources that platforms must mobilise to ensure the implementation of both the legal frameworks on disinformation and their own community guidelines. This legal act could provide an incentive to improve the relationship between intermediary service providers, the public and the State. The socio-economic potential of large platforms requires a coordinated effort at pan-European level and using the strength of the European single market as an argument;

18. calls for the DSA to be adopted at EU level and implemented in the Member States. Member States should engage in further work and promotion of the DSA in the EU. It is worth promoting the DSA as an EU law that does not compete with separate, independent regulations on digital services or freedom of expression online, which would be adopted by individual Member States;

19. draws attention to the role of law enforcement authorities in the process of prevention, detection and, ultimately, prosecution; hopes that extending the EU-wide catalogue of crimes to include hate crimes will contribute to a consistent response to them and attach importance to the prosecution of hate speech and hate crime at every stage of proceedings (police, prosecution service, courts); points out the role of independent courts in this process which, by building their case law, set the boundaries of what is permissible and what falls within the boundaries of exercising freedom of expression and what constitutes hate speech; recommends that the standards for how to respond to this problem be the same throughout the European Union;

20. calls for consideration to be given to creating a model whereby hate speech is prosecuted by public indictment and not by private or complaint procedures. It is in the public interest to curb this phenomenon and perpetrators should be aware that they will inevitably face a penalty. It is also necessary to overcome the obstacle of the anonymity of people who perpetrate hate crimes, for which law enforcement authorities need to take action and internet service providers must be willing to cooperate;

21. stresses that progress on equality and human rights, including law enforcement bodies effectively combating hate crime and hate speech, relies to a large extent on cooperation from regional and local authorities;

22. points out that the main obstacle against law enforcement authorities effectively taking action is hate crimes not being reported; points out that local and regional authorities and local government officials should take advantage of their proximity to the population and promote policies to raise awareness of the problem (including among civil servants) and to encourage victims to report hate speech and hate crime;

23. points out that local and regional authorities should play a role in breaking down barriers to reporting incidents of hate crime, for example by raising awareness on victims' rights, providing legal information on how to report incidents, assuring migrants that they can file a report regardless of their legal status and promoting anonymous reporting via third

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<sup>(?)</sup> A relevant report is accessible at [210831\\_Reset\\_Facebook\\_Bundestagswahl\\_EN.pdf](#) ([hateaid.org](#)).

parties. Local and regional authorities should also promote good practices and cooperation on behalf of victims with the involvement of police, local equality and anti-discrimination bodies, social NGOs and other victim support services;

24. concludes that even the best legal solutions will not help if law enforcement authorities do not enforce them by prosecuting perpetrators. Similarly, the possibility for law enforcement authorities to react will be limited if internet service providers (providing services by electronic means) do not share the data of people who commit hate crimes and thus manifestly break the law;

25. argues that, in terms of law enforcement bodies, given that hate speech is often intertwined with the language of public and political debate, it is all the more important that these bodies (and in particular the prosecutor's office) maintain independence and that this phenomenon be taken seriously. Regardless of existing national differences in regulating, combating and preventing hate speech and protection on specific grounds, it is very important to ensure the stability of institutions. This means, first of all, independent courts, and second, a prosecutor's office that is free from pressure and able to take independent decisions regarding prosecuting this type of crime by public indictment;

26. notes that in several EU Member States, the mandate of equality bodies also covers hate speech and hate crime<sup>(3)</sup> and thus, they have an important role to play in this process. The Committee supports in this regard the European Commission's recommendations to Member States to help them improve the equality bodies' independence and effectiveness<sup>(4)</sup> and looks forward to the announced forthcoming legislative proposal on further strengthening their role and independence;

27. points out the need to cooperate with NGOs that support awareness building and combating hate speech and hate-based acts of violence. The experience gained by these key stakeholders, including local authorities, must be used to counter and combat hatred;

28. all schools should implement anti-discrimination education programmes and skills for getting along and living in a multicultural society that is diverse in terms of nationality, race, ideology and faith. Activities to counter hate speech should be a key element of this education;

29. proposes that hate speech be included in the general education curriculum and encourages regions that have competences in this area to take action to this end;

30. stresses that the European citizens of today must be educated and equipped with the interpersonal skills to not cross the line in terms of what is considered freedom of speech or freedom of expression either online or in public spaces;

31. encourages wide-ranging public campaigns, including EU-wide ones, to promote equality and prevent discrimination, for example in the form of a follow-up to the Conference on the Future of Europe;

32. calls for support for local and regional organisations and social partners working in the same areas that deal with the fight against verbal and physical hate through multicultural education; points out that we can find a positive example of this in the idea behind the Paweł Adamowicz Award funded by the Committee of the Regions, ICORN and the City of Gdansk;

## Conclusions

33. sees the EU as a guarantor in terms of making and applying laws to counteract public manifestations of hate;

34. recognises that the effects of hate speech and hate crime have a cross-border dimension, hence the need to tackle them through common action at EU level. Calls therefore to effectively address hate speech and hate crime on other grounds beyond those covered by Framework Decision 2008/913/JHA, including on the grounds of gender identity, sexual

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<sup>(3)</sup> The Office of the Ombudsman in Poland is such an example.

<sup>(4)</sup> Commission Recommendation of 22.6.2018 on standards for equality bodies (C(2018) 3850 final).

orientation, age and disability, as identified in the European Commission's Union of Equality proposals. It is important that the Council swiftly extend the list of crimes to include hate crimes (Article 83(1) TFEU) to ensure that law enforcement bodies operate effectively both at EU and national level;

35. points out that the only response to hate speech and hate crime is to create a comprehensive legal strategy for countering, reporting and consistent prosecution;

36. calls for the establishment of minimum rules at EU level concerning sanctions of hate speech and hate crime, which would allow for national legislations to be amended in order to criminalise membership in organisations that promote or incite hatred on any grounds and participation in any such activities. There should be no room for acceptance of anti-democratic views or hate speech and hostility against another human being in any corner of the world or Europe;

37. recommends improving the methods for recording and collecting data on hate crime and recommends carrying out expert discussions with Member States under the auspices of the Fundamental Rights Agency (FRA) which can help national authorities address problems concerning the practical application of the legislation and ensure effective investigation, prosecution and sentencing of hate crime and hate speech; also sees an important role here for social institutions and organisations that deal with hate speech and hate crime;

38. sees a need for organisational and legal solutions to protect victims of hate speech and hate crimes which must be supported and assisted by EU institutions and organisations, Member States and European regional and local authorities and civil society;

39. notes that there is a fine line between combating hate speech and censorship. The right to freedom of expression should be guaranteed when developing legal solutions to combat hate speech and hate crime;

40. notes the lack of a standardised definition of hate crime at international level; therefore calls for development efforts to strengthen case law and consequently improve the effectiveness of prosecution of hate speech and hate crime; Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States<sup>(?)</sup>, or the definition contained in Framework Decision 2008/913/JHA, could serve as inspiration for this;

41. is aware that we will not regulate extreme political speech. Member States will still be responsible for determining how they define freedom of expression; believes, however, that we must impose EU standards to fight against verbal and physical incidents of hate. This is precisely what expanding the catalogue of crimes in the EU to include hate speech and hate crime is for.

Brussels, 1 December 2022.

*The President*  
*of the European Committee of the Regions*  
Vasco ALVES CORDEIRO

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<sup>(?)</sup> Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States on combating hate speech: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955)