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**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**

*'Hate is hate - and no one should have to put up with it'*

Ursula von der Leyen, President of the European Commission  
State of the European Union address, September 2020

## 1. Introduction

In her 2020 State of the European Union address<sup>1</sup>, Commission President Von der Leyen underlined that progress on fighting racism and hate is fragile and that now is the moment to make a change to build a 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.'*

Combating hate speech and hate crime is part of the Commission's action to promote the EU's core values and to ensure that the EU Charter of Fundamental Rights ('the Charter') is upheld. All forms and manifestations of hatred and intolerance are incompatible with the values of respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities, upon which the EU is founded. These values, enshrined in Article 2 of the Treaty on European Union ('TEU'), are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Indeed, any form of discrimination – be it based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, as laid down in Article 19 of the Treaty on the Functioning of the European Union ('TFEU') – is prohibited. At the same time, freedom of expression is one of the pillars of a democratic and pluralist society and must be strongly protected. Furthermore, as set out in Article 67 of the TFEU, the EU must constitute an area of freedom, security and justice with respect for fundamental rights. Through measures, it must ensure a high level of security to prevent and combat crime, racism and xenophobia.

Hate speech and hate crime affect not only the individual victims and their communities, causing them suffering and limiting their fundamental rights and freedoms, but also society at large. Hate undermines the very foundations of our society. It weakens mutual understanding and respect for diversity on which pluralistic and democratic societies are built.

In the last decades, there has been a sharp rise in hate speech and hate crime in Europe<sup>2</sup>. Hate is moving into the mainstream<sup>3</sup>, targeting individuals and groups of people sharing or perceived as sharing 'a common characteristic', such as 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. These characteristics are, in general, noticeable to others and therefore more easily targeted by

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<sup>1</sup> [State of the Union 2020, Letter of Intent](#), Brussels, 16 September 2020.

<sup>2</sup> See, for instance, ECRI annual reports 2019 and 2020 at: <https://rm.coe.int/ecri-annual-report-2019/16809ca3e1> and <https://rm.coe.int/annual-report-on-ecri-s-activities-for-2020/1680a1cd59>; study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs '[Hate speech and hate crime in the EU and the evaluation of online content regulation approaches](#)', July 2020.

<sup>3</sup> See United Nations Secretary-General António Guterres, [Foreword](#) to the United Nations Strategy and plan of action on hate speech, May 2019.

offenders, they refer to an aspect of a person's identity that is unchangeable or fundamental to a person's sense of self, while also being a sign of a group identity<sup>4</sup>.

The increase in internet and social media usage has also brought more hate speech online over the years. The fast sharing of hate speech through the digital word is eased by the online disinhibition effect, as the presumed anonymity on the internet and sense of impunity reduce people's inhibition to commit such offences. In parallel, emotions and vulnerabilities have been increasingly used, including in public debate for political gain, to disseminate racist and xenophobic statements and attacks, amplified in many cases by social media<sup>5</sup>. The spreading of hatred among potentially vulnerable audiences can be observed across a large spectrum of violent extremism from jihadist, to right- and left-wing<sup>6</sup>. This has contributed to a polarisation of society and, in turn, the increasing incidence of hate speech against, in particular, marginalised groups.

The public health crisis caused by the COVID-19 pandemic heightened feelings of insecurity, isolation and fear, creating an atmosphere in which hate speech has flourished. The pandemic itself has been used by various extremist ideological movements to target specific populations (on various grounds, including nationality, religion, race, sex, sexual orientation, colour and even age), also resulting in hate crimes<sup>7</sup>.

The Commission aims to bring forward an extension of the list of areas of EU crimes, to include hate speech and hate crime. Hate has no place in the EU. It should be fought with all available means, including through criminal law.

## 2. Context of the initiative

Article 83(1) of the TFEU lays down an exhaustive list of areas of crime<sup>8</sup> where the European Parliament and the Council may establish minimum rules concerning the definition of criminal offences and sanctions applicable in all EU Member States. It also provides that, based on **developments in crime**, the Council may adopt a decision identifying **other 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**.

The Council's adoption of such a decision would be a first step to creating the legal basis necessary to adopt, in a second step, a common legal framework to combat hate speech and hate crime across the EU. Such future legislation would complement current EU law which requires the criminalisation of hate speech and hate crime based on race, colour, religion, descent or national or ethnic origin (see Section 2.2), and would cover other specific grounds.

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<sup>4</sup> OSCE ODHIR, '[Hate Crime Laws, A Practical Guide](#)'

<sup>5</sup> See [findings](#) of the consultation organised by the International Dialogue Centre and the European Council for Religious Leaders/Religions for Peace Europe, 20 April 2021; Article 19, '[Responding to "hate speech": Comparative overview of six EU countries](#)', 2018.

<sup>6</sup> [The Europol European Union Terrorism Situation and Trend Report 2021](#)

<sup>7</sup> United Nations [Guidance Note on Addressing and Countering COVID-19 related Hate Speech](#), 11 May 2020.

<sup>8</sup> This list contains the following areas of crime: 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.

Robust preparatory work has been carried out for this initiative, including an external study<sup>9</sup>, an extensive Commission consultation, as well as a large number of available reports and studies.

## **2.1. Institutional context**

The Commission is presenting this initiative based on Article 17(1) of the TEU<sup>10</sup> and following the two-stage procedure envisaged in Article 83(1) of the TFEU:

The first step is that the Council unanimously adopts, after obtaining the consent of the European Parliament, a decision identifying hate speech and hate crime as another area of crime that meets the criteria set out in Article 83(1) of the TFEU. Such a decision will extend the list of areas of crime listed in Article 83(1) of the TFEU to include hate speech and hate crime as an EU crime. This will therefore provide a legal basis enabling the European Parliament and the Council to establish, by means of directives, minimum rules concerning the definition of criminal offences and sanctions in this area of crime.

As a second step, the Commission may propose the adoption of directives establishing minimum rules on the definitions and sanctions of hate speech and hate crime to be adopted by the European Parliament and the Council in line with the ordinary legislative procedure.

The present initiative relates to the first stage and is without prejudice to the actions that may be undertaken in a second stage. It does not pre-empt or anticipate the scope and content of the secondary legislation to be subsequently proposed. Likewise, the adoption of directives as mentioned above affects the fundamental freedoms protected by the Charter, in particular the freedom of expression, including press and media freedom.

Once the Council decision has been adopted, the Commission will use its right of initiative in line with the Better Regulation requirements. The Commission will carry out an impact assessment to carefully assess the different options for defining criminal offences and sanctions, and their impacts on fundamental rights, in particular on freedom of expression and press and media freedom, which are strong foundations of a democratic society<sup>11</sup>.

To precisely define the scope and content of the rules that could be proposed, the Commission will pay particular attention to the developments of hate speech and hate crime, in light of the most recent data and trends. Such careful assessment of societal developments and trends will be particularly relevant in determining the constituent elements of future criminal offences. This will include defining the specific forms of hate speech and hate crime to be criminalised by reference to the protected characteristics of the persons and groups targeted.

When preparing such secondary legislation, the Commission will consult Member States and the European Parliament, including on the specificities of national legislative frameworks relating to criminal law and fundamental rights. The Commission will also hold a broad consultation with all relevant stakeholders, while closely involving the European Parliament.

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<sup>9</sup> [Study](#) supporting a Commission initiative to extend the list of EU crimes in Article 83(1) of the TFEU to hate speech and hate crime ('the supporting study'). The supporting study set out a detailed mapping of the legal frameworks in all Member States to combat hate speech and hate crime. It also analysed and summarised information, data and views gathered through the Commission consultation.

<sup>10</sup> Under Article 17(1) of the TEU: '[t]he Commission shall promote the general interest of the Union and take appropriate initiatives to that end'.

<sup>11</sup> See Article 52 of the [Charter of Fundamental Rights of the European Union](#)

## 2.2. The fight against hate speech and hate crime as an EU priority

At EU level, there is already in place a framework for a strong common response to racist and xenophobic hate speech and hate crime through the **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 Framework Decision')<sup>12</sup>. The Framework Decision aims to ensure that serious manifestations of racism and xenophobia are punishable by effective, proportionate and dissuasive criminal sanctions across the EU. It requires Member States to criminalise hate speech, i.e. the public incitement to violence or hatred, on grounds of race, colour, religion, descent or national or ethnic origin<sup>13</sup>. It also requires Member States to ensure, for offences other than hate speech, that such racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively that such motivation may be taken into account in the determination of the penalties.

The Commission supports Member States' efforts to effectively implement the Framework Decision through the work of the **High Level Group on combating racism and xenophobia and other forms of intolerance**<sup>14</sup> to develop training and capacity building for law enforcement, improve hate crime recording and data collection, as well as to encourage victims to report hate crime.

This initiative is part of a broader set of EU actions to combat illegal hate speech and violent extremist ideologies and terrorism online, including the **EU Code of Conduct on countering illegal hate speech online**<sup>15</sup>, the **Regulation on addressing terrorist content online**<sup>16</sup> and the **EU Internet Forum**<sup>17</sup>.

The Audiovisual Media Services Directive<sup>18</sup> requires Member States to ensure that video-sharing platforms take effective measures not only against the dissemination of content infringing the Framework Decision, but also against hate speech based on any of the grounds referred to in Article 21 of the Charter. Moreover, the Commission's proposal for a **Digital Services Act**<sup>19</sup> sets out a comprehensive reform to ensure that users are safe online, via obligations to address illegal content and systemic risks. In addition, the 2022 update of the European strategy for a better internet for children<sup>20</sup> will aim to protect children from online threats, including cyberbullying and hate speech.

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<sup>12</sup> OJ L 328, 6.12.2008, p. 55–58.

<sup>13</sup> See Article 1 of the Framework Decision.

<sup>14</sup> <https://ec.europa.eu/newsroom/just/items/51025>

<sup>15</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en)

<sup>16</sup> OJ L 172, 17.5.2021, p. 79-109.

<sup>17</sup> The [EU Internet Forum](#) is a Commission-led and voluntary-based initiative to work jointly with tech industry and other relevant stakeholders to counter violent extremist content online.

<sup>18</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 303, 28.11.2018, p. 69).

<sup>19</sup> Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services ('Digital Services Act') and amending Directive 2000/31/EC, [COM\(2020\) 825 final](#), 15.12.2020.

<sup>20</sup> [COM\(2012\) 196 final](#)

This initiative will support the **EU anti-racism action plan 2020-2025**<sup>21</sup> and the **strategy on combating antisemitism and fostering Jewish life in the EU**<sup>22</sup>. The initiative will also complement recent initiatives aiming to promote equality and respect for diversity, such as the **LGBTIQ Equality strategy 2020-2025**<sup>23</sup>. These recent initiatives have highlighted the need to ensure a robust EU level criminal law response to hate speech and hate crime on **other grounds than racism and xenophobia**, in particular the grounds of sex, sexual orientation, age and disability<sup>24</sup>.

The **Gender Equality strategy 2020-2025**<sup>25</sup> sets out actions to combat gender-based violence against women and girls, including the need to criminalise specific forms of gender-based violence at the EU level. This initiative will complement the upcoming proposal for a **directive to prevent and combat violence against women and domestic violence**. While hate speech and hate crime are characterised by an underlying hate against a group of persons, including significant gender-bias and hatred of women, the upcoming directive will criminalise, within the limits of the EU competence, certain specific forms of violence which do not necessitate an element of hatred and in particular hatred against an individual as part of a group of persons. Therefore, this initiative on extending the list of EU crimes creates an additional legal basis for addressing those specific forms of serious violence against women and girls that can also be defined as misogynous hate speech or hate crime with an objectively identifiable gendered bias motive.

This initiative will also complement the **strategy for the Rights of Persons with Disabilities 2021-2030**<sup>26</sup>, the **strategy on Victims' Rights 2020-2025**<sup>27</sup> and the **Victims' Rights Directive**<sup>28</sup>. It will also be aligned with the March 2021 Council Conclusions on Mainstreaming Ageing in Public Policies<sup>29</sup> recalling that age-related discrimination is a frequent phenomenon, while violence against older people is an emerging concern.

The European Parliament has also adopted a legislative resolution in September 2021 calling on the Commission to submit a legislative proposal to include gender-based violence as a new

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<sup>21</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, 'A Union of equality: EU anti-racism action plan 2020-2025', [COM\(2020\) 565 final](#), 18.9.2020.

<sup>22</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'EU strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030)' [COM\(2021\) 615 final](#), 5.10.2021.

<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Union of Equality: LGBTIQ Equality Strategy 2020-2025', of 12.11.2020, [COM\(2020\) 698 final](#). This strategy identified the need to criminalise hate speech and hate crime targeting LGBTIQ people – lesbian, gay, bisexual, trans, non-binary, intersex and queer.

<sup>24</sup> These protected characteristics are amongst the grounds laid down in Article 19(1) TFEU, which refers to action to combat discrimination 'based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'.

<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Union of Equality: Gender Equality Strategy 2020-2025', of 5.03.2020, [COM\(2020\) 152 final](#).

<sup>26</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030', of 3.3.2021, [COM\(2021\) 101 final](#).

<sup>27</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, 'EU Strategy on victims' rights (2020-2025)', [COM\(2020\) 258 final](#), 24.6.2020.

<sup>28</sup> OJ L 315, 14.11.2012, p. 57–73.

<sup>29</sup> [6976/21, SOC 142, 12 March 2021](#)

area of crime under Article 83(1) of the TFEU<sup>30</sup>. This initiative, together with the upcoming legislative proposal to combat violence against women and domestic violence, aim to address the European Parliament's request.

### 3. The need for extending the list of EU crimes to hate speech and hate crime

Under Article 83(1) of the TFEU, the Council may, based on **developments in crime**, identify additional areas of crime provided they fulfil specific criteria. Notably, the new area must be of **particularly serious** crime, with a **cross-border dimension** resulting **from the nature or impact** of the offences or from a **special need to combat them on a common basis**.

The following sections set out the Commission's assessment of hate speech and hate crime in light of the criteria of Article 83(1) of the TFEU.

#### 3.1. Hate speech and hate crime as an area of crime

Hate speech and hate crime are well recognised as an area of crime at international level<sup>31</sup>.

Back in its Recommendation of 1997<sup>32</sup>, the Council of Europe had already considered hate speech as incitement to hatred addressed at individuals or groups defined by certain protected characteristics<sup>33</sup>. In 2015, the Recommendation of the European Commission against Racism and Intolerance ('ECRI') of the Council of Europe defined hate speech as: *'advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of race colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status'*<sup>34</sup>. The Organisation for Security and Co-operation in Europe ('OSCE') refers to hate crimes as *'criminal offences committed with a bias motive towards a certain group within society'*<sup>35</sup>.

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<sup>30</sup> European Parliament 'Article 225 TFEU' resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (2021/2035(INL)).

<sup>31</sup> For example, the [European Commission against Racism and Intolerance \('ECRI'\) of the Council of Europe issued a General Policy Recommendation No.15 on Combating Hate Speech in](#) December 2015, while the United Nations adopted a Strategy and a plan of action in May 2019, Article 20 of the International Covenant on Civil and Political Rights and the Organisation for Security and Co-operation in Europe ('OSCE'), Office for Democratic Institutions and Human Rights ('ODHIR'), Ministerial Council, adopted Decision No. 9/09 Combatting Hate Crimes, MC(17) Journal No. 2, Agenda item 8, 2 December 2009.

<sup>32</sup> Council of Europe Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'hate speech'.

<sup>33</sup> The Recommendation states in its scope that the term hate speech shall be understood as 'covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin'.

<sup>34</sup> ECRI, General Policy Recommendation No. 15 on combating hate speech, p. 3.

<sup>35</sup> This is the operational definition used by OSCE in their reports on Racist and Xenophobic Hate crime (2021), Gender-based Hate crime (2021), Antisemitic Hate Crime (2019), Anti-Muslim Hate Crime (2018), based on the OSCE Ministerial Council Decision No. 9/09 on combating hate crimes of 2 December 2009, agreed by consensus by all OSCE States, including all EU Member States. The concept behind such definition and its practical implication are further explained by OSCE ODHIR '[Hate Crime Laws A Practical Guide](#)' (2009), p. 16.



While EU law does not provide for a legal definition of hate speech and hate crime as such, the **Framework Decision** sets out criminal law definitions of the most severe forms of racism and xenophobia. Hate speech as defined by the Framework Decision refers to the public incitement to violence or hatred directed against a group or a member of such a group sharing a protected characteristic<sup>36</sup>. Hate crime within the meaning of the Framework Decision<sup>37</sup> is referred to as any criminal offence<sup>38</sup> (base offence), other than hate speech, committed with a racist or xenophobic motivation (bias motivation).

For both hate speech and hate crime, it is the **bias motivation** that triggers the perpetrator's action. Targeted persons are selected based on their real or perceived connection, attachment, affiliation with, support or membership of a community or a group sharing a protected characteristic<sup>39</sup>. These are 'identity' or 'message' acts, as the messages conveyed - notably that the targeted victims do not belong to that society - are addressed not only to the victim, but also to their community or group<sup>40</sup>. Therefore, the perpetrator's motive is key in distinguishing these offences from other crimes and in determining their greater gravity having regard to the specific impact that these offences have on the individual victim, on communities and on society at large<sup>41</sup>.

The element of **hatred** is an intrinsic feature of both hate speech and hate crime. Hatred leads to the devaluation of and threat to the human dignity of a person or a group. It negates their equal footing as members of the society<sup>42</sup>, including their right to participate in the political or social life, which are fundamental principles the EU is founded on. Understanding the role of hatred against people with protected characteristics is fundamental for their recognition, prosecution and sanctioning within our criminal justice systems.

Given the special feature characterising hate speech and hate crime, i.e. hatred targeting persons or groups, sharing (or perceived as sharing) protected characteristics, hate speech and hate crime can be considered as an 'area of crime', within the meaning of Article 83(1) of the TFEU.

Similarly to other EU crimes with a common feature, such as organised crime or terrorism, hatred against people with protected characteristics connects a broader group of crimes. The core and common objective for criminalising hate speech and hate crimes is to combat such hatred, which links these two categories of offences within one 'area of crime'. The addition of hate speech and hate crime as an area of crime would enable the Commission to propose, in a second stage, secondary legislation that would specifically address related societal developments and challenges as they arise and evolve in the future.

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<sup>36</sup> Article 1(1)(a) of the Framework Decision requires Member States to punish the conduct of '*publicly inciting to violence or hatred directed 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.*'

<sup>37</sup> See Article 4: '*For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.*'

<sup>38</sup> Such as crimes against a person's life, physical integrity or property.

<sup>39</sup> See the supporting study, Section 2.4.2.

<sup>40</sup> OSCE ODHIR '[Hate Crime Laws A Practical Guide](#)'

<sup>41</sup> See [Guidance Note](#) on the practical application of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>42</sup> OSCE ODHIR '[Hate Crime Laws A Practical Guide](#)'

### 3.2. Hate speech and hate crime as an area of particularly serious crime

Hate speech and hate crime are particularly serious crimes because of their harmful impacts on the individuals and on society at large, which undermine the foundations of the EU.

#### 3.2.1. *The impact on common values*

Hate speech and hate crime run counter to EU common values and fundamental rights, as enshrined in Articles 2 and 6 of the TEU, as well as in the Charter.

The particular gravity of such conduct, given their impacts on the values and fundamental rights, has been consistently acknowledged by the European Court of Human Rights ('ECtHR') in case-law. The ECtHR held that where 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. The ECtHR considered in particular that criminal law measures are required with respect to direct verbal assaults and physical threats motivated by discriminatory attitudes<sup>43</sup>.

Recognising that tolerance and the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society, the ECtHR considered that it may be necessary in '*democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance*'<sup>44</sup>. The ECtHR further pointed out that criminal sanctions against individuals responsible for the most serious expressions of hatred, inciting others to violence, could also be invoked as a last resort measure. For these reasons, the ECtHR consistently recognised in case-law that the right to freedom of expression does not prevent criminal law responses to certain forms of hate speech<sup>45</sup>.

#### 3.2.2. *Harmful impacts on the individual victims and on their communities*

The particular seriousness of hate speech and hate crime is shown by the harm they cause to the individual victims, to wider communities, as well as to society as a whole.

Hate speech and hate crime violate the victims' fundamental right to dignity and to equality. They have serious and often long-lasting consequences on victims' physical and mental health and well-being.

Victims of hate speech and hate crime are targeted because of their immutable, unchangeable characteristics, or because of one that is at the core of their identity<sup>46</sup>. As a result, they feel devalued, unwelcome, denigrated, and despised in society because of their identity. In addition to harmful physical health effects, the level of mental harm (e.g. sense of violation and humiliation) caused by hate acts is in fact often more significant than the physical harm

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<sup>43</sup> ECtHR, judgement of 14.12.2020, *Beizaras and Levickas v Lithuania*, §111 and case law cited therein.

<sup>44</sup> ECtHR, judgment of 6.7.2006, *Erbakan v Turkey*, §56.

<sup>45</sup> ECtHR, decision of 24.6.2003, *Garaudy v. France*, §1; decision of 13.11.2003, *Gündüz v. Turkey*, §37; decision of 16.11.2004, *Norwood v. the United Kingdom*; judgment of 10.7.2008, *Soulas and Others v. France*, §47; judgment of 9.2.2012, *Vejdeland and Others v. Sweden*, §59.

<sup>46</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, European Parliament, '[Hate speech and hate crime in the EU and the evaluation of offline content regulation approaches](#)' (July 2020), p. 23 .

resulting from the violence itself<sup>47</sup>. Victims of hate crime can experience symptoms of severe trauma such as depression, suspicion of others, self-blame and a profound sense of isolation. These experiences are what makes hate crimes different from other types of crime. In addition, many victims of hate crimes blame themselves and experience a lack of confidence.<sup>48</sup>

More generally, victims of hate crimes are also forced to live with the fear of repeat victimisation and more vulnerable groups, such as older persons, children and persons with a physical and mental disability, experience increased vulnerability as hate speech targets when relying on online communication in their daily lives. Victims of hate speech are also exposed to political and social exclusion which deter them from accessing medical care and other vital services<sup>49</sup>. Furthermore, those victims that do report experiences of hate often risk secondary victimisation<sup>50</sup>, which can cause further harm to the victim. For child victims, hate speech can seriously harm their long-term personal development.

Crimes triggered by hatred send messages of rejection and devaluation of whole groups and communities and the persons forming these groups and communities experience fear and feel at risk of future attacks<sup>51</sup>. It is important to note the potential that hate speech and hate crime have to reverberate among the followers of the perpetrator, spreading further fear and intimidation. And therefore, perpetuating a pattern of hate speech and hate crime targeted at other individuals perceived as sharing similar protected characteristics or as connected to the victim<sup>52</sup>.

### 3.2.3. *Harmful impacts on society at large*

Hate speech and hate crime also have a strong societal dimension. They are a threat to democratic values, social stability and peace<sup>53</sup> and heighten social divisions, erode social cohesion, and trigger retaliation, resulting in violence and counter-violence<sup>54</sup>. The climate of conflict, fear, polarisation and radicalisation resulting from hate-motivated acts was also confirmed by the respondents to the Commission's targeted consultation.

Hate speech and hate crime have a harmful impact on fundamental rights, in particular on human dignity, equality and freedom of expression. Their chilling effect on freedom of

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<sup>47</sup> European Union Fundamental Rights Agency ('FRA'), '[Making hate crime visible in the European Union: acknowledging victims' rights](#)' (2012), p. 20. Layla Okhai, '[How hate crime impacts mental health](#)' (Diverse Minds, 2018).

<sup>48</sup> See the supporting study, Sections 4.2.3, 4.3.3 and 5.2.3.

<sup>49</sup> United Nations [Guidance Note](#) on Addressing and Countering COVID-19 related Hate Speech, 11 May 2020.

<sup>50</sup> Victimisation that occurs not as a direct result of the criminal act, but through the way the victim is treated by the police and the criminal justice system. See the supporting study, Sections 4.2.3, 4.3.3 and 5.2.3.

<sup>51</sup> OSCE ODIHR, '[Understanding the Needs of Hate Crime Victims](#)' (2020), p. 13. For instance, a significant amount of lesbian, gay and bisexual persons avoid certain places or locations for fear of being assaulted, threatened, or harassed. Similarly, 37-41% of trans and intersex respondents reported that they 'often' or 'always' avoid certain places or locations for the same reason. FRA (2020), EU-LGBTI II: [A long way to go for LGBTI equality](#), p. 47.

<sup>52</sup> See FRA, '[Making hate crime visible in the European Union: acknowledging victims' rights](#)' (2012), p. 19.

<sup>53</sup> See [United Nations Strategy and Plan of Action on Hate Speech](#), May 2019; [European Commission against Racism and Intolerance](#) (Council of Europe).

<sup>54</sup> See study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs '[Hate speech and hate crime in the EU and the evaluation of online content regulation approaches](#)', July 2020; OSCE, ODIHR, '[Hate crime laws-A practical guide](#)', 2009.

expression can result in social media users refraining from engaging in public debates because of hateful content they see<sup>55</sup>. Hate also poisons the political dialogue and impacts on the readiness of citizens to engage in politics and to exercise official functions with public visibility, such as members of parliament, mayors and politicians<sup>56</sup>. On women in the public life, a survey of 123 European women parliamentarians showed that 46.9 % of respondents 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<sup>57</sup>.

Journalists are often victims<sup>58</sup> of hate speech on social media, and, as a result, may hesitate to engage in public debate or to tackle certain topics<sup>59</sup>. While hate speech and threats are directed against all journalists, statistics demonstrate that female journalists are subject to more threats than their male counterparts in particular in the form of online harassment, threats of rape and murder, as well as incitement to hatred based on grounds of gender<sup>60</sup>. These attacks are sometimes the result of orchestrated campaigns aimed at discrediting or silencing female journalists.

Hate speech can lead not only to conflict, but also to hate crimes<sup>61</sup>. Evidence points to a ‘pyramid of hate’<sup>62</sup> or a ‘ladder of harm’ starting from acts of bias (e.g. bullying, ridicule, de-humanisation) and discrimination (e.g. economic, political), moving up towards bias motivated violence, such as murder, rape, assault, terrorism, violent extremism, even genocide<sup>63</sup>. Research shows the link between targeted, discriminatory tweets posted in a city and the high number of hate crimes in that city<sup>64</sup>. The United Nations (‘UN’) points out that *‘incitement to violence that targets communities or individuals based on their identity can contribute to enabling or preparing atrocity crimes, [...] and is both a warning sign and early indicator of the risk of those crimes’*<sup>65</sup>.

Research also shows that hate speech on social media leads to more crimes against minorities in the physical world<sup>66</sup>. Hate speech online has led to a rise in violence, against refugees and

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<sup>55</sup> [A study](#) from Norway shows that one out of five (19%) 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.

<sup>56</sup> Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs [‘Hate speech and hate crime in the EU and the evaluation of online content regulation approaches’](#), July 2020.

<sup>57</sup> <https://www.ipu.org/resources/publications/issue-briefs/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe>; See also <https://www.amnesty.org/en/latest/news/2018/03/online-violence-against-women-chapter-2/#topanchor>

<sup>58</sup> See Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, [C\(2021\) 6650 final](#), 16.9.2021.

<sup>59</sup> [Eurobarometer 452 of 2016](#) 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.

<sup>60</sup> Office of the High Commissioner for Human Rights, [Statement](#) by the Special Rapporteur on violence against women, its causes and consequences.

<sup>61</sup> Council of Europe, [European Commission against Racism and Intolerance](#)

<sup>62</sup> See [Anti-defamation league](#), 2018.

<sup>63</sup> See research [report](#) published under the SELMA (Social and Emotional Learning for Mutual Awareness) project by European Schoolnet, p. 33.

<sup>64</sup> See the supporting study, Section 4.2.3.

<sup>65</sup> United Nations, [Plan of Action](#) for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes, July 2017.

<sup>66</sup> 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.

immigrants, ethnic and religious minorities, and LGBTIQ people<sup>67</sup>. Exposure to hate speech or being targeted by hate speech can also contribute to the process of radicalisation and violent extremism. These can be expressed online and offline through speech and propaganda, but can also result in violent extremist or terrorist attacks. This can have disrupting and fatal consequences for society<sup>68</sup>.

Recalling that the internet has provided a new dimension to express sexist hate speech, the Council of Europe has stressed that sexist hate speech *'may escalate to or incite overtly offensive and threatening acts, including sexual abuse or violence, potentially lethal action or self-harm'*<sup>69</sup>. The emergence of online groups and communities, such as Manosphere<sup>70</sup> and Incel<sup>71</sup>, which provide for additional international fora to promote and spread misogyny and hostility towards women, are of particular concern in this regard<sup>72</sup>.

#### 3.2.4. Scale of hate speech and hate crime

One in 10 (11%) LGBTIQ respondents to a survey by the EU Fundamental Rights Agency ('FRA') indicated that they had been physically or sexually attacked because they were LGBTIQ (with trans and intersex respondents experiencing physical or sexual attacks at higher rates during this timeframe: 17% and 22%, respectively), and 51% of 15-17 years old respondents reported being harassment in school<sup>73</sup>.

Hate speech and hate crime against persons of Asian origin, particularly Chinese, or those perceived to be of Asian origin, has increased during the COVID-19 pandemic<sup>74</sup>, including racist attacks and beatings, violent bullying, threats and racist abuse<sup>75</sup>. A survey by FRA shows that Roma respondents and respondents with sub-Saharan or north-African backgrounds experience higher rates of discrimination, harassment and violence motivated by hatred<sup>76</sup>.

According to a 2018 survey on antisemitism, conducted by FRA, 40% of Jews in the EU fear being physically attacked<sup>77</sup>. The findings of a 2017 FRA survey on EU Minorities and Discrimination<sup>78</sup> show that 27% of Muslims had experienced incidents of hate-motivated

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<sup>67</sup> European Parliament resolution of 25 October 2018 on the rise of neo-fascist violence in Europe (2018/2869(RSP)).

<sup>68</sup> See also '[Hate Speech and Radicalisation Online](#)', the OCCI Research Report, Johannes Baldauf, Julia Ebner and Jakob Guhl (Eds.), 2019.

<sup>69</sup> [Recommendation](#) CM/Rec(2019)1 of the Committee of Ministers to Member States on preventing and combating sexism, 27 March 2019, p. 9.

<sup>70</sup> Online forum opposing feminism, where men gather to discuss gender, equality and masculinity with a pro-male focus, footnote 59 Centre for Digital Youth Care, '[The Angry Internet: A threat to gender equality, democracy & wellbeing](#)' (2020).

<sup>71</sup> A movement/community that has got notoriety mostly in the last few years; 'the INvoluntary CELibate men blame their misfortune on women, sexually greedy men and society', Centre for Digital Youth Care, '[The Angry Internet: A threat to gender equality, democracy & wellbeing](#)' (2020).

<sup>72</sup> Centre for Digital Youth Care, '[The Angry Internet: A threat to gender equality, democracy & wellbeing](#)' (2020).

<sup>73</sup> FRA, [EU LGBTI Survey II](#) (2020).

<sup>74</sup> Council of Europe, ECRI, [Annual Report on ECRI's activities](#), March 2021; [Human Rights Watch](#), 'Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide', 2020.

<sup>75</sup> [Human Rights Watch](#), 'Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide', 2020.

<sup>76</sup> FRA, '[EU-MIDIS II: Second European Union Minorities and Discrimination Survey](#)' (2017).

<sup>77</sup> FRA, '[Experiences and perceptions of antisemitism - Second survey on discrimination and hate crime against Jews in the EU](#)', 10 December 2018.

<sup>78</sup> FRA, Second European Union Minorities and Discrimination [Survey](#), 21 September 2017.

harassment in the previous 12 months, while this percentage is higher (31%) among Muslim women wearing the headscarf in public.

Women, and in particular young women, are targeted by gender-based hate speech, online or offline<sup>79</sup>. According to a 2020 global survey, 52% of young women and girls experienced online violence, including threats<sup>80</sup>.

In addition, there is also the case of those living at the intersection of two or more protected characteristics, such as women of colour, who are 84% more likely than white women to be mentioned in abusive or ‘problematic’ tweets<sup>81</sup>.

The UN expressed concerns about hate speech targeting older persons, which has ‘emerged in public debate and on social media as expressions of intergenerational resentment’<sup>82</sup>. Persons with disabilities are more at risk of being victims of violent crimes, including hate crimes, or to face hate speech, than other persons<sup>83</sup>. Feedback to the Commission consultation showed that in some countries 21% of hate crimes reported to the authorities are perpetrated against persons with disabilities<sup>84</sup>. In general, victims are targeted simply because they have a disability, are perceived as having a disability, or are associated with a person with a disability<sup>85</sup>. Moreover, the World Health Organization considers that the abuse of older persons is likely to become an increasing problem due to the ageing population<sup>86</sup>.

These figures only represent the tip of the iceberg because of the under-reporting and under-recording of incidents<sup>87</sup> and incomparable data collection methods<sup>88</sup>. For instance, sources<sup>89</sup> show that 88% of the hate-motivated physical attacks against Roma people were not reported and 79 % of Jewish people who experienced antisemitic harassment did not report the most serious incident to the police or to any other organisation. And only one in five (21%) incidents of physical or sexual violence against LGBTIQ people were reported<sup>90</sup>. Age is an example where the lack of recognition as a ground that incites hate speech and hate crime and the lack of sanctions for related offences lead to lower reporting and lack of information on the extent of hate speech and hate crime against older persons<sup>91</sup>. In particular, the AGE platform<sup>92</sup> deplores this *‘hidden reality despite the worrying levels of prevalence across*

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<sup>79</sup> Council of Europe, [‘Combating sexist hate speech’](#)

<sup>80</sup> See [survey](#) conducted by the World Wide Web Foundation & World Association of Girl Guides and Girls Scouts using UNICEF’s U report platform, February 2020.

<sup>81</sup> Amnesty International, [‘Troll Patrol Findings: Using Crowdsourcing, Data Science & Machine Learning to Measure Violence and Abuse against Women on Twitter’](#), 2018.

<sup>82</sup> UN, Policy Brief: [‘The Impact of COVID-19 on older persons’](#), May 2020.

<sup>83</sup> FRA, [‘Equal protection for all victims of hate crime. The case of people with disabilities’](#), March 2015.

<sup>84</sup> See the supporting study, Annex VII.

<sup>85</sup> FRA, [‘Equal protection for all victims of hate crime. The case of people with disabilities’](#), March 2015, p. 2.

<sup>86</sup> The World Health Organisation, [‘Elder Abuse’](#), 2021.

<sup>87</sup> See also OSCE ODHIR [saying](#) that lack of hate crime recording means victims and their needs too often remain invisible, 16 November 2020.

<sup>88</sup> According to the supporting study, based on the stakeholder consultation, most stakeholders considered that incidents of hate speech and hate crime were underreported in their Member States.

<sup>89</sup> See FRA survey [‘Roma and Travellers in Six Countries’](#), 2020, and FRA survey [‘Experiences and perceptions of antisemitism - Second survey on discrimination and hate crime against Jews in the EU’](#), 2018.

<sup>90</sup> FRA, EU-LGBTI II, [‘A long way to go for LGBTI equality’](#), p. 38 and 46.

<sup>91</sup> See the supporting study, Section 4.2.3.

<sup>92</sup> AGE Platform Europe is a European network of non-profit organisations of and for people aged 50+; see AGE platform Europe’s response to the Commission’s consultation.

*Europe*, and points to the invisibility and lack of protection of older victims is heightened by the lack of awareness of age as a ground that might incite hate crimes.

### 3.2.5. Criminal law response in Member States

The seriousness of the impacts described above has led Member States to criminalise certain forms of hate speech and hate crime. The criminalisation of these conducts conveys a message of a particular social disapproval. It is an indication of the specific gravity and danger posed by these conducts, as particularly destructive of fundamental rights.

As a result of transposing the Framework Decision into national law, **hate speech** is criminalised in all the Member States on grounds of race, colour, religion, descent, national or ethnic origin<sup>93</sup>. Furthermore, Member States have explicitly criminalised hate speech also for other protected characteristics: 20 Member States criminalise hate speech on grounds of sexual orientation<sup>94</sup> and 17 Member States on grounds of sex/gender<sup>95</sup>. In addition, 14 Member States criminalise hate speech on the ground of disability<sup>96</sup> and 6 Member States on grounds of age<sup>97</sup>. Moreover, 8 Member States<sup>98</sup> have (either alternatively or in addition) criminalised hate speech without defining the protected characteristics of the groups, and leaving the criminalisation of hate speech open, aiming at protecting any minority group or part of the population<sup>99</sup>.

**Hate crime** is also widely criminalised across Member States, either as a self-standing offence for specific crimes or as a general aggravating circumstance for all crimes committed with a bias motivation. In addition to criminalising hate crime on grounds of race, colour, religion, descent or national or ethnic origin as a result of transposing the Framework Decision into national law, 19 Member States criminalise hate crime on grounds of sexual orientation<sup>100</sup> and 17 Member States on grounds of sex/gender<sup>101</sup>. Additionally, 13 Member States criminalise hate crimes on the grounds of disability<sup>102</sup> and 10 Member States on grounds of age<sup>103</sup>. Furthermore, 15 Member States<sup>104</sup> do allow national courts to take the perpetrator's motivation into account for any crime when deciding the criminal penalty, either

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<sup>93</sup> These are the grounds laid down in the Framework Decision, referred to above, see also the supporting study, Sections 4.2.1 and 4.3.1. However, the transposition has not always been correct or complete. This is why the Commission has launched infringement actions against some Member States.

<sup>94</sup> BE, DK, EE, IE, EL, ES, FR, HR, CY, LT, LU, HU, MT, NL, AT, PT, SI, SK, FI, SE.

<sup>95</sup> Among this group, 14 Member States (BE, EE, ES, FR, HR, CY, LV, LT, LU, MT, NL, AT, PT, and SI) specifically refer to the ground of sex/gender, and 10 Member States (EL, ES, FR, HR, CY, LU, HU, MT, PT, SE) refer (alternatively or in addition) to the ground of gender identity and 2 Member States (BE and EL) to the ground of sex characteristics.

<sup>96</sup> BE, EL, ES, FR, HR, LV, LT, LU, HU, NL, AT, PT, SI, FI.

<sup>97</sup> BE, ES, LV, LT, LU, AT.

<sup>98</sup> CZ, DE, HR, LV, HU, RO, SI, FI.

<sup>99</sup> For example, German law criminalises hate speech against groups sharing specific characteristics such as racial or religious groups, but also 'against parts of the population'.

<sup>100</sup> BE, DK, EL, ES, FR, HR, CY, LT, LU, HU, MT, NL, AT, PT, RO, SI, SK, FI, SE. It is important to note that some Member States only criminalise specific offences with regard to sexual orientation.

<sup>101</sup> Among this group, 13 Member States (BE, ES, FR, CY, LT, LU, MT, AT, PT, RO, SI, SK, FI) specifically refer to the ground of sex/gender, and 11 Member States (BE, EL, ES, FR, HR, CY, LU, HU, MT, PT, SE) refer (alternatively or in addition) to the ground of gender identity and 4 Member States (BE, EL, FR, MT) to the ground of sex characteristics.

<sup>102</sup> BE, EL, ES, FR, HR, LT, LU, HU, MT, NL, AT, RO, FI.

<sup>103</sup> BE, ES, FR, HR, LT, LU, MT, AT, RO, FI.

<sup>104</sup> BG, CZ, DK, DE, EE, HR, LV, HU, AT, PL, PT, RO, SI, FI, SE.

as an alternative or an addition to having a self-standing offence on hate crime. Some Member States have also left the protected characteristics undefined to potentially cover hate crime based on any form of intolerance.

### 3.3. The cross-border dimension of hate speech and hate crime

The cross-border dimension of hate speech and hate crime is evidenced by the **nature and by the impact** of these phenomena as well as by the existence of a **special need to combat them on a common basis**.

This is evident for **hate speech** committed online. Given the cross-border nature of the internet, online hate speech spreads fast and it is accessible to everybody anywhere. This makes it easier for hate groups to widen their audiences to countries facing similar political or social situations<sup>105</sup>. The cross-border dimension was also highlighted by most stakeholders responding to the Commission's targeted consultation, also through specific examples<sup>106</sup>. For instance, hate speech on grounds of sex characteristics and intersex people in particular have increasingly become the target of hate speech perpetrated by groups that operate cross-border<sup>107</sup>. The ubiquity of gender-based hate speech has also been underlined by the Council of Europe<sup>108</sup>, calling for stronger measures to combat it.

However, hate messages expressed offline (e.g. in written press, in television broadcasts, in political speech or sport events) have a cross-border dimension evidenced by their impact as they are easily reproduced and widely disseminated across borders. More than 80% of respondents to the targeted consultation considered that offline hate speech has a spillover effect across borders<sup>109</sup>. They point to the fact that the hateful messages are developed and propagated by networks with members from several countries. And that ideologies behind hate speech messages are developed internationally and are therefore cross-border phenomena<sup>110</sup>.

The cross-border dimension of **hate crime** is directly linked to the cross-border dimension of hate speech. Hate travels across national borders, leading to a spiral of violence. Similarly to hate speech, the ideologies behind hate crimes can be developed internationally and can be rapidly shared online. Hate crimes can be committed by networks with members from several countries (within or outside the EU) that inspire, organise, or carry out physical attacks. The

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<sup>105</sup> See the supporting study, Section 4.3.4; Anti-Defamation League, '[Soldiers of Odin USA: The Extreme European Anti-Refugee Group Comes to America](#)', 2016; the Soldiers of Odin is a controversial anti-immigrant, anti-Muslim and refugee-hating ideology group created in Finland and spreading until the United States.

<sup>106</sup> A concrete example of the spillover effect of online hate speech across borders is the #DefendEurope campaign by the French far-right intellectual movement 'Nouvelle Droite' highlighting the extent of cross-ideological and cross-border cooperation and mobilisation of the extreme right across the world, i.e. UK, Austria, France, Germany, Sweden, the Netherlands, Norway, Italy and the USA; see the supporting study, Section 4.3.4.

<sup>107</sup> See the supporting study, Section 4.2.4.

<sup>108</sup> [Recommendation](#) CM/Rec(2019)1 of the Committee of Ministers to Member States on preventing and combating sexism, 27 March 2019.

<sup>109</sup> See the supporting study, Annex VI.

<sup>110</sup> See the supporting study, Section 4.2.4; see also Annex VII to the supporting study where a variety of examples of the cross-border impact of offline hate speech are included, such as related to the operation of the far-right Greek organisation 'Golden Dawn', and drew comparisons with the offline dissemination and spillover effect across Member States of conspiracy theories –such as the 'Great Replacement Theory' through offline events, rallies and 'publicity stunts'.



Counter Extremism project<sup>111</sup>, the Soufan Center<sup>112</sup>, and Anti-Defamation League<sup>113</sup> provide examples of the transnational activity of different groups that, influence and inspire across borders. Hate crimes can also create a climate of fear or social conflicts, which may spillover from one EU Member State to another<sup>114</sup>. Hate speech and hate crime can also lead to radicalisation and the creation of violent extremist groups, which cross borders and are unified in their ideology.

Likewise, the same phenomenon can lead to hate crime being replicated in another country or have follow-up patterns, echoing the crime committed in the country where it first happened. This can also occur where there is high publicity around specific hate crimes, inciting other persons to commit similar crimes ('copycat effect'). In addition to the actual perpetration of a hate crime, the psychological impact on individuals and society can easily go beyond borders by provoking an environment of fear and social conflicts. Crimes and events taking place in different parts of the world have had an impact on several countries, including the Black Lives Matter movement. The spillover impact of hate crimes across borders was acknowledged by most of the respondents to the Commission's consultation.<sup>115</sup>

This process is a global one and has an impact irrespectively of its geographical origin. The EU can act as a role-model around the world and ideas and initiatives launched elsewhere can contribute to a more effective action in Europe.

This background underlines **the special need to combat hate speech and hate crime on a common basis.**

The special need to address these phenomena on a common basis stems from the serious impacts of hate speech and hate crime on the core EU values enshrined in Article 2 of the TEU. Safeguarding our common values requires common action.

The negative consequences of hate speech and hate crime go beyond the impact on individual victims and can affect groups or communities of people living in different countries. Not criminalising hate speech and hate crime in a few Member States may undermine efforts to effectively address these phenomena and ease spillover effects. Not providing a common approach to criminalisation also results in gaps and an uneven protection of the victims of such acts across the EU, as only persons who are recognised as victims of crime have access to the redress and support measures provided by EU law. Moreover, a fragmented approach may send mixed messages to the public that such acts are not being taken seriously and can be perpetrated with impunity<sup>116</sup>, that they are considered as 'normal' or even perceived in some countries as the State's legitimisation and/or tolerance of such behaviour<sup>117</sup>.

In addition, the special need to combat hate speech and hate crime on a common basis stems from the endeavours of individual Member States to criminalise different forms of hate crime

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<sup>111</sup> Counter Extremism Project, '[Violent Right-Wing Extremism and Terrorism – Transnational Connectivity, Definitions, Incidents, Structures and Countermeasures](#)', 2020, p. 12, 79 and 145.

<sup>112</sup> The Soufan Center, '[White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement](#)', 2019, p. 11.

<sup>113</sup> Anti-Defamation League, '[Hate Beyond Borders: The Internationalisation of White Supremacy](#)'.

<sup>114</sup> See the supporting study, Section 5.2.4.

<sup>115</sup> See the supporting study, Section 4.2.3, 4.3.4, 5.2.3, 5.2.4 and 5.2.5.

<sup>116</sup> See footnote 5, Council of Europe, European Commission against Racism and Intolerance, [ECRI General Policy Recommendation No.15 on Combating Hate Speech](#), 8 December 2015.

<sup>117</sup> ECtHR, judgment of 17.01.2017, *Király and Dömötör v. Hungary*.

and hate speech on their own. Such an approach results in fragmentation, and in a lack of a level playing field for individuals who can fall victim to hate speech and hate crime.

### 3.4. Developments in crime

According to the UN, in recent years there has been an alarming spike in online and offline hate speech and incitement<sup>118</sup>. Indeed, since 2007, when the Commission proposed to make racist and xenophobic acts punishable in all Member States, there has been a steady rise in hate speech and hate crime<sup>119</sup>. This rise is linked to changes in the social, economic and technological environment. Most respondents (more than 60%) to the Commission's targeted consultation also acknowledged the increase in both hate speech and hate crime between 2018 and 2020, compared to the previous period between 2015 and 2017. Among the factors for this were increased migration flows, economic and social crises (including the COVID-19 pandemic), and improved access to online information, including the use of social networks, resulting in a fast sharing of content.<sup>120</sup>

The internet provides a channel for increased and easily shared hate speech online. Perpetrators of hate speech online are triggered and disinhibited by a sense of anonymity and impunity on the internet, which increases the risk that they continue commit such offences.

The surge in violent extremist individuals and groups across Europe was one of the factors that has contributed to polarisation and radicalisation in society. This has in turn led to an increased incidence of hate speech against marginalised groups and women. In 2019, the European Parliament acknowledged this in a resolution on 'the rise of neo-fascist violence in Europe', and called the Member States to condemn and sanction 'hate crime, hate speech, and scapegoating by politicians and public officials [...] as they directly normalise and reinforce hatred and violence in society'<sup>121</sup>.

The ECRI underlined the rise in ultra-nationalistic, xenophobic, racist and homo-/transphobic hate speech in the various election campaigns in 2019, increasingly permeating, and often setting the tone in social media networks<sup>122</sup>. According to the ECRI, insulting and degrading remarks about members of minority groups are nowadays more easily acceptable than in the past. The Council of Europe has indeed sent an alarm signal over the situation that Europe 'is facing a shocking reality: antisemitic, anti-Muslim and other racist hate crimes are increasing at an alarming rate'<sup>123</sup>.

The COVID-19 pandemic has created an atmosphere in which hate speech has flourished, becoming 'a tsunami of hate and xenophobia'<sup>124</sup>. Europol<sup>125</sup> emphasised how the COVID-19 pandemic and the ensuing economic and social crises have resulted in attitudes being

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<sup>118</sup> United Nations, [Plan of Action](#) for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes, July 2017.

<sup>119</sup> '[Hate speech and hate crime in the EU and the evaluation of online content regulation approaches](#)', European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, July 2020.

<sup>120</sup> See the supporting study, Sections 4.2.1, 4.3.1 and 4.3.2.

<sup>121</sup> European Parliament, European Parliament Resolution of 25 October 2018 on the rise of neo-fascist violence in Europe (2018/2869(RSP)), P8\_TA(2018)0428, Strasbourg, 2018.

<sup>122</sup> [ECRI Annual Report 2019](#)

<sup>123</sup> [Statement](#) of Marija Pejčinović Burić, Secretary General of the Council of Europe, 27 February 2020.

<sup>124</sup> United Nations Secretary-General António Guterres' [global appeal](#) to address and counter COVID-19-related hate speech, in New York, 8 May 2020.

<sup>125</sup> [The Europol European Union Terrorism Situation and Trend Report 2021](#), p. 28.

hardened and more acceptance of intimidation, including calls to commit violent acts. In its Annual report for 2020, the ECRI highlighted the increased exposure to hate speech and violence of certain groups<sup>126</sup> blamed for being major spreaders of the virus. These include Roma and migrants whose access to healthcare and public support measures had become even more difficult<sup>127</sup>, as well as persons of Asian origin or those perceived to be of Asian origin<sup>128</sup>. There has also been a rise in conspiracy theories against certain groups, leading to hate speech and hate crimes<sup>129</sup>. Research reveals, for instance, that in the first two months of 2021 (during the pandemic), compared to the same period of 2020 (pre-pandemic), a seven-fold increase in antisemitic posting took place on the French accounts/channels assessed, and over a 13-fold increase in the German ones<sup>130</sup>.

The pandemic also emphasised intergenerational tensions and brought a resurgence of hostile messages on social media qualifying as hate speech against older people, who as a vulnerable category have been more targeted by abuse during the pandemic and more prone to becoming victims of hate speech and hate crime<sup>131</sup>.

People identifying as LGBTIQ have experienced an increase in violence since the beginning of the pandemic<sup>132</sup>. ‘Sexual orientation or gender identity’ was the third most common ground among the reported hate crimes (18.35%) in the Hate Crime Report for 2019 of the Office for Democratic Institutions and Human Rights (‘ODIHR’)– an increase compared with 2018 (14.61%)<sup>133</sup>. Gender-based hate speech has also been increasing in Europe, taking place online and offline and in all forms of social interaction (e.g. at school, at work, in public spaces). All forms of gender-based cyber violence against women, including misogynous hate speech, were increasingly common before COVID-19, resulting in normalising violence against women. In a report<sup>134</sup> on online harassment against female ministers, NATO Strategic Communications Centre of Excellence found that the topics triggering the most abusive messages online were the COVID-19 pandemic, immigration, EU relations, and socially liberal politics.

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<sup>126</sup> See also the [European Voice against Racism](https://rm.coe.int/annual-report-on-ecri-s-activities-for-2020/1680a1cd59), <https://rm.coe.int/annual-report-on-ecri-s-activities-for-2020/1680a1cd59>; see also [ECRI’s Bureau holds exceptional meeting and exchanges views with Director of FRA and EU Special Representative for Human Rights - News of the European Commission against Racism and Intolerance \(ECRI\) \(coe.int\)](#)

<sup>127</sup> <https://fra.europa.eu/en/publication/2020/covid19-rights-impact-september-1>;  
<https://fra.europa.eu/en/publication/2020/covid19-rights-impact-november-1>

<sup>128</sup> ECRI, [Annual Report on ECRIS’s activities](#), March 2021.

<sup>129</sup> Tony Blair Institute for Global Change, [‘From the Fringes to the Forefront: How far-right movements across the globe have reacted to Covid-19’](#) (July 2020); See also [findings](#) of the consultation organised by the International Dialogue Centre and the European Council for Religious Leaders/Religions for Peace Europe, 20 April 2021.

<sup>130</sup> See study prepared by the Institute for Strategic Dialogue for the European Commission, [‘The Rise of Antisemitism Online During the Pandemic](#), A study of French and German content’, April 2021.

<sup>131</sup> See AGE Platform Europe feedback to the Commission consultation, United Nations Secretary-General António Guterres [statement](#) and the supporting study, Section 4.2.1.

<sup>132</sup> See Council of Europe Steering Committee on Anti-Discrimination, Diversity and Inclusion, [‘COVID-19: An analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe Member States’](#) (2020), p. 19. See also [2019 FRA report on the pandemic and its impact on fundamental rights](#), FRA report [‘The Coronavirus Pandemic and Fundamental Rights: A year in Review’](#) (2021) and [ECRI report 2020](#)

<sup>133</sup> ODIHR, [Hate Crime Report](#), 2019; see [the press](#) reports that in Spain hate crimes against the LGBTIQ collective rose 43% during the first half of 2021.

<sup>134</sup> <https://stratcomcoe.org/news/nato-stratcom-coe-research-female-finnish-ministers-received-a-disproportionate-number-of-abusive-messages/17>

Looking at recent legislative developments, a progressive rise in criminalisation on grounds other than the ones laid down in the Framework Decision can be observed in recent years. Currently, 11 Member States<sup>135</sup> have initiated legislative proposals or processes to further criminalise hate speech and/or hate crime. Of those, nine Member States<sup>136</sup> have proposed adding certain grounds to their hate speech and/or hate crime legislation.

#### **4. Added value of extending the list of EU crimes**

##### **4.1. An effective response at EU level**

Based on the assessment set out above, the Commission considers this initiative to be the most effective response at EU level to the identified challenges. In particular, only a common initiative at EU level can effectively protect the common values enshrined in Article 2 of the TEU, which are undermined by all forms of hate speech and hate crime, regardless of the persons and groups targeted.

A joint effort can effectively and consistently respond to the challenges raised by the cross-border nature of the two phenomena, as well as by their scale and increasing trend. Considering the current divergent and fragmented criminal approaches of Member States, and their limited impact at the EU level, this initiative addresses the cross-border problem comprehensively.

Only a common approach to the criminalisation of hate speech and hate crime at EU level can ensure a consistent protection of the victims of such acts across the EU. This includes the access by victims to the special protection measures given to the most vulnerable victims of crime under the Victims' Rights Directive. Given the cross-border dimension of hate speech and hate crime, and the need for a criminal law solution, cooperation between judicial authorities will be crucial. A common criminal justice response can improve mutual trust and judicial cooperation which are the basic principles of an EU area of freedom, security and justice with respect for fundamental rights.

##### **4.2. Lack of alternatives to extending the list of EU crimes**

Although there may be some overlaps with certain areas of crime listed in Article 83(1) of the TFEU<sup>137</sup>, minimum rules on the definition of criminal offences and sanctions for hate speech and hate crime as such could not be adopted at EU level for the time being.

In particular, the partial overlap between 'computer crime' and hate crime and hate speech would not enable the adoption of minimum criminal law rules covering all forms of hate speech, regardless of the means used. It might enable the adoption of minimum rules on hate speech shared through the internet, but not of hate speech perpetrated and shared by other means. For instance, through public sharing or distribution of tracts or pictures, in public gatherings (e.g. sport events), broadcast on television and political speech. This would mean that there would be a single EU harmonised criminal law framework for hate speech

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<sup>135</sup> DK, DE, IE, ES, IT, CY, NL, PL, RO, FI. See the supporting study, Section 3.7. Please note in particular that the proposed reform in Italy has not been adopted.

<sup>136</sup> DK, DE, ES, FR, IT, CY, NL, PL, FI.

<sup>137</sup> Overlaps exist also between different existing areas of EU crimes, such as between 'organised crime' and 'illicit drug trafficking' or 'sexual exploitation of women', which are nevertheless recognised as distinct areas of crime.

committed through digital means versus a divergent and fragmented approach across the EU vis-à-vis hate speech committed through other means. A similar, unwarranted separation would arise between the criminalisation of hate speech and hate crime, as hate crime would not be covered by the ‘computer crime’ legal basis. Such piecemeal criminalisation cannot effectively and comprehensively tackle these closely interlinked phenomena.

Certain instances of hate crime could, under specific circumstances, be considered as falling under ‘terrorism’, and qualifying as a terrorist offence, namely where a terrorist intent can be established. For example, an intent to seriously intimidate a population<sup>138</sup>. Despite such possible overlaps, ‘terrorism’ and the definition of terrorist offences will not apply to all instances of hate crime and therefore cannot be used to comprehensively criminalise hate speech and hate crime.

Against this background, it appears that only the identification of hate speech and hate crime as a new, distinct area of crime, in its own right, can enable an effective and comprehensive criminal law approach to these phenomena at EU level.

For this reason, this Commission initiative can be considered as complying with the principle of subsidiarity, which appears to be inherent in the fulfilment of the criteria in Article 83(1) of the TFEU. Moreover, this initiative is proportionate to the objective sought. In particular, it does not create, in itself, any financial or administrative burden for the EU, national governments, regional or local authorities, economic operators or citizens.

## **5. Conclusion**

The urgency of addressing hate speech and hate crime across the EU calls for joint efforts and commitment.

Through this Communication, the Commission invites the Council, with the consent of the European Parliament, to take this initiative forward and decide on the extension of the list of EU crimes to hate speech and hate crime. To this effect, the Communication is accompanied by a Commission initiative for the adoption of a Council decision, in line with Article 83(1) of the TFEU.

Following the adoption of a Council decision, the Commission will be empowered to propose legislation to criminalise hate speech and hate crime at EU level. Giving particular consideration to the national legislative frameworks and in close cooperation with Member States and the European Parliament, the Commission will propose a robust response to the challenges posed by hate speech and hate crime across the EU today and in the future.

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<sup>138</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31.3.2017, p. 6–21.