

# REGULATION AND COMBATING HATE SPEECH IN EUROPEAN UNION AND CROATIA - A HUMAN RIGHTS APPROACH?

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This brief provides insight into the latest legal and policy framework on combating hate speech, specially concerning hate speech online, in the European Union and Croatia, a newest member state. It is focusing on the human rights approach to combat hate speech and promote freedom of expression, bringing some concerns and possible future solutions based on the human rights approach.

To point out the fact that hate speech is on the rise in Europe and globally, especially in the online environment, is not news any more. Also, the main debate in Europe is not directed on should we counter it, but rather on how and by whom we can and should counter it. The questions of responsibility for user generated content, roles and responsibilities of social media platforms, development of artificial intelligence and relying on it in content moderation, hate speech and disinformation, victims support and effects of hate speech on social cohesion and democracy are all in focus of discussion and searching for policy solutions for this issue. The public discussion intensified even more when Elon Musk, who called himself “freedom of expression absolutist” bought Twitter in October 2022, and when research results conclusively showed that there was an immediate spike in Tweets using hate terms in the period leading up to Musk taking over the company.<sup>1</sup> When dealing with hate speech issues in public debates, academic and civil society work, as well as in the policy processes, more and larger attention is being given to the recognition of consequences of hate speech for individuals and society, recognising the complexity and multidimensionality of hate speech and its relations to hate crimes, as well as approaching the phenomena from a more victim centered approach.

Although all these questions raise serious and more complex issues and new concerns in a fast, dynamic, larger, highly commercialized and global environment of social media and big tech, the hate speech issues are fundamentally rooted in the realm of human rights, specifically on protection of freedom of expression, non-discrimination and prohibitions of abuse of rights. Therefore, human rights are the framework where answers should be found.

<sup>1</sup> Montclair State University: Hate Speech Spikes on Twitter After Elon Musk Acquires the Platform, available at: <https://www.montclair.edu/school-of-communication-and-media/wp-content/uploads/sites/20/2022/11/Montclair-State-SCM-Study-Increases-in-Twitter-Hate-Speech-After-Elon-Musks-Acquisition.pdf>



## The Council of Europe and human rights approach to hate speech

The Council of Europe has worked in multiple manners to counter hate speech in past years from freedom of expression perspective, focusing on youth, media and internet literacy, media regulation and co-operation with member states in preparing, assessing, reviewing and bringing in line with the European Convention on Human Rights any laws and practices that place restrictions on freedom of expression.<sup>2</sup> The latest Recommendation of the Committee of Ministers to member States on combating hate speech from May 2022 is recognising a need for comprehensive approach in order to prevent and combat online and offline hate speech effectively, comprising a coherent strategy and a wide-ranging set of legal and non-legal measures that take due account of specific situations and broader contexts<sup>3</sup>. The recommendation aims to provide guidance to the governments of member States, public officials, elected bodies and political parties, internet intermediaries, media, civil society organization - to all key stakeholders that are "faced with the complex task of preventing and combating hate speech, including in the online environment"<sup>4</sup>. The recommendations provide a framework of actions for human rights based approach to countering hate speech, that encompasses actions directed on legal framework, and especially important focus of legislation regarding online hate speech that tackles the roles and responsibilities of internet intermediaries, the duties and responsibilities of State and non-State actors in addressing online hate speech. Equally important, the Recommendation also refers to actions on awareness raising, education, training and use of counter-speech and alternative speech, support for those targeted by hate speech, monitoring and analysis of hate speech as well as national coordination and international cooperation. This Recommendation, together with its Explanatory memorandum offers some comprehensive and practical guidelines that clearly determines future development of human rights approach to countering hate speech for 46 Council of Europe member states.

## The EU regulation and work on hate speech

The European Commission work on combating hate speech departs from European Union fundamental rights and values - respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. Hatred and intolerance in all forms are incompatible with these rights and values.<sup>5</sup>

The [Framework Decision on combating certain forms of expressions of racism and xenophobia](#) from 2008 aims to ensure that serious manifestations of racism and xenophobia are punishable by effective, proportionate and dissuasive criminal sanctions across the EU, and requires Member States to criminalize hate speech, i.e. the public incitement to violence or hatred, on grounds of race, color, religion, descent or national or ethnic origin. It defines illegal hate speech - the forms of conduct punishable as criminal offenses as:

"public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, color, descent, religion or belief, or national or ethnic origin; and publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes (...) when the conduct is carried out in a manner likely to incite violence."<sup>6</sup> The Framework Decision is a

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<sup>2</sup> Council of Europe, Hate speech, available at: <https://www.coe.int/en/web/freedom-expression/hate-speech>

<sup>3</sup> Council of Europe, Combating Hate Speech, Recommendation CM/Rec(2022)161 of the Committee of Ministers to member States on combating hate speech, available at: <https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a70b37>

<sup>4</sup> Ibid.

<sup>5</sup> European Commission, Combating hate speech and hate crime: Measures to prevent and combat different forms of hatred and to protect victims, available at: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/combating-hate-speech-and-hate-crime\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/combating-hate-speech-and-hate-crime_en)

<sup>6</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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:133178>

ground document 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, the Regulation on addressing terrorist content online and the Commission initiative to include hate speech and hate crime in the list of ‘EU crimes’ in the Treaty.

The latest initiative, the process to extend the list of EU crimes to illegal hate speech and hate crime, aims to bring forward an extension of the list of areas of crime (‘EU crimes’), laid down in Article 83(1) TFEU, to hate speech and hate crime, whether because of race, religion, gender or sexuality.<sup>7</sup> It is the initiative that emphasizes hate speech and hate crime as particularly serious crimes because of their harmful impacts on fundamental rights, on the individuals and on society at large, undermining the foundations of the EU, and therefore, it should be fought with all available means, including through criminal law.<sup>8</sup> The 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<sup>9</sup>.

Other measures except combating hate speech by criminal means have also been on Commission agenda for the last couple of years. From 2016, the Commission agreed with Facebook, Microsoft, Twitter and YouTube a “Code of conduct on countering illegal hate speech online”<sup>10</sup>. From there on, more social media companies join the Code: Instagram, Snapchat, Dailymotion, Jeuxvideo.com, TikTok, Linked, while Rakuten Viber and Twitch announced their participation in the Code of Conduct in 2022.<sup>11</sup> This means the Code now covers 96% of the EU market share of online platforms that may be affected by hateful content.<sup>12</sup>

The Code of Conduct requests that IT companies have rules and community standards that prohibit hate speech and put in place systems and teams to review content that is reported to violate these standards.<sup>13</sup> The main focus of the Code is on removing or disabling access to illegal hate speech content on IT companies services and assess in 24 hours the majority of notifications according to national law transposing EU Framework Decision 2008/913/JHA. The Conduct also asserts encouraging the provision of notices and flagging of content that promotes incitement to violence and hateful conduct at scale by experts, particularly via partnerships with CSOs, especially within the network of trusted flaggers and enhancing cooperation with national authorities and CSOs.<sup>14</sup> Moreover, there are obligations of IT companies concerning work with trusted flaggers on promoting independent counter-narratives and educational programmes and to promote transparency towards users as well as to the general public.

The Code of Conduct is based on close cooperation between the European Commission, IT companies, civil society organizations (CSOs) and national authorities. All stakeholders meet regularly under the umbrella of the [High Level Group on combatting hate speech and hate crime](#), to discuss challenges and progress.<sup>15</sup>

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7 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, available at: [https://commission.europa.eu/system/files/2021-12/1\\_1\\_178542\\_comm\\_eu\\_crimes\\_en.pdf](https://commission.europa.eu/system/files/2021-12/1_1_178542_comm_eu_crimes_en.pdf)

8 European Commission, Extending EU crimes to hate speech and hate crime: The Commission initiative to include hate speech and hate crime in the list of ‘EU crimes’ in the Treaty, available at: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/extending-eu-crimes-hate-speech-and-hate-crime\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/extending-eu-crimes-hate-speech-and-hate-crime_en)

9 Ibid.

10 European Commission, The EU Code of conduct on countering illegal hate speech online: The robust response provided by the European Union, available at: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en)

11 Ibid.

12 European Commission, Information note: Progress on combating hate speech online through the EU Code of conduct 2016-2019, available at: [https://commission.europa.eu/system/files/2020-03/assessment\\_of\\_the\\_code\\_of\\_conduct\\_on\\_hate\\_speech\\_on\\_line\\_-\\_state\\_of\\_play\\_\\_0.pdf](https://commission.europa.eu/system/files/2020-03/assessment_of_the_code_of_conduct_on_hate_speech_on_line_-_state_of_play__0.pdf)

13 Ibid.

14 Ibid.

15 European Commission, EU Code of Conduct against online hate speech: latest evaluation shows slowdown in progress, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7109](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7109)

As Code of conduct is currently one of the important policy activities of the Commission, in order to evaluate its implementation, the Commission has set up regular monitoring exercises in collaboration with a network of organizations located in the different EU countries, that test how the IT companies are implementing the commitments in the Code. From 2016 until today, 7 monitoring exercises were conducted, and more than 30 organizations from 21 Member States took part in these exercises and sent notifications to the IT companies based on same shared methodology<sup>16</sup>.

As much as the Code “has proven to be an essential tool for forging closer cooperation among key stakeholders in addressing hate speech”<sup>17</sup>, the results from 7th monitoring exercise conducted in spring 2022 unfortunately show a decrease in companies’ notice-and-action results: the number of notifications reviewed by the companies within 24 hours dropped as compared to the last two monitoring exercises.<sup>18</sup> This decrease is worrying, especially in the context of the earlier addressed need to improve the efforts of the social media companies to remove illegal content notified to them in a timely manner as well as communication efforts in order to make the process of notification and removal of illegal hate speech more transparent and user friendly.<sup>19</sup> Also, as removal is not the only way to counter hate speech online, and it is not the only obligation for social media companies engaged in Code of Conduct, the civil society organizations involved in monitoring of Code of Conduct called social media companies not just to urgently improve the reporting and communication management, but also to invest more resources into scientific research on, and data analysis of, hate speech phenomena in order to increase the understanding of trends in this field.<sup>20</sup>

Although Code of Conduct is been expanded to more IT companies and some improvements through Joint statement by trusted flagger organizations and IT companies for an action framework on enhanced cooperation<sup>21</sup> are made based on the above mentioned challenges, it stays insufficient to answer growing need for more responsibility of social media platforms on combination hate speech, as their influence, profit and power is growing. The case of Twitter mentioned in the introduction, as well as results of last monitoring exercise of Code of Conduct that confirm the regression clearly testify to this.

Therefore, building on Code of Conduct and its monitoring exercise, the obligations for online intermediary services related to clear notice and action systems, priority treatment of notices from trusted flaggers, feedback on notices to users and extensive transparency obligations are included in new [Digital Services Act](#)<sup>22</sup>, adopted by the European Parliament on 5 July 2022, that will apply from January 2024. The importance of DSA is in the fact that it sets obligations to social media companies concerning transparency and accountability on how they offer content through their algorithms and to take legal responsibility when hate speech is detected on their platforms. But what is an important improvement toward a more comprehensive and human rights based approach in DSA, are principles aiming to protect freedom of expression by ensuring that online platforms are not incentivised to over-police people’s

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16 European Commission, Countering illegal hate speech online: 7th evaluation of the Code of Conduct, available at: <https://commission.europa.eu/system/files/2022-12/Factsheet%20-%207th%20monitoring%20round%20of%20the%20Code%20of%20Conduct.pdf>

17 European Commission, Joint statement by trusted flagger organisations and IT companies for an action framework on enhanced cooperation – Annex to the Code of conduct, available at: <https://commission.europa.eu/system/files/2022-12/Annex%20to%20the%20Code%20E2%80%93%20Joint%20statement%20by%20IT%20companies%20and%20trusted%20flagger%20organisations%20to%20enhance%20cooperation.pdf>

18 European Commission, EU Code of Conduct against online hate speech: latest evaluation shows slowdown in progress, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7109](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7109)

19 Platforms, Experts, Tools: Specialized Cyber-Activists Network: Policy Recommendations, available at: [http://scan-project.eu/wp-content/uploads/sCAN\\_recommendations\\_paper\\_final.pdf](http://scan-project.eu/wp-content/uploads/sCAN_recommendations_paper_final.pdf)

20 Ibid.

21 European Commission, Joint statement by trusted flagger organisations and IT companies for an action framework on enhanced cooperation – Annex to the Code of conduct, available at: <https://commission.europa.eu/system/files/2022-12/Annex%20to%20the%20Code%20E2%80%93%20Joint%20statement%20by%20IT%20companies%20and%20trusted%20flagger%20organisations%20to%20enhance%20cooperation.pdf>

22 European Commission, The Digital Services Act: ensuring a safe and accountable online environment, available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en)

online speech. Many civil society organizations welcomed the EU's decision to uphold the conditional liability regime and combine it with a mandatory 'notice-and-action' system that should enable users to flag illegal content and complain about the platforms' inaction.<sup>23</sup> The transparency, accountability and user friendliness of the mechanism of flagging hate speech content on social media as well as cooperation and strengthening the role of trusted flaggers, will be of significant importance in implementation of DSA. If the DSA is properly enforced, platforms with more than 45 million users like Google and Facebook will be obliged to conduct risk assessments, deploy risk mitigation measures and do yearly independent audits that will help identify potential human rights violations.<sup>24</sup> For those reasons, the DSA is a big step forward in combating hate speech online and placing greater responsibility on internet intermediaries to take responsibility for hate speech and other human rights violations on big social media, that could have a big impact not just in EU member states, but potentially other countries too. The key steps for the upcoming period is proper implementation of DA provisions in all member states and establishing a proper cooperation and engagement with all stakeholders in monitoring of implementation and impact of DSA on human rights.

## Regulation and combating hate speech in Croatia

Hate speech in the Croatian legal system is incriminated through a number of provisions (criminal and misdemeanour), but regulation can also be found in the mandate of independent regulatory and self-regulatory bodies. Although there is no single provision regulating all forms of hate speech, hate speech in Croatia is nevertheless substantially regulated<sup>25</sup>. The largest issue, similar to other EU countries, is regulation of hate speech online.

In 2019, there was an initiative in the Ministry of Justice for the enactment of the Act on the Prevention of Misconduct on Social Networks<sup>26</sup>, that would rely on existing practices within the EU and thus on the German legislation (NetzDG) which has so far proved to have significant shortcomings in its implementation<sup>27</sup>. Therefore, there were concerns that the introduction of such a legislative solution in Croatia would have serious consequences on the freedom of expression and could lead to excessive removal of content<sup>28</sup>. Beyond the announcement to plan the adoption of this legislation, to this day the Act on the Prevention of Misconduct on Social Networks has not yet been adopted and with the DSA regulation, these kinds of solutions that aim to regulate global online IT companies only on national level provisions seem even more flawed and ineffective.

The newest change in hate speech regulation was in 2021, when the new Electronic Media Act was adapted, and a provision on the responsibility of publishers of electronic publications for user-generated content was added, aimed to contribute to combating hate speech online. However, the provision is laid out in such a way that publishers are obliged to register users and warn them of the rules of commenting instead of prescribing that publishers are responsible for moderating user-generated content

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23 EDRI, The DSA fails to reign in the most harmful digital platform businesses – but it is still useful, available at: <https://edri.org/our-work/the-dsa-fails-to-reign-in-the-most-harmful-digital-platform-businesses-but-it-is-still-useful/>

24 EDRI, EU Digital Services Act brings us closer to an inclusive, equitable internet, available at: <https://edri.org/our-work/eu-digital-services-act-brings-us-closer-to-an-inclusive-equitable-internet/>

25 Human Rights House Zagreb, Hate speech and Euroscepticism: Croatian national report, available at: [https://cilvektiesibas.org.lv/media/attachments/14/09/2022/Hate\\_speech\\_and\\_EuroscepticismCRO\\_ACaljAf.pdf](https://cilvektiesibas.org.lv/media/attachments/14/09/2022/Hate_speech_and_EuroscepticismCRO_ACaljAf.pdf)

26 Form of preliminary assessment of the impact of regulations for the Act on the Prevention of Misconduct on Social Networks, available at: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=9137>

27 Human Rights Watch. Germany: Flawed Social Media Law, available at: <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>

28 Đaković, T. Ljudska prava u digitalnom okruženju, Kuća ljudskih prava Zagreb, available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2019/12/TI-Ljudska-prava-u-digitalnom-okruzenju\\_edit2411.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2019/12/TI-Ljudska-prava-u-digitalnom-okruzenju_edit2411.pdf)

and limiting the spread of hate speech in accordance with the standards of protection of freedom of expression. Therefore, the extent to which this provision will contribute to the suppression of hate speech and the protection of freedom of expression online is questionable.<sup>29</sup>

With respect to public attitudes and trends, freedom of expression in Croatia continues to be negatively affected by occurrences of hate speech in public discourse, where the most often targets are Serbs, LGBT+ persons, Roma and migrants<sup>30</sup>. Social problems such as intolerance, hate speech, discrimination, and hate-motivated violence are addressed only reactively and superficially - there is a lack of comprehensive policy solutions to these issues, especially taking into account that the National Plan for the Protection and Promotion of Human Rights and Combating Discrimination for the period 2021-2027 has not yet been adopted, while the previous National Program for the Protection and Promotion of Human Rights expired in 2016, leading Croatia into its sixth year without a valid basic public policy in the field of human rights.<sup>31</sup>

As Croatia is a member of the EU, it is also one of the countries where Code of conduct on countering illegal hate speech online is implemented and monitoring exercises were conducted. Also, the DSA will be significant for Croatia in regulating hate speech online. However, Croatia still lacks a holistic approach to combating hate speech, one that includes maintaining comprehensive dialogue with important stakeholders (independent human rights institutions, media, civil society) aim of recognising, monitoring, preventing, raising awareness and activating citizens, and empowering victims, as well as strengthening prosecution and regulatory mechanisms<sup>32</sup>.

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29 Human Rights House Zagreb, Human Rights in Croatia: Overview of 2021, available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP\\_GI2021-EN\\_Online.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP_GI2021-EN_Online.pdf)

30 European Commission against Racism and Intolerance. ECRI Report on Croatia, fifth monitoring cycle, adopted on 21 March 2018, ECRI Council of Europe, Strasbourg, available at: <https://rm.coe.int/fifth-report-on-croatia/16808b57be>

31 Human Rights House Zagreb, Human Rights in Croatia: Overview of 2021, available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP\\_GI2021-EN\\_Online.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP_GI2021-EN_Online.pdf)

32 Human Rights House Zagreb, Hate speech and Euroscepticism: Croatian national report, available at: [https://cilvektiesibas.org.lv/media/attachments/14/09/2022/Hate\\_speech\\_and\\_EuroscepticismCRO\\_ACaljAf.pdf](https://cilvektiesibas.org.lv/media/attachments/14/09/2022/Hate_speech_and_EuroscepticismCRO_ACaljAf.pdf)

