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## Monitoring and Detecting Online Hate Speech

### D2.1b (final report)

#### Definition of illegal hatred and implications

**Abstract:** A comparative analysis covering ten E.U. Member States has shown a wide heterogeneity and complexity of legislations responding to hatred-related contents, which has consequences on the determination of an acceptable definition of illegal hate speech (the phrase “definition of illegal hate speech” being understood as referring to the identification of hate speech that is currently illegal, covering all forms of written and oral expression). This analysis results in a proposal for both a detailed and a shorter definition of illegal hate speech covering the ten E.U. Member States that have been studied, which - together with a short overview of liabilities - have a series of implications (1) in terms of contents to be taken into account within the framework of the MANDOLA project, (2) in terms of actions that should be or should not be taken against hate speech and (3) in terms of ideal definition of illegal hate speech and of harmonisation’s efforts.

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## 1 Executive summary

The comparative analysis of the legislations of ten E.U. Member States (namely Belgium, Bulgaria, Cyprus, France, Germany, Greece, Ireland, the Netherlands, Romania, and Spain) has shown a wide heterogeneity and complexity of legislations, despite the existence of European and International instruments aiming to harmonise the combat against hate speech.

This situation has consequences on the determination of an acceptable definition of illegal hate speech, the phrase “definition of illegal hate speech” being understood in this report as referring to the identification of the hate speech contents that are currently illegal, covering all forms of written (including non-verbal) and oral expression.

Indeed, the complexity and heterogeneity uncovered increases the difficulty to create a clear harmonised definition. In this context, both a detailed and a shorter definition of illegal hate speech present strengths and weaknesses, keeping in mind that their objective is to target (potential) illegal hate speech only, legal speeches deserving protection.

As a result, the current report proposes a detailed definition of illegal hate speech covering the ten E.U. Member States studied through the classification of illegal contents into four categories, as well as an attempt for a more global definition accompanied with explanations relating to its structure, content and details. Both these definitions are supported by detailed tables.

These outcomes, accompanied with a short overview of liabilities towards illegal contents, enable to identify a series of implications (1) in terms of contents to be taken into account within the framework of the MANDOLA project, (2) in terms of actions that should be or should not be taken against hate speech and (3) in terms of ideal definition of online hate speech and of harmonisation’s efforts. These analyses might be useful as the basis for further research that would encourage closer alignment among legislations across Europe.



## **2 Introduction**

The purpose and scope of the current report (Section 2.2) are closely tied to MANDOLA objectives and activities (Section 2.1).

### **2.1 Background to the MANDOLA project**

MANDOLA (Monitoring ANd Detecting OnLine hAte speech) is a 24-months project co-funded by the Rights, Equality and Citizenship (REC) Programme of the European Commission, which aims at making a bold step towards improving the understanding of the prevalence and spread of on-line hate speech and towards empowering ordinary citizens to report hate speech.

#### **2.1.1 MANDOLA objectives**

The MANDOLA specific objectives are the following:

- To monitor the spread and penetration of on-line hate-related speech in the European Union (EU) and in the E.U. Member States using big-data approaches, while investigating the possibility to distinguish, among monitored contents, between potentially illegal hate-related speech and non-illegal hate-related speech;
- To provide policy makers with actionable information that can be used to promote policies for mitigating the spread of on-line hate speech;
- To provide ordinary citizens with useful tools that can help them deal with on-line hate speech irrespective of whether they are bystanders or victims;
- To transfer best practices among E.U. Member States;
- To set-up a reporting infrastructure that will enable the reporting of potentially illegal hate speech.

The MANDOLA project addresses the two major difficulties in dealing with online hate speech: the lack of reliable data and the poor awareness on how to deal with the issue. Indeed, it is difficult to find reliable data that can show detailed online hate speech trends (inter alia in terms of geolocation and in relation to the focus of hate speech). Moreover, available data generally do not distinguish between potentially illegal hate speech and not illegal hate speech. In addition, the different legal systems in various Member States make it difficult for ordinary people to perceive the boundaries between both these categories of content. In this context, citizens might have difficulties to know how to deal with potentially illegal hate speech and how to behave when facing harmful but not illegal hate content. The lack of reliable data also prevents to make reliable decisions and push policies to the appropriate level.

The two MANDOLA innovations are (1) the extensive use of Internet technologies and big data to study and report on-line hate, and (2) the research on the possibility to make a clear distinction between legal and potentially illegal content taking into account the variations between E.U. Member States legislations.

MANDOLA is serving: (1) policy makers - who will have up-to-date online hate speech-related information that can be used to create enlightened policy in the field; (2) ordinary

citizens - who will have a better understanding of what online hate speech is and how it evolves, and who will be provided with information for recognising legal and potentially illegal online hate-speech and for acting in this regard; and (3) witnesses of online hate speech incidents - who will have the possibility to report hate speech anonymously.

### **2.1.2 MANDOLA Activities**

In order to achieve its objectives the project includes the following activities:

- An analysis of the legislation of illegal hate-speech at the European and international level and in ten E.U. Member States.
- An analysis of the applicable legal and ethical framework relating to the protection of privacy, personal data and protection of other fundamental rights in order to implement adequate safeguards during research and in the products to be developed.
- The development of a monitoring dashboard, which aims to identify and visualise cases of online hate-related speech spread on social media (such as Twitter) and the Web.
- The creation of a multi-lingual corpus of hate-related speech based on the collected data, to be used to define queries in order to identify Web pages that may contain hate-related speech and to filter the tweets during the pre-processing phase. The vocabulary is developed with the support of social scientists and enhanced by the Hatebase (<http://www.hatebase.org/>).
- The development of a reporting portal, in order to allow Internet users to report potentially illegal hate-related speech material and criminal activities they have noticed on the Internet.
- The development of a smartphone application, in order to allow anonymous reporting of potentially hate-related speech materials noticed on the Web and in social media.
- The creation and dissemination of a Frequently Asked Questions document, to be disseminated via the project portal and the smartphone app.
- The creation of a network of National Liaison Officers (NLOs) of the participating Member States. They are intended to act as contact persons for their country, to exchange best practices and information, and to support the project and its activities with legal and technical expertise when needed.
- The development of a landscape of current responses to hate speech across Europe and of a Best Practices Guide for responding to online hate speech for Internet industry in Europe.

## **2.2 Purpose and scope of the report**

### **2.2.1 Introduction to task 2.1**

Task 2.1 aims at analysing the legislations relating to illegal hatred in ten E.U. countries, in the light of International and European legislation in this field. The analysis has not been extended to additional countries, nor to all the E.U. countries, for budgetary reasons, but the MANDOLA results could serve as a basis in the future to a more extended comparative analysis.

Among the ten countries that have been analysed lie the 6 participants in the project - Bulgaria, Cyprus, France, Greece, Ireland, and Spain, covering in addition the Netherlands. Three other countries, namely Belgium, Germany and Romania, have been chosen for their potential capacity to represent different kind of E.U. countries, notably given the recommendations addressed to them by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe<sup>1</sup>.

This analysis pursues the following objectives:

- To identify the materials on which the MANDOLA project will focus;
- To identifying the precautions that must be taken when dealing with such contents before any decision of a legitimate authority on their legal or illegal nature;
- To analyse the answers that may be brought to non-illegal hatred, while respecting the requirements of fundamental rights protection, including freedom of expression.

This analysis also aims at feeding other MANDOLA work streams, notably regarding the identification of the legal challenges and the release of potential recommendations in relation to responses to hate-speech.

## 2.2.2 Introduction to the current report

The current report consists of a study of the definition of illegal hatred and of the implications of such a definition, based on the description of the legal frameworks of ten E.U. Member States. It focuses on the behaviours, relevant to the MANDOLA topic, that are prohibited by the legislation of these countries. It focuses on all forms of oral or written (including non-verbal) expression, but not on other forms of hatred (such as physical) in order to only target hate that might be encountered on the Internet. On the opposite, it does not focus particularly on online hate speech but on hate speech more generally, since *“human rights and fundamental freedoms apply equally offline and online”*<sup>2</sup>, which implies that the definition of illegal hate speech is supposed to be the same in both these areas, even though there might be differences of treatment between sources (where necessary and proportionate) taking into account that *“such forms of expression may have a greater and more damaging impact when disseminated through the media”*<sup>3</sup>, Internet being in addition *“one of the principal means by which individuals exercise their right to freedom of expression and information”*<sup>4</sup>.

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<sup>1</sup> See the ECRI Report on Germany, 25 February 2014, available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Germany/DEU-CbC-V-2014-002-ENG.pdf>; the ECRI report on Belgium, 25 February 2014, available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Belgium/BEL-CbC-V-2014-001-ENG.pdf> ; the ECRI report on Romania, 3 June 2014, available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf> (links last accessed on 8 July 2016).

<sup>2</sup> Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, 16 April 2014, n°5, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d5b31> (last accessed on 29 August 2017).

<sup>3</sup> Recommendation n° R (97)20 on Hate speech, 30 October 1997, Appendix (Scope), available at <https://rm.coe.int/1680505d5b> (last accessed on 29 August 2017).

<sup>4</sup> ECtHR, 2<sup>nd</sup> Sect., 18 December 2012, Ahmet Yildirim v. Turkey, appl. n° 3111/10, <http://hudoc.echr.coe.int/eng?i=001-115705>, § 54; Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, op. cit., Explanatory Memorandum, n°2.

The collection of information relating to these legislations show that if, legally speaking, hate speech is very easy to define, as the speech that is prohibited by the law which applies to the situation, this clear and simple definition hides a very complex situation in practice, even within the E.U. Indeed, although several International and European legal instruments have been adopted with the aim of harmonising national legislations<sup>5</sup>, transpositions into domestic laws have not been done the same way, where they are not partial. Moreover, these instruments follow a similar approach on what should be at least illegal<sup>6</sup>, but show small differences, and transpositions of each of them have not always been included into a global reflection aiming at harmonising the internal penal law. As a result, the E.U. Member States' legislations show huge disparities.

In this context, results of the comparative study could be presented in detail or in a more global manner. Each of these options presenting both benefits and challenges (explained in Section 3.2.2), and a general presentation implying to firstly carry out a comprehensive analysis, we have chosen to proceed in two steps.

Firstly, we have drawn up a detailed description of illegal behaviours in the countries studied, classifying these behaviours in four main categories: (1) behaviours that are illegal in all or almost all the E.U. Member States studied, (2) behaviours that are illegal or partly illegal in a majority of the E.U. Member States studied, (3) behaviours that are illegal in a minority of the E.U. Member States studied, and (4) additional behaviours that should be illegal according to European and International instruments. This classification is detailed in Section 4.1 and Section 7 presents tables which include details by country.

Secondly, we have attempted to propose a more global definition of prohibited hate speech, emphasising the inherent limitations of such a definition. This analysis can be found in Section 4.2 of the current report.

On the basis of these works and of a clarification of applicable responsibilities (which can be found in Section 5), we were able to deduce a series of implications in terms of contents to be taken into account within the framework of the MANDOLA project, in terms of actions that should be taken or not taken against illegal hate speech, and in terms of ideal definition of online illegal hate speech and of harmonisation's efforts (Section 6).

## **2.3 Working method**

The scope of the investigation has been deliberately broad in order to perform an extensive analysis of legislations. It has covered all the penal provisions, along with civil or even administrative ones, that prohibit actions that have a link with hate, even if relatively thin, in other words in which the perpetrator demonstrates a particular intent to hurt or prejudice another person or group of persons, or to commit an action that is very likely to have such an effect. For example, among offences that have been studied lies the one that consists in the realisation of a montage of the private images of someone else without his or her consent and without specifying that it is a montage. Indeed, this montage might show a will to mock or to particularly offend the victim, whereas the simple publication of private

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<sup>5</sup> See for example the preamble of the additional protocol to the Convention on cybercrime and the preamble of the Council Framework Decision 2008/913/JHA, § 3 and 4.

<sup>6</sup> Especially the additional protocol to the Convention on cybercrime and the E.U. Council Framework Decision 2008/913/JHA.

images might pursue several other illegal purposes. The personal characteristics of the victims that might motivate the perpetrator's action (such as religion, colour or gender) have not been taken into account as exclusion criteria in order to investigate countries' choices in this area.

Furthermore, some provisions have been knowingly ignored. The first of these are the provisions relating to audiovisual media services, since they are not lying exactly inside the core of the current study. The second of these are the provisions protecting sensitive personal data, since they have been considered as being too far from the topic of hate speech (in hate speech situations, the processing of sensitive personal data will generally be a consequence of hate speech or one only of the constitutive elements of a hatred-related action, rather than a hatred-related action in itself), in addition to the fact that they will shortly be replaced by the E.U. Regulation 2016/679.

In order to investigate the so defined part of national legislations of countries studied, a first questionnaire has been prepared and sent to the MANDOLA partners. On the basis of the answers that have been received, a second questionnaire has been created and sent to three additional experts in Belgium, Germany and Romania, where there is no MANDOLA partner. Additional research has also been performed by the editor of this document, and a third questionnaire has been sent later in order to collect additional information from both the MANDOLA partners and the external experts referred to above. Concomitantly, tables have been created in order to be able to compare legislations efficiently.

These tables, which are available in Section 7 below, propose several definitions of illegal behaviours in their most common definition where found possible. Where it was not possible due to a too wide heterogeneity of legislations, illegal behaviours have been defined according to existing European and/or international instruments (this has been done in one situation only, in relation to the public denial, condoning or trivialising of certain crimes - see Section 7.1.8 of the current report). Where there was no such instrument available (which has been found only in a few situations where targeted behaviours were punished in a minority of countries), the retained definition has been the more interesting one in terms of "novelty" compared to other close illegal behaviours already studied.

In all cases, the particularities of each country studied in relation to these general definitions are highlighted in subsequent cells targeting the specificities of each country (where possible and relevant, elements which extend the scope of the prohibition are written in blue colour, and elements which reduce this scope are written in green colour). These cells also specify for each country the incurred sanction and its nature (namely penal, civil or administrative).

## **2.4 Document structure**

The document is structured as follows.

Section 1 provides an executive summary.

Section 2 provides an introduction.

Section 3 sets-up the context by presenting the results of the comparative study as well as the consequences of these findings on the definition of online hate speech.

Section 4 presents the outcomes of the comparative analysis in terms of definition of illegal hatred.

Section 5 clarifies the situation in relation to the determination of liabilities.

Section 6 presents the implications of the findings of the current study.

Section 7 presents tables that summarise the hatred-related behaviours that could materialise on the Internet and that are prohibited within the ten E.U. Member States that have been studied.

A final Section proposes a list of main acronyms and abbreviations.

An Annex presents the name of the experts who have contributed to the current study.

### 3 Setting-up the context

The comparative study of the legislations of ten E.U. Member States has shown a wide heterogeneity and complexity of legislations (Section 3.1). This situation has a direct impact on the definition of illegal hate speech covering the ten E.U. countries studied (Section 3.2).

#### 3.1 Wide heterogeneity and complexity of legislations

First outcomes of the study show a huge disparity between legislations (1), notably due to a lack of proper transposition of International and European legal instruments (2), and to the differences that exist between International and European provisions, differences that are sometimes maintained at the domestic level, along with pre-existing national provisions (3).

##### 3.1.1 Important disparity between legislations

Some international and European legal instruments advise the prohibition of some hatred-related acts, such as the United Nations International Convention on the elimination of all forms of racial discrimination of 21 December 1965; the Council of Europe additional protocol (of 28 January 2003) to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems; and, at the E.U. level, the Council Framework Decision 2008/913/JHA of November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. Regarding specifically discrimination, its prohibition is also declared in article 14 of the European Convention on Human Rights (ECHR), which prohibits discrimination when applying the other provisions of the Convention; in the additional protocol n°12 to the ECHR, which provides for a general prohibition of discrimination; and, at the E.U. level, in the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Despite the existence of these instruments, which aim at harmonising legislations<sup>7</sup>, a huge disparity is noticed between countries. Indeed, these legal instruments are not directly applicable in countries that must comply with them (the binding effect depends on the accession to or ratification of the related international treaty or convention<sup>8</sup>, or on the E.U. membership of the country, in relation to Directives and Council framework decisions<sup>9</sup>), at the exception of some treaties that may in some countries have such a direct effect, such as the ECHR<sup>10</sup>. As a result, the application of these instruments implies most of the time their

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<sup>7</sup> See for example the preamble of the additional protocol to the Convention on cybercrime and the preamble of the Council Framework Decision 2008/913/JHA, § 3 and 4.

<sup>8</sup> See for example Council of Europe, *About Treaties*, "About Conventions in the Council of Europe Treaty Series (CETS)", <http://www.coe.int/en/web/conventions/about-treaties> (last accessed on 04 July 2017).

<sup>9</sup> See for example European Union, *Regulations, Directives and other acts*, [http://europa.eu/eu-law/decision-making/legal-acts/index\\_en.htm](http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm) (last accessed on 04 July 2017).

<sup>10</sup> The direct effect depends on the status given to the treaty by each national Constitution. See for ex. Marc J. Bossuyt, *The direct applicability of International instruments on Human rights*, RBDI 1980.2, pp. 317 to 344, available at <http://rbdi.bruylant.be/public/modele/rbdi/content/files/RBDI%201980/RBDI%201980-2/Etudes/RBDI%201980.2%20-%20pp.%20317%20%C3%A0%20344%20-%20Marc%20Bossuyt.pdf> and at [http://www.academia.edu/633695/The\\_Application\\_of\\_the\\_ECHR\\_in\\_the\\_Domestic\\_Systems](http://www.academia.edu/633695/The_Application_of_the_ECHR_in_the_Domestic_Systems) (last accessed on 4 July 2017).

transposition into domestic law. However, it appears that most transpositions have not been done the same way, in addition to the fact that most countries provide for additional prohibitions that are not covered by European and International instruments.

An illustration is the offence (which should be punished in all E.U. Member States according to article 1 (1) of the Council Framework Decision 2008/913/JHA) of public incitement to hatred or violence, directed against a group of persons or a member of such a group determined on the basis of their race, colour, descent, national or ethnic origin, and (at least if used as a pretext for any of the other factors) religion, eventually (States can choose to apply or not the following condition) if the incitement is either carried out in a manner likely to disturb public order or is threatening, abusive or insulting (article 1 (2)).

The study of the legislation of ten E.U. Member States has shown the following:

- Ten countries penalise the incitement to hatred, but only eight of them penalise the incitement to violence;
- Eight countries only penalise additionally the incitement to discrimination, which is not mentioned in the Council Framework Decision, but mentioned in the International Convention on the elimination of all forms of racial discrimination, and in the additional protocol to the Convention on cybercrime, where committed through a computer system;
- Only two countries penalise the incitement to hatred based on peoples' "colour", and only four of them penalise the incitement to hatred based on persons' "descent" or "origin" (even if these grounds might be implicitly covered in certain other countries, in practice, by other grounds such as "race"). In addition, one country does penalise the incitement to hatred based on any ground. Besides this, numerous other grounds may be taken into account to declare the behaviour as illegal in some countries but not others, such as nationality; language; ideologies or beliefs other than religion (sometime reduced to philosophical and political beliefs); familiar situation; ethnic, racial or national belonging of family members; gender and/or sex<sup>11</sup>; sexual identity; sexual orientation or preference; age; civil status; birth; fortune; illnesses (or state of health); disability; physical or genetic characteristics, and social origins.
- Only three countries impose an additional condition, and therefore only prohibit the public incitement to hatred if it is either carried out in a manner likely to disturb public order (two countries), or public peace (one country), or if it is threatening, abusive or insulting (one country, alternatively to the disturbing of public order).

The afore-mentioned example shows the huge disparity that exists between different texts that are transposing a provision which aim was to harmonise legislations across Europe, provision which is moreover belonging to those that have been the most correctly

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2017). In relation to the ECHR, see Estelle De Marco in C. Callanan, M. Gercke, E. De Marco and H. Dries-Ziekenheiner, Internet blocking - balancing cybercrime responses in democratic societies, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>), n° 6.5.2.2.

<sup>11</sup> Regarding the difference between sex and gender, see for example MONASH University, "What is the difference between sex and gender?", available at <http://www.med.monash.edu.au/gendermed/sexandgender.html> (last accessed on 8 July 2017), according to which "Sex refers to biological differences; chromosomes, hormonal profiles, internal and external sex organs", whereas "Gender describes the characteristics that a society or culture delineates as masculine or feminine".



transposed. Same examples of disparity could be given as illustration for all the behaviours studied in Section 7 below, with the possible exception of direct and indirect discrimination. However, this latter prohibition of discrimination does mostly concern offline behaviours, and has only been studied in this report for its potential to serve as a basis, in some countries, to sanction certain online statements of discrimination or instructions to discriminate.

This disparity between legislations is due, amongst other, to the fact that International and European instruments have not always been transposed as they should have been, in addition to the fact that they only aim at ensuring a minimum harmonisation.

### **3.1.2 Lack of proper transpositions of International and European legal instruments**

Some differences between legislations might be unavoidable, since International and European texts are often the result of a negotiation between States, and as a consequence a certain margin of appreciation might be granted to them within the framework of the implementation of the negotiated provisions into domestic laws (outside E.U. Regulations that are directly applicable). This is the case, for example, of the Council Framework Decision 2008/913/JHA, which authorises States to prohibit the public incitement to hatred only where the act is committed "*in a manner likely to disturb public order or if it is threatening, abusive or insulting*".

However, the disparities that are noticed are often, firstly, the result of a lack of proper transposition of International and European instruments.

For example, as seen in the previous section, eight countries out of ten do not expressly penalise the public incitement to hatred where it is based on the colour of the victim, and six countries out of ten do not penalise the public incitement to hatred where it is based on the descent of the victim, while colour and descent are supposed to be taken into account as illegal motivations according to the Council Framework Decision 2008/913/JHA. In addition, two countries do not penalise the public incitement to discrimination, whereas such prohibition is requested by the International Convention on the elimination of all forms of racial discrimination, to which all the countries studied are parties.

As a last example (even though numerous of them could be given), only one country (Cyprus) out of ten fully penalises the public condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes as defined by relevant international instruments, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group. Despite the fact that such prohibition is requested by the Council Framework Decision 2008/913/JHA, only two countries penalise the public condoning, denying or grossly trivialising crimes against peace, only four countries penalise the public condoning, denying or grossly trivialising crimes against humanity (one additional country, France, penalises the public apology of such crimes, and their public contesting in the extent they are defined by article 6 of the Charter of the International military tribunal annexed to the London agreement of 8 August 1945; the gross trivialisation

of such crimes being only covered by courts<sup>12</sup>), and only three countries penalise the public condoning, denying or grossly trivialising genocide and war crimes.

These differences of transposition are a first explanation of differences that are noticed between national legislations. A second explanation might be the differences that exist between international and European texts themselves, differences that are not always embedded in a coherent legal framework at the domestic level.

### **3.1.3 Coexistence, at the domestic levels, between different provisions targeting close behaviours**

Each International or European instrument has been adopted in the aim of addressing a specific situation, and, as a result, set up the minimum requirements in terms of penalisation, in order to enforce the harmony between legislation and to strengthen cooperation possibilities between countries, in this particular field. As a result, and as a result of the negotiations that have taken place during their preparation, these texts present differences.

For example, the Council Framework Decision 2008/913/JHA commands to penalise the action of "*publicly inciting to violence or hatred*", whereas the additional protocol to the Convention on cybercrime commands to penalise the action of publicly "*advocating, promoting or inciting hatred, discrimination or violence*". Regarding the situation to penalise, the first instrument authorises Member States to require that the action is performed "*in a manner likely to disturb public order or if it is threatening, abusive or insulting*", whereas the second instrument only requires (given its aim to combat cybercrime) that the action is performed "*through a computer system*".

The transposition of both these texts into domestic law, where sometimes some provisions penalising some hatred-related behaviours do already exist, without prior overall reflection aiming at creating a coherent and harmonised legal framework, may lead to the co-existence of several provisions penalising very close behaviours, but maintaining some differences between each of these provisions. As a result, one legal text or another may apply to a given behaviour, depending on its precise circumstances and on the perpetrator's motivation as noticed by the judge (for example race, colour, or gender... some of these motivations being possibly punishable under one or several provisions but not under all applicable ones).

Cyprus offers in this field one of the best illustrations. Indeed, Cyprus provides for the following prohibitions:

- Inciting hatred or violence, in any way, based on race, national or ethnic origin, religion, colour and genealogical origin, in such a way to cause public disorder or that has a threatening, abusive, or offensive character (sanction: imprisonment up to 5 years and/or fine up to 10 000 € - art.3 §1 of the Law 134(I)/2011). The motivations of "gender" and "sexual orientation" are also punished, lower (imprisonment up to 3 years and/or fine up to 5 000 € - art. 99A of the penal Code);

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<sup>12</sup> Art. 24bis of the Law of 1881 only prohibits the contestation of crimes against humanity. However, and despite the principle that criminal law has to be interpreted by the letter, the French courts also sanction, on the basis of this provision, the gross trivialisation of such crimes (such as "*the excessive understatement of the number of victims of the policy of extermination in concentration camps*": Crim., 29 January 1998, n°96-82.731, Gaz. Pal. 1, chron. crim. 87; Crim., 17 June 1997, n° 94-85.126, Bull. Crim. n°236). For an example of the sanction of the denying of such crimes see CA Paris, 27 May 1992, Gaz. Pal. 1992. 2. Somm. 321; Crim. 12 sept. 2000 n°98-88.200, Dr. pénal 2001. 4 (2<sup>nd</sup> decision).

- Publicly inciting acts which are likely to cause discrimination, hatred or violence, in any way, on grounds of race, ethnic origin, or religion (imprisonment up to 2 years and/or fine up to 1 700 € - art. 2A of the law 12/1967);
- Distributing or making available (publicly or non-publicly), through a computer system, xenophobic or racist material which incites or promotes racial differences (which covers discrimination - see Section 7.1.2 of the current report) hatred or violence, on grounds of race, national or ethnic origin, religion, colour and descent (imprisonment up to 5 years and/or fine up to 34 000 € - art. 4 of law 26(III)/2004).
- Public expression of ideas which insult persons based on their racial or ethnic origin or religion (national origins are missing), committed orally or in writing or by the press or using images or in any other way (imprisonment up to 1 year or a fine up to 850 € -art. 2A(c) Law 12/1967 - see Section 7.1.4 of the current report);
- Racist and xenophobic insult with an effect that the insulted person is exposed to hatred, contempt or ridicule, based on the race, or national or ethnic origins or colour, descent or religion of this person, through a computer system (imprisonment up to 5 years or a fine up to 34 000 € - art. 6 of Law of 2004 - - see Section 7.1.4 of the current report);
- Insult committed in a way that may result in an attack against a person who is present, for whatever ground, in a public place or in a place that is not public in such a manner or under conditions that it may be heard by any person in a public place (imprisonment up to 1 month and/or a fine up to 128 € - art. 99 of the penal Code - see Section 7.1.4 of the current report).

This example shows that, for example, in Cyprus, inciting discrimination is more easily punished (acts must be likely to cause discrimination, there is no need for a proper incitement, and no need for a public disorder), but sanctions are lower than those that can be applied to perpetrators of incitement to violence or hatred, unless incitement to discrimination is committed through a computer system (and in that case, a public disorder is not needed as well). Incitement to discrimination, as well as the promotion of hatred based on colour or descent, is punished where committed through a computer system, but not punished at all if committed through any other means (despite the fact that such prohibitions are requested by the International Convention on the elimination of all forms of racial discrimination). An insult motivated by ethnic origins might be sanctioned under two legal bases (depending on whether the action exposes the victim to hatred, contempt or ridicule, or not - art. 2A(c) of the Law 12/1967 and art. 6 of the Law of 2004), as well as an insult motivated by the nationality, the descent or the colour of the victim (sanctioned under art. 99 of the penal Code in case the action does result in an attack against a person who is present, and under art. 6 of the Law of 2004 in case a computer system is used and the person is exposed this way to hatred, contempt or ridicule, in compliance with the additional protocol to the Convention on cybercrime which enables to provide for such an additional condition).

### **3.2 Consequences on the identification of an acceptable definition of illegal hate speech covering the ten countries studied**

The important heterogeneity and complexity of legislations makes it difficult to propose a simple definition of illegal hate speech covering the ten countries studied. Indeed, an

accurate definition will be very complex while a larger and simpler definition will not enable to target illegal hate speech only. However, both approaches are of interest, along with the choice to focus on hate speech that is illegal.

### **3.2.1 Difficulty to propose a simple definition of illegal hate speech**

The difficulty, when trying to define illegal hate speech, is to make a choice between accuracy and simplicity, in addition to the question of the limits that must bound the notion of “hate”.

#### **3.2.1.1 Detailed but complex definition vs. short but imprecise definition**

The analysis of the legislations of ten E.U. countries has shown the existence of a great disparity between legislations, which makes very complex and voluminous any detailed presentation of what is illegal on the territory covered by these countries taken together. In this context, a shorter definition must either include the solely behaviours that are illegal in all the countries that have been studied, or identify terms that enable to encompass all the legislations’ details. However, the attempt to define illegal hate speech based on what is commonly prohibited drives to a list of prohibited behaviours that is reduced to very few elements of content. On the opposite, the attempt to include all the differences between E.U. Member States’ legislations in a short and simplified definition leads to a definition that includes behaviours which might not be illegal at all in one or several countries, due to the lack of precision with regard to the vocabulary used to identify the illegal action or with regard to the context or to the effect of the action (which are in some case decisive factors in the legal qualification of facts).

#### **3.2.1.2 The challenge of identifying the boundaries of hate**

The very wide diversity of offences that are noticed in the E.U. countries studied, and the offences that have been mentioned by some legal experts as offences that might enable to sanction online hate speech whereas the offence as such does not target hate speech particularly, raise a novel issue: the difficulty to identify the boundaries of hate speech, within the larger category of legal prohibitions.

Indeed, according to the Oxford dictionary, hate can be defined as an emotion of "*intense dislike for*"<sup>13</sup> someone or something, of "*strong aversion to*" something<sup>14</sup>. This feeling of "*hatred or intolerance*"<sup>15</sup> can be verbalised in a speech (becoming this way a "*hate speech*"<sup>16</sup>) and used to express "*hatred or intolerance of other social groups, especially on the basis of race or sexuality*"<sup>17</sup>. Hate speech might be more generally used to designate

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<sup>13</sup> Oxford dictionaries, *Definition of hate in English*, available at <http://www.oxforddictionaries.com/definition/english/hate> (last accessed on 25 September 2017).

<sup>14</sup> *Ibid.*

<sup>15</sup> Oxford dictionaries, *Definition of hate speech in English*, available at <http://www.oxforddictionaries.com/definition/english/hate-speech?q=hate+speech> (version of 8 July 2016).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

"hostile verbal abuse", and the term is "sometimes understood to encompass written and non-verbal forms of expression"<sup>18 19</sup>.

Hate so defined is very often the first motive for the commission of a penal infringement (or even of a civil tort), and criteria such as "race", "origins" or "handicap" are not of any help since (1) they vary between countries and (2) some countries prohibit some actions whatever is the specific hate-related motivation. As a result, a speech that aims at hurting someone else because of his or her difference (in terms of religion, colour or whatever other characteristic), may be sanctioned under certain domestic legislations on the basis of - for example - provisions aiming to sanction violations of privacy or dignity, or provisions aiming to sanction physical or psychological violence. This is reinforced by the fact that under several legislations, hatred-related motivations are an aggravating circumstance in relation to all the penal infringements (in six countries out of ten) or in relation to a list of penal infringements that covers general infringements - such as violence - mentioned above (in two countries out of the remaining four countries studied).

In this context, the list of the penal provisions that might underpin the sanction of hatred-motivated speech and other forms of expression might be very wide, and cover a very large part of each penal Code. It is the reason why the scope of the MANDOLA investigation has been voluntarily broad, covering all the penal provisions (along with civil or even administrative ones) that prohibit actions that have a link with hate, even if relatively thin, in other words in which the perpetrator demonstrates a particular intent to hurt or prejudice another person or group of persons, or to commit an action that is very likely to have such an effect.

### **3.2.2 The need to target (potentially) illegal content within the framework of the MANDOLA project**

Even though it appears difficult to define illegal hate speech, a focus on hate speech that is illegal rather than on a phenomenon that would be larger appears to be necessary for the reasons explained below.

Before the examination of these reasons, it appears important to recall that dealing with illegal hate speech before any court decision implies in most situations (where it is not purely about giving a legal definition) to consider contents to be "potentially" illegal only, by application of several principles such as the principle of presumption of innocence, the right to a fair trial, and even the right to personal data and privacy protection.

The need to focus on (potentially) illegal hate speech is supported by the following arguments:

- The MANDOLA proposal indicates that the monitoring of online hate speech will investigate the possibility to distinguish legal and illegal contents<sup>20</sup>. Taking illegal

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<sup>18</sup> *Ibid.*

<sup>19</sup> The Oxford dictionaries *Definition of hate speech in English*, has been modified and is now referring to an "abusive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion or sexual orientation" (version of 25 September 2017, available at [https://en.oxforddictionaries.com/definition/hate\\_speech](https://en.oxforddictionaries.com/definition/hate_speech)). It is to be noted that no justification is given to such modification, whereas the notions of "hatred or intolerance" are rather different than the notions of "abusive or threatening".

<sup>20</sup> Grant agreement n° JUST/2014/RRAC/AG/HATE/6652, Annex I, especially Section 1.5.1 p. 13 and p. 23.

contents as a basis of the research enables to place the investigation on the possibility to distinguish legality from (potential) illegality at the core of the research;

- The monitoring of all kind of materialised hatred would be very wide, since, as already analysed, hate-speech might be used to designate "*hostile verbal abuse*", encompassing written and non-verbal forms of expression<sup>21</sup>. Taking such a definition as a working basis would certainly render very difficult to include all kinds of hate contents in the research, with the risk of non-handling certain aspects of the definition. In addition, the picture of hate which would be obtained according to this definition would not be a picture of hatred that must be legally combatted, but a picture of the oral and written violence of human beings. Such a latter picture appears to be of a lesser interest than the first one, in the context of the MANDOLA project.
- The MANDOLA proposal indicates in some of its parts that reporting infrastructures will enable to report (potentially) illegal content<sup>22</sup>.
- Combatting (legally, through reports to LEAs and other comminatory measures) hatred-related contents in compliance with law implies to combat hatred that is (potentially) illegal only, since non-illegal hate speech (in other words hatred-related content that is not punished by law) is highly protected under the right to freedom of expression and, within such a framework, should ideally be neither targeted nor handled.

### **3.2.3 Benefits and limits of both a detailed and a general definition**

As already explained, defining precisely illegal hate speech appears complex and voluminous, whereas defining hate speech more largely leads to include potentially legal behaviours. However, both these definitions present benefits, in addition to their inherent limits.

#### **3.2.3.1 Benefits and limits of a detailed definition**

To consider a given Internet content as being "unlawful" is not insignificant, it must therefore be done carefully. The first need is to identify the competent jurisdiction, and therefore to access the details of the applicable legislation. This implies to have available a detailed presentation of prohibited behaviours country by country. It is what we propose in Section 7 of the current report, in addition to a classification of these prohibited behaviours into three main categories (along with a fourth category targeting contents that should be illegal according to international instruments), for a better reading.

Additional interests of both defining precisely illegal hate speech and classifying these contents into the categories referred to above are the following:

- Only (potentially) illegal hate speech is targeted;
- All the contents that might be illegal in one of the E.U. Member States studied, currently or in the future due to the full implementation of a European or International legal instrument, are targeted;

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<sup>21</sup> Oxford dictionaries, *Definition of hate speech in English*", version of 8 July 2016 which was available at <http://www.oxforddictionaries.com/definition/english/hate-speech?q=hate+speech>. For further details see below Section 3.2.1.2 of the current report.

<sup>22</sup> Grant agreement n° JUST/2014/RRAC/AG/HATE/6652, p. 5, and Annex I, p.15.

- There is the possibility, if deemed appropriate, to differentiate the answer to be brought (1) to mainly common offences, (2) to offences that are illegal in most countries, (3) to offences that are illegal in some countries only, and (4) to offences that should be illegal in addition, according to International and European instruments. Indeed, each of these categories might involve specific outcomes in terms of recommendations.

As it has already been identified, limits are the length of the so obtained definition, and the difficulty to identify the competent jurisdiction (and therefore the applicable legislation), where facing a potentially illegal content. This identification might indeed be an issue in itself, since it might depend on the precise circumstances (not always known by the person who visualises a potentially illegal online hate speech), and several penal legislations might even be applicable to some cases. As a result, disclaimers must explain this situation, where the detailed definition of illegal hate speech is displayed, and contents should be ideally assessed by analysts with legal knowledge.

### **3.2.3.2 Benefits and limits of a more general definition**

Taking into account the difficulty to identify the competent legislation, the complexity of each national legislation, and the fact that only a judge can in principle<sup>23</sup> decide on what is illegal or not, considering specific circumstances that might not appear on the screen when a potentially illegal content is visualised, it might appear interesting to have available a more general and simple definition of illegal hate speech, which would enable to identify more easily behaviours to be targeted.

The limitation of this approach is that an important part of the identified contents might be not illegal, either because the circumstances of the action are not considered, or because a given behaviour is not illegal at all, in all jurisdictions (such as the propagation of intolerance), in most jurisdictions (such as the simple propagation of hatred or violence, or the private incitement to hatred) or in some jurisdictions (such as the public incitement to discrimination). Therefore, the use of a general definition implies the display of disclaimers explaining clearly this matter of fact, since presumption of innocence commands, in this context, to consider the qualification of “illegality” with greater care than where a precise and detailed definition is used. For this reason, a general definition should be avoided in projects or actions implying to “combat” hate speech<sup>24</sup>.

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<sup>23</sup> ECtHR, plen., 6 September 1978, *Klass and others v. Germany*, application n° 5029/71, especially § 55, <http://hudoc.echr.coe.int/eng?i=001-57510> (relating to interferences of public authorities with the right to privacy, but applicable *mutatis mutandis* given the importance of the right to freedom of expression in a society governed by the rule of law (see the MANDOLA Deliverable D2.2, Section 4.3, *op. cit.*). See also and for ex. the Committee of Ministers of the Council of Europe, Recommendation R(97)20 on “Hate speech”, 30 October 1997, <https://rm.coe.int/1680505d5b> (URL last accessed on 4 September 2017), Principle 3: “[...] in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others”.

<sup>24</sup> For a deeper analysis of this issue, see Section 4.2.1.1 of the current report.

## 4 Definition of illegal hatred

Results of the comparative analysis of the legislations of ten E.U. Member States, which are shown in detail in Section 7 of the current report, can be summarised through a classification of prohibited behaviours into four categories (Section 4.1). From this classification an attempt for a shorter definition can also be produced (Section 4.2).

### 4.1 Classification of Illegal hatred into four categories

The complexity of domestic laws (which might sanction close behaviours through different texts requiring different contextual conditions) and their huge heterogeneity makes it very complex to perform a detailed comparative analysis, as it has been already explained in this report. Most of all, it appears very difficult to provide a list of behaviours that are prohibited in all the European Union (unless reducing this list to a very limited number of illegal acts), and to give a clear picture of their legal bases and incurred sanctions.

As a consequence, the best approach in order to give a comprehensive comparative overview of hatred-related illegal behaviours in the ten E.U. countries that have been studied (Belgium, Bulgaria, Cyprus, France, Germany, Greece, Ireland, the Netherlands, Romania, and Spain), has been found to be a classification into four categories, namely (1) behaviours that are illegal in all or almost all the E.U. Member States studied, (2) behaviours that are illegal or partially illegal in a majority of these countries; (3) behaviours that are illegal in a minority of these countries; and (4) additional behaviours that should be illegal according to European and International instruments.

Findings below are out of ten countries chosen as described in Section 2.2.1 of the current report. Therefore, these results must be handled with care since these ten countries cannot be considered as statistically representative of all the E.U. Member States.

#### 4.1.1 Behaviours that are illegal in all or almost all the E.U. Member States studied

Six common or largely common prohibited behaviours have been identified. They are the following:

##### ***4.1.1.1 Public incitement to hatred or eventually violence or discrimination on illegal grounds, eventually subject to conditions relating to the nature or to the impact of the action***

**Publicly inciting hatred (in ten countries<sup>25</sup>) or violence or discrimination (in eight countries) directed against a group of persons or a member of such a group,**

- determined on the basis/grounds of their race, national or ethnic origin, and (if used as a pretext for any of the other factors) religion,
- if (three countries impose in addition one of the following conditions<sup>26</sup>) the incitement is either carried out in a manner likely to disturb public order (two countries), or public

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<sup>25</sup> We indicate in brackets (here and below) the number of States, among those that have been studied, which law prohibits the related behaviour (precisely or on the basis of a wider text).

<sup>26</sup> As this is authorised by the Framework decision 2008/913/JHA.



peace (one country), or which is threatening, abusive or insulting (one country, alternatively to the first condition).

It is to be noted that if the punishment for *"incitement"* (or provocation<sup>27</sup>) to hatred (and violence and/or discrimination in eight countries) is shared by all the countries, several of the latter do provide for the punishment of wider acts such as propagation (Bulgaria), *"call for"* violence or arbitrary measures (Germany), to *"cause"* or to *"induce"* acts or activities which *"can lead to"* (Greece), to *"encourage"* (the Netherlands), to publish content that are *"intended"* or are *"likely"* to *"stir up"* hate (Ireland), to publicly *"directly or indirectly foment, encourage or incite hostility"* (in addition to hate, violence or discrimination) (Spain), and to express a public *"behaviour with a nationalist-chauvinist propaganda character, instigating to racial or nationalistic hatred"* (Romania). One country (Belgium) moreover punishes, in addition the incitement to hate, violence and discrimination, the incitement to segregation.

These actions are mostly only punished where committed in public, but in a few countries private incitement might also be sanctioned (such as in Bulgaria, in France and in the Netherlands).

Regarding illegal motivations, an important number of countries add additional illegal grounds, which are (all taken together) the following: sexual preferences or orientation (five countries) or hetero or homosexuality (one country); disability (four countries) or bodily, psychological or mental handicap (one country); sex (two countries) or sex and gender motives (one country) or gender (one country); gender identity (two countries) or sexual identity (one country); national or ethnical ancestry (one country) or genealogical origin (one country) or descent (one country) or ethnic, racial or national belonging of family members (one country); origins (two countries) or social origins (one country); nationality (two countries); skin colour (two countries); ideology or beliefs (two countries) or political or philosophical beliefs (one country); familiar situation (one country); age (one country); civil status (one country); birth (one country); fortune (one country); language (one country); state of health (one country); illness (one country); physical or genetic characteristics (one country); membership of the travelling community (one country). These statistics **do not include** one country (Romania) in which the prohibited behaviour is illegal **whatever the motivation**.

In addition, one country (France) prohibits explicitly the motivations where they target the membership as well as the non-membership of the victim of one of the afore-mentioned categories. Some countries (Belgium and France) prohibit the motivation based on certain characteristics of the victim regardless of whether these characteristics are real or "supposed". The list above must in any case be interpreted with care, since a lot of the grounds it includes are not common or only partially common to some of the E.U. Member States studied.

Furthermore, it must be noted that *"colour"* and *"descent"*, which are not explicitly illegal grounds in all countries, should be commonly illegal according to the Council Framework Decision 2008/913/JHA and the International Convention on the elimination of all forms of

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<sup>27</sup> The term *"provocation"* is used in French law instead of *"incitement"*. According to French courts, *"provocation 'is not necessarily an exhortation, but a positive act of evident incitement'"*: tribunal correctionnel de Paris, 3 June 2016, n° de Parquet 15021000202, published by Me Caroline Mecary, 10 June 2016, <https://consultation.avocat.fr/blog/caroline-mecary/article-11490-tribunal-correctionnel-de-paris-3-juin-2016-provocation-a-la-haine-n-parquet-15021000202.html> (last accessed on 30 June 2017).

racial discrimination, as well as (according to the latter Treaty) the "*dissemination of ideas based on racial superiority*" (which is only covered by law in Cyprus and Romania) and the incitement to discrimination.

#### ***4.1.1.2 Making available materials inciting (and eventually promoting) hate and eventually violence or discrimination based on certain grounds through a computer system***

**Making available to the public xenophobic or racist material which incites hatred** (ten countries) **or violence** (nine countries) **or discrimination** (fully covered in eight countries), **or which promotes hatred** (fully covered in five countries), **violence** (fully covered in four countries) **or discrimination** (fully covered in four countries), **through a computer system**, for illegal listed reasons.

It is notable that, in the same line as in the previous section for most countries, the punishment for "*incitement*" (or provocation<sup>28</sup>) to hatred (and violence and/or discrimination in respectively nine and eight countries) is shared by all the countries, but several of the latter do provide for the punishment of wider acts such as propagation (Bulgaria), "*call for*" violence or arbitrary measures (Germany), to "*cause*" or to "*induce*" acts or activities which "*can lead to*" (Greece), to "*encourage*" (the Netherlands), to publish content that are "*intended*" or are "*likely*" to "*stir up*" hate (Ireland), and to publicly "*directly or indirectly foment, encourage or incite hostility*" (in addition to hate, violence or discrimination) (Spain).

It must also be noted that "*advocating*" and "*promoting*" hatred, violence and discrimination should be commonly illegal according to the additional protocol to the convention on Cybercrime, whereas "*promotion*" of hate is only punished in five countries and whereas "*advocating*" hate, as such, is absent from all the legislations (even though it might be covered by close notions).

Regarding the means of transmission, seven countries do not limit the prohibition to the making available of illegal materials through computer system, but include any means of communication.

Regarding illegal grounds, the list is almost the same as the one mentioned in Section 4.1.1: all countries provide here for the same illegal grounds at the exception of one country (Cyprus) which does not punish in this context the motivation of "sexual orientation" (even with a lower sanction), and of another country (Romania) which does not any more punish the behaviour whatever the ground, but only in case of distribution of "*flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines*". In addition, "colour" and "descent" are not explicitly illegal grounds in every country although they should be commonly illegal according to the additional protocol to the Convention on cybercrime.

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<sup>28</sup> The term "*provocation*" is used in French law instead of "*incitement*". According to French courts, "*provocation* *is not necessarily an exhortation, but a positive act of evident incitement*": tribunal correctionnel de Paris, 3 June 2016, n° de Parquet 15021000202, published by Me Caroline Mecary, 10 June 2016, <https://consultation.avocat.fr/blog/caroline-mecary/article-11490-tribunal-correctionnel-de-paris-3-juin-2016-provocation-a-la-haine-n-parquet-15021000202.html> (last accessed on 30 June 2017).

#### **4.1.1.3 Public insult based on certain victim's characteristics**

**Publicly insulting a person or a group of persons by reason of their race, or their national or ethnic origin or (if used as a pretext for any of the other factors) religion** (prohibited or covered in ten countries but only six of them accept both one person or a group as a victim), **by any means** (unless in one country - Cyprus - where the ground of nationality, as well as colour and descent, is only taken into account where committed through a computer system), if it has the effect that this person or group of persons is exposed to hatred, contempt or ridicule (only one country - Cyprus - adds this requirement in relation to insults committed through a computer system - being the sole legal basis to cover grounds of "nationality", "colour" and "descent") or if the perpetrator has the intent to provoke a breach of the peace or is reckless as to whether a breach of the peace may be occasioned (only one country - Ireland - adds this requirement).

Despite the fact that this prohibition is required by the additional protocol to the Convention on cybercrime, which enables the States to add the above-mentioned condition relating to exposure to hatred, contempt, or ridicule<sup>29</sup>, four countries prohibit insult only where it is directed against a person (and not a group of persons). In addition, one country (the Netherlands) does prohibit hatred-related insult only where it is committed against a group, and prohibits the insult against a person separately, on another legal basis, whatever the motivation. One country (Romania) also prohibits the behaviour where committed against a community.

In a majority of countries, the behaviour is illegal whatever the ground, but some of the illegal grounds mentioned in relation to the incitement to hatred may be taken into account as aggravating circumstances (in Belgium, France<sup>30</sup> and Bulgaria<sup>31</sup>).

#### **4.1.1.4 Public defamation based on certain victim's characteristics**

**Public defamation** (prohibited in ten countries, penally in eight of them), **on any ground** (eight countries) **or at least on the grounds of race, nation, ethnicity, religion or other beliefs/convictions<sup>32</sup>, sex or gender<sup>33</sup>, sexual orientation** (common to the two remaining countries). Two countries prohibiting defamation whatever the ground provide for aggravating circumstances in case the action is motivated by specific grounds, and for a higher sanction in such cases (Belgium and France<sup>34</sup>). In an additional country, specific grounds may be taken into account as aggravating circumstances based on a Courts' practice, even if law does not provide for it (Bulgaria). Defamation is generally punished

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<sup>29</sup> As well as the possibility to not apply, in whole or in part, the requirement to penalise this act of insult (art. 5, 2 b).

<sup>30</sup> The French provisions aggravate the sanctions of insult and of defamation in case the offence is committed against a person or a group of persons with illegal motivations. This can be seen as an aggravating circumstance, but alternatively as an autonomous offence since the penal provision sanctions hate-related insult in a separate paragraph, with different constitutive elements. For example, according to Art. 33 of the Law of 1881, insult is only punished if not preceded by provocation, which is not the case where the insult is motivated by hate (where provocation is inoperative).

<sup>31</sup> In Bulgaria it is not based on a legal text but on a courts' practice.

<sup>32</sup> Spain evokes "beliefs", and Romania "a specific social or unprivileged category or their conviction".

<sup>33</sup> Spain evokes "gender and reasons of gender", Romania evokes "sex".

<sup>34</sup> See footnote n°30.

when it targets a person, but some countries also punish this behaviour when directed against a group of persons or a community.

#### ***4.1.1.5 Threatening a natural person with the commission of a serious offence, eventually motivated by racism and xenophobia***

**Threatening a natural person with the commission of a serious offence** (ten countries), **often under certain additional conditions** (six countries - depending on the country: threat likely to evoke fear or cause anxiety or intended to intimidate, or repeated or materialised, or committed with the intent to provoke a breach of the peace or knowledge that such a breach might occur), **eventually motivated by racism or xenophobia** (for the reason that the victim belongs to a group distinguished by factors such as racial, national or ethnic origin, colour, descent, or -if used as a pretext for any of these factors-, religion).

**Regarding the subject of the threat**, two countries only punish threats where their subject is the commission of a serious offence<sup>35</sup> (France: attempt must be punishable and the threat must be repeated or materialised; the Netherlands: it must be public violence jointly committed or some serious offence). One more country (Ireland) requires a threat of serious harm too but alternatively punishes all forms of threat if an additional condition is met (the public commission of the threat with the intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned). The seven other countries require (sometimes in addition to the parallel punishment of threats of serious offence/harm) that the offence is a misdemeanour or a crime (or belongs to a certain list of misdemeanours and crimes), or at least a violence or harm not necessarily qualified in terms of the criminal law. In addition, two of the latter countries punish alternatively all forms of threats without any other condition where committed through computer systems on illegal hatred-related grounds (Cyprus and Romania).

#### **Regarding additional conditions:**

- The threat to commit a misdemeanour or a crime, without any other condition, is punished in three countries out of ten (Belgium, Germany, and Spain).
- The threat to commit a serious crime without any other condition is punished in one country (the Netherlands).
- In the six other countries (in addition to Spain where the condition is an aggravating circumstance), an additional condition must be established: the threat must be likely to evoke fear of implementation (Bulgaria), or must be of nature to cause a state of fear (Romania<sup>36</sup>) or must have for purpose to intimidate (Cyprus<sup>37</sup>) or terrorise (Spain, as aggravated circumstance); or must cause to a person fright or anxiety (Greece); or must be committed with the intent that the other believe it will be carried out AND must be a threat to cause death or serious harm OR might be a threat to cause non-serious harm but committed publicly with the intent to provoke a breach of the peace or being

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<sup>35</sup> Without consideration of threats with the order to fulfil a condition, handled at the end of this Section.

<sup>36</sup> Alternatively to the punishment of all forms of threats without any other condition where committed through computer systems on illegal hate-related grounds (see above).

<sup>37</sup> Alternatively to the punishment of all forms of threats without any other condition where committed through computer systems on illegal hate-related grounds (see above).

reckless as to whether a breach of the peace may be occasioned (Ireland); or the threat must be repeated or materialised (France).

Alternatively, four countries punish threats to compel someone to do or to omit something: Bulgaria, Cyprus, Germany, and (threat with the order to fulfil a condition) France.

#### ***4.1.1.6 Direct or indirect discrimination, including harassment, based on illegal grounds, in certain specified areas***

**Direct or indirect discrimination, including harassment, in certain specified areas** (employment, education, access to goods and services), of a person (sometimes of a group or community) based on factors such as racial or ethnic origins (fully covered in six countries, partly covered in the four others; seven countries provide for penal provisions, the three others provide for civil and/or administrative ones).

**This behaviour is generally only punished in the following areas** (on the basis of the Council Directive 2000/43/EC): conditions for access to employment, to self-employment and to occupation; access to vocational guidance and training; employment and working conditions; involvement in a professional organisation; social protection and advantages; education; access to and supply of goods and services which are available to the public. An exception might concern harassment, which is prohibited whatever the area in some countries.

**Common illegal grounds** are racial or ethnic origins but a lot of additional ones may be taken into account. In addition to the list of grounds already provided in relation to incitement to hatred (see our Section 4.1.1.1 above), additional grounds may be, in certain countries, the membership in a trade union (Bulgaria, or the support of such organisation in Spain, or Union activities in France) or another type of organisation, political party, organisation, movement or coalition with political objective; the next-of-kin political convictions (Bulgaria); the community or special needs (Cyprus), pregnancy, physical appearance, particular vulnerability due to their economic situation (apparent or known by the perpetrator), surname, place of residence, state of health, loss of autonomy, disability, way of living/moral, fact to have suffered or refused to suffer sexual harassment or hazing (as defined by the penal Code) or to have testified about such facts, ability to speak another language than the local one (France, which also prohibits the ground of motherhood, but not in the penal provisions), marital status, family status (Ireland), social category or unprivileged category (Romania), kinship with other workers in the company (Spain).

It must also be noted that these provisions have not been adopted in order to handle online contents, but several legal authors think that some electronic contents (incitement to violence, statement of discrimination, instructions to discriminate...) could be in certain cases sanctioned under these provisions.

#### **4.1.2 Behaviours that are illegal or partially illegal in a majority of the E.U. Member States studied:**

Six conducts appear to be prohibited in a majority of countries. They are the following:

##### ***4.1.2.1 Participating in or establishing organisations that promote or incite discrimination, hate or violence based on certain persons' characteristics***

**Establishing** (mentioned or covered in six countries) **or participating** (mentioned or covered in eight countries) **in organisations that:**

- **promote discrimination** (mentioned or fully covered in nine countries) **or violence** (mentioned or fully covered in seven countries) **or hatred** (mentioned or fully covered in six countries), **or**
- **Incite discrimination** (mentioned or fully covered in eight countries) **or hatred** (idem) **or violence** (idem),

against a person or a group of persons based on factors such as race, national or ethnic origin (nine countries out of nine that prohibit the behaviour) or religion (fully covered in seven countries out of nine).

Penal sanctions are provided in eight countries; one country (France) provides for disband only; one country (Ireland) does not especially prohibit such groups.

Illegal motivations that are common to all the countries which prohibit at least partly the behaviour are race, or national or ethnic origin (covered in nine countries out of nine<sup>38</sup>). Moreover, religion is fully covered in seven countries. For the rest, motivations listed in relation to incitement to hatred (see our Subsection 4.1.1.1) may apply in certain countries. In addition, other illegal grounds may apply in one country (Romania): social category, non-transmissible chronic disease, HIV infection, belonging to a disadvantaged category, as well as any criterion which would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by law, in the politic, economic, social and cultural field or in any other field of the public life.

In parallel or instead of the establishment and/or participation in such groups, some countries punish the lead (Bulgaria), the recruitment of members or supporters (Germany), the providing assistance to (Belgium) or the support of such group (Germany and Romania), the financial or other material support of such group (the Netherlands), the fact to initiate such a group (Romania) or to adhere to it (Romania), or only the association itself (Spain).

Regarding the victims, some countries do not specify them (Cyprus and Romania), some countries protect "persons" (the Netherlands), or "one person" (Belgium), while one country protects, in addition to persons and groups having particular characteristics, associations (Spain).

Regarding the prohibited action of the group, beside or instead promotion and incitement to discrimination, violence and hatred, some countries punish or prohibit the promotion of segregation (Belgium), the "*promotion of propaganda aiming at racial discrimination*" (Cyprus) or the "*fascist, racist or xenophobic character*" of the group (Romania), the "*dissemination of ideas or theories* (which is wider than "promotion") *which attempt to*

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<sup>38</sup> One country does not prohibit this behaviour.

*justify or encourage such discrimination, hatred or violence” (France), the systematic seek to carry out actions that cause, induce or incite acts which can lead to discrimination, violence or hatred in a manner that compromises public order or poses a threat to liberty or physical integrity of the victims (Greece), the simple aim to discriminate (the Netherlands) or to incite and promote hatred (Bulgaria and Germany), or the fact to directly or indirectly encourage, promote or incite hatred, hostility, discrimination or violence (Spain).*

Regarding the international instrument that requires the criminalisation of these actions, namely the International Convention on the elimination of all forms of racial discrimination, it is not followed by all countries in relation to material acts (as a minimum, organisations that promote and incite racial discrimination<sup>39</sup> should be prohibited, and participation in such an organisation should be a penal offence<sup>40</sup>). The same conclusion can be reached in relation to illegal grounds, since religion, colour and descent should be covered. Moreover, the Convention does not provide for the possibility to require an additional condition such as the compromise of public order.

***4.1.2.2 Public condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes, eventually subject to conditions relating to the impact of the action or to the perpetrator’s motivation.***

**Public condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes<sup>41</sup>, where it is motivated by racism and xenophobia or it is directed against persons determined based on some of their personal characteristics and/or it is threatening or abusive, or it poses a risk of violence or hate or of disturbing the public peace.**

This behaviour is fully prohibited or covered in one country (Cyprus); mainly or partly prohibited/covered in five countries (Bulgaria, France, Greece, Romania and Spain); limited to the holocaust / National Socialism in three countries (Belgium, Germany and the Netherlands), and not prohibited in one country (Ireland).

Additional requirements might be that the action poses a risk of violence or instigates hatred among individuals or groups of people united on certain grounds (Bulgaria), or that it is directed against a person or group of persons determined based on certain characteristics and is such that it can incite violence or hatred against these persons or involves a threatening or abusive character (Greece), or is motivated by racism and xenophobia (Cyprus and Spain), or is performed in a manner capable of disturbing the public peace (Germany).

Where the action is only punished where directed against persons determined (Greece) or united (Bulgaria) based on some of their personal characteristics, or motivated by racism and xenophobia (Cyprus, Spain), common illegal grounds or characteristics are race, national or ethnic origin, religion, and (missing in only one country, if we consider that “origin” and “genealogical origin” cover “descent” in the others) colour and descent.

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<sup>39</sup> "Racial discrimination" refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.

<sup>40</sup> Article 4b.

<sup>41</sup> As they are defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, and in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945.

In this context, it seems interesting to recall the provisions of European and International instruments, since their disparity might explain, at least partly, such domestic differences:

- The Council Framework Decision 2008/913/JHA requires the criminalisation of the public condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes<sup>42</sup> (therefore the action as we defined it in its first part in the introduction of the current Subsection) *“where it is directed against a group of persons or a member of such a group defined by reference to”* the characteristics mentioned above<sup>43</sup>, *“when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group”*. In addition, Member States may choose to punish only the conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting, and may restrict some material elements of the offence to the condition that the crimes (whose apology / deny / trivialisation takes place) have been established by a final decision of a national court of this Member State and/or an International court, or by a final decision of an International court (which some countries studied in this report do require). Comparing these provisions to domestic ones, we notice that countries mostly share parts of the core definition of the action (only one country implements the Council Framework Decision correctly regarding the punishment of the (1) condoning, (2) deny and (3) gross trivialisation of the entire list of crimes mentioned above), the other elements of the infringement (impacts on individuals or on the public order, shared characteristics or grounds motivating the action) being heterogeneously required by a minority of States.
- The additional protocol to the Convention on cybercrime requires the punishment (where committed using a computer system) of the denial, gross minimisation, approval or justification of genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of relevant international courts, without requiring that the action is motivated by any particular ground. However, Member States may require that the denial or the gross minimisation is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on the same grounds as the Council Framework Decision, adding *“or otherwise”*. In addition, a party may reserve the right not to apply, in whole or in part, the provision requiring the penalisation of this behaviour.

#### ***4.1.2.3 Sending of grossly offensive and/or indecent or obscene or menacing content, mostly for any reason***

The behaviour, labelled as above, is prohibited in one country only (Cyprus) and five other countries prohibit it partly. The exact nature of the content that is prohibited varies widely. Indeed, might be prohibited contents that are indecent (Belgium, Cyprus, and the Netherlands), obscene (Cyprus and Ireland), menacing or grossly offensive (Cyprus), infringing a person's dignity (Spain), abusive or insulting or threatening (Ireland), violent or inciting terrorism or seriously offending human dignity or inciting juveniles to play games

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<sup>42</sup> As they are defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, and in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945.

<sup>43</sup> As always, religion may only be an illegal ground where it is used as a pretext for any of the other factors, according to the Council Framework Decision 2008/913/JHA and the additional protocol to the Convention on cybercrime.



which are physically dangerous to them (France). Some countries may require an additional condition (such as the intent to provoke a breach of the peace or being reckless as to whether it might happen - in Ireland) in order to punish the behaviour. These results do not take into account neither the precise infringements of threat, insult, and defamation which are studied above and below in the current Section 4, nor infringements targeting the sending of child-pornography or pornography-related materials, which are clearly outside the scope of the study.

This behaviour, where penally sanctioned at least partly, is punished whatever the ground, except in Spain where motivations must be one of the following: religion or beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, reasons of gender, illness or disability.

#### ***4.1.2.4 Direct public incitement to commit any misdemeanour or crime, for any reason***

This behaviour is fully prohibited or covered in six countries, and partly prohibited in two additional countries. Five countries prohibit the behaviour even if no infringement has resulted from the incitement, without any other condition. Two countries (France and Spain) restrict the prohibition to a limited list of infringements, whereas two countries (France - alternatively to the above-mentioned restriction, with a different sanction, and Belgium) do not restrict the prohibition to a limited list of infringements but prohibit this behaviour only where the incited offence has been at least attempted. These outcomes do not take into account the infringement of threat, which has been previously analysed.

#### ***4.1.2.5 Illegal motivations as aggravating circumstance***

**Some illegal motivations are an aggravating circumstance in relation to all or some penal infringements, *inter alia* the following:** race (eight countries out of eight), ethnic origin (covered in eight countries); national origin / nationality (covered in eight countries); religion (covered in seven countries); gender and sexual orientation (six countries); political beliefs (five countries); handicap (four countries); age, philosophical beliefs (three countries each).

Some hatred-related motivations are an aggravating circumstance in relation to all the penal infringements in six countries out of ten (Cyprus, France, Germany, Greece, Romania and Spain), as it is requested by the Council Framework Decision 2008/913/JHA. This means that in relation to all the other infringements studied in this report, where a given behaviour is punished whatever the motivation of the perpetrator, an illegal motivation should drive to a higher penalty<sup>44</sup>.

In two other countries, some hatred-related motivations are an aggravating circumstance in relation to certain offences only, which has already been considered, in this report, within the framework of the presentation of each concerned infringement. It does concern insult

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<sup>44</sup> Most of the time, at the domestic level, the general provision providing for an aggravating circumstance in all crimes and misdemeanours does not apply to the penal infringements whose legal basis does already provide for a sanction in case illegal motivations of the perpetrator are established. This is for example the case in France where the provisions that describe insult and defamation provide themselves for higher sanctions in case the offence is committed against a person or a group of persons with illegal motivations. As a consequence, the French general provision aggravating sanctions in all crimes and misdemeanours where committed on the same grounds, expressly excludes its application to insult and defamation.

and defamation in two countries (Belgium and Bulgaria<sup>45</sup>), and harassment in one country (Belgium), in addition to a list of acts which go beyond the scope of this report such as some forms of violence (in Belgium and Bulgaria as well).

Illegal hatred-related motivations are mainly race, national origin or nationality; ethnic origin (covered in eight countries out of eight); religion (seven countries); gender and sexual orientation (six countries); political beliefs (five countries); handicap (four countries); age, philosophical beliefs (three countries each). Other grounds belonging to those highlighted in Section 4.4.1.1 above might be considered depending on the country, as well as additional ones which are the following (outside motivations specific to bodily injury which are out of the scope of the study): racist, xenophobic or other inhuman (Germany); wealth, chronic non-contagious disease or HIV/AIDS infection, social category, inclusion in an unflavoured category, or any other criterion (Romania, in relation to harassment). We can notice that some of these grounds are widely open to interpretation.

#### **4.1.2.6 *Insult to religion / blasphemy***

This infringement is fully covered in four countries, and partly covered in three additional countries (including one case of prohibition of defamation of religion - in Germany).

#### **4.1.3 Behaviours that are illegal in a minority of the E.U. Member States studied**

Finally, five conducts appear to be prohibited in a minority of countries. They are the following:

##### **4.1.3.1 *Sending a message, or whatever content, which can cause annoyance, harassment and / or needless anxiety to another person, which the sender knows to be false, for any reason***

This behaviour is fully prohibited in one country only (Cyprus). In addition, it might be covered by civil provisions in one additional country (Romania). In all the other countries, this behaviour might be more or less covered by provisions relating to harassment, threat, insult, and defamation already studied.

##### **4.1.3.2 *Promotion or public incitement to hostility or violence between communities***

This behaviour is prohibited or covered in two countries (Belgium in relation to a list of motivations, and Cyprus whatever the ground), and not prohibited in four countries. Experts who contributed to the study in relation to the four remaining countries (Bulgaria, Germany, Romania and Spain) consider that some aspects of the behaviour might be sanctioned under some provisions of their respective penal Code relating to certain forms of attacks against persons or their property (see Section 7.4.4 below in relation to Bulgaria), under the provisions that prohibit the incitement to hatred (see Section 7.1.1 below), the public incitement to commit a penal offence (see Section 7.4.3 below) or the condoning of certain categories of crimes (See Section 7.1.8 below).

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<sup>45</sup> In Bulgaria, these specific grounds may be taken into account as aggravating circumstances based on a Courts' practice, the law does not provide for it in relation to insult and defamation.

**4.1.3.3 *Recording of images of the commission of a crime or misdemeanour against a person, on any ground and by any means***

This behaviour is prohibited in one country (France), and might be (sometimes very) partly covered in four additional countries (Belgium, Germany, Romania and Spain). These outcomes do not take into account infringements targeting child-pornography or pornography-related materials, which are clearly outside the scope of the study.

**4.1.3.4 *Realising a montage with the talk or the images of a third party without his or her consent, if it is not obvious that it is a montage or if it is not specified that it is a montage, on any ground***

This behaviour is prohibited or covered in two countries (France and Spain). These outcomes do not take into account infringements targeting privacy or personal data violations, falsification of technical records for the purpose of misleading judicial authorities, copyright and related rights, and insults.

**4.1.3.5 *To misuse / usurp someone else's identity, on any ground***

This behaviour is prohibited in two countries (Spain and France). In some other countries and in some situations, the infringement of forgery may cover this behaviour.

**4.1.4 Additional behaviours that should be illegal according to European and International instruments**

The following actions should be illegal according to European instruments, or to International instruments to which some E.U. Member States are parties, but are not visible in the previous categories:

**4.1.4.1 *Dissemination of ideas based on racial superiority or hatred directed against any race or group of persons of another colour or ethnic origin***

This behaviour should be declared an offence punishable by law, according to Art. 4, a) of the International Convention on the elimination of all forms of racial discrimination.

Only two legislations, amongst the ones of the ten E.U. Member States studied, cover entirely this prohibition (these legislations have been taken into consideration in Sections 4.1.1.1 and 4.1.1.2 above).

**4.1.4.2 *Provision of any assistance to racist activities, including the financing thereof.***

This behaviour should be declared an offence punishable by law, according to Art. 4, a) of the International Convention on the elimination of all forms of racial discrimination.

This behaviour might in several countries be sanctioned under the prohibition of the complicity / aiding and abetting offences introduced into domestic laws in the field of racist activities, but has not been noticed labelled as above (except regarding the financing of the organisations mentioned in 4.1.2.1 above).

## 4.2 Attempt for a more global definition

A simplified definition of potentially illegal hate speech has been created based on "gross" actions that are likely to be illegal in the ten E.U. Member States studied. Key elements of penal (and in a few cases civil) offences have been included in a table presented in Section 4.2.2, from which a short definition has been issued. This short definition is presented in Section 4.2.1, together with a disclaimer, its structure and its details. It constitutes an attempt to summarise what is potentially illegal hate speech in the ten E.U. Member States that have been studied.

### 4.2.1 Short definition of potentially illegal hate speech: disclaimer, structure and details

The short definition proposed below (Section 4.2.1.2) must be read together with a specific disclaimer (Section 4.2.1.1). It is, along with its structure (Section 4.2.1.3) and details (Section 4.2.1.4), the result of a classification, in a table, of the key elements of penal (and in a few cases civil) offences (Section 4.2.2).

#### 4.2.1.1 Short definition - disclaimer

Given their very generic nature, the table presented in Section 4.2.2 and the short definition issued from this table, proposed below in Section 4.2.1.2, must be interpreted with care. Indeed, they **only present the main actions that might be considered in certain circumstances as being potentially illegal where they are displayed by writing or another form of verbal or non-verbal expression**. In other words, they **only highlight the type of contents in which potentially illegal contents can be found**. However, each of the listed actions might (1) not be illegal in all or in some E.U. countries, and might (2) in all or in some countries be illegal only if some additional circumstances are noticed (such as a particular motivation of the perpetrator, an impact on public order, a publicity of the action, etc.).

As a consequence, this short definition cannot be used to take measures, against an online content, that would limit fundamental freedoms such as the right to communicate or to access information, and, more generally, must not be considered as a convenient tool to deal with most of the issues surrounding online hate speech<sup>46</sup>. It might only be used to distinguish relatively easily potentially legal content from potentially illegal content in the area of hate speech, keeping in mind that this second category will include perfectly legal contents which might need to be excluded from the category of potentially illegal contents by legal experts able to identify the applicable legislation, and that, in all cases, only a judge is in principle entitled to declare the illegality of a given content<sup>47</sup>.

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<sup>46</sup> See for example Asja Rokša Zubčević, Stanislav Bender, Jadranka Vojvodić, *Media regulation authorities and hate speech*, June 2017, Council of Europe publishing, <https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5>, p.10: "there is no universal definition of hate speech, which is a matter of large debate on many international fora. Some critics have argued that the term hate speech is used to silence critics of social policies that have been poorly implemented. On the other hand, there are many issues surrounding hate speech and global definition might not be the best tool to dealing with them".

<sup>47</sup> ECtHR, plen., 6 September 1978, *Klass and others v. Germany*, application n° 5029/71, especially § 55, <http://hudoc.echr.coe.int/eng?i=001-57510> (relating to interferences of public authorities with the right to privacy, but applicable *mutatis mutandis* given the importance of the right to freedom of expression in a society governed by the rule of law (see the MANDOLA Deliverable D2.2, Section 4.3, *op. cit.*). See also and for ex. the Committee of Ministers of the Council of Europe, Recommendation R(97)20 on "Hate speech", 30 October 1997, <https://rm.coe.int/1680505d5b> (URL last accessed on 4 September 2017), Principle 3: "[...] in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is

#### 4.2.1.2 Short definition - content

The analysis of ten E.U. Member States' legislations leads to define hate speech contents that are potentially illegal in one, several or all these ten E. U. Member States as follows:

- The incitement, propagation or support to hatred, violence, discrimination, segregation, or hostility; the incitement or threat to commit harm or violence or a crime or a misdemeanour; humiliation, offence to dignity, insult, defamation, discrimination or harassment; the action to force or to prevent or to commit threat in order to compel someone to do something against his/her will; committed intentionally against a person, a group of persons and possibly a community, on grounds of some of the particular characteristics of this person or of persons belonging to this group or community.
- The intentional outrage, insult, defamation or blasphemy directed against religion, ideology, the Divine, or offence of believers' religious feelings.

This short definition appears more detailed but larger than the one proposed by the Council of Europe Committee of ministers<sup>48</sup>, and appears closest from the one proposed by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe<sup>49</sup>.

However, all these three definitions are marred by the same defect, as recalled in the disclaimer provided in the previous section and as it has been perfectly articulated by the British Institute of Human Rights: *"the boundaries of what is regarded as hate speech under this definition are likely to fall outside the boundaries of speech which is criminalised under national legislation. They are also likely to fall outside the boundaries of speech which should not be restricted under freedom of expression (see diagram below). These are important points because the most common strategy of organisations working in this area appears to be to campaign for greater restrictions on content, or to campaign for content to be taken offline"*<sup>50</sup>.

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*particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others".*

<sup>48</sup> In its Recommendation n° R (97)20 on Hate speech, 30 October 1997, Appendix (Scope), available at <https://rm.coe.int/1680505d5b> (last accessed on 21 August 2017): *"the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism 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>49</sup> ECRI, General Policy Recommendation n° 15 on combating hate speech adopted on 8 December 2015, Explanatory Memorandum, [https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N15/REC-15-2016-015-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf), n°9, p. 16 (last accessed on 21 September 2017) : *"Hate speech for the purpose of the Recommendation entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation"*.

<sup>50</sup> Young People Combating Hate Speech On-line, Mapping study on projects against hate speech online, prepared by the British Institute of Human Rights, 15 April 2012, Council of Europe publishing 2012 (DDCP-YD/CHS (2012), <https://rm.coe.int/16807023b4> (last accessed on 21 August 2017), Section 2.1.1, 2, p. 9.

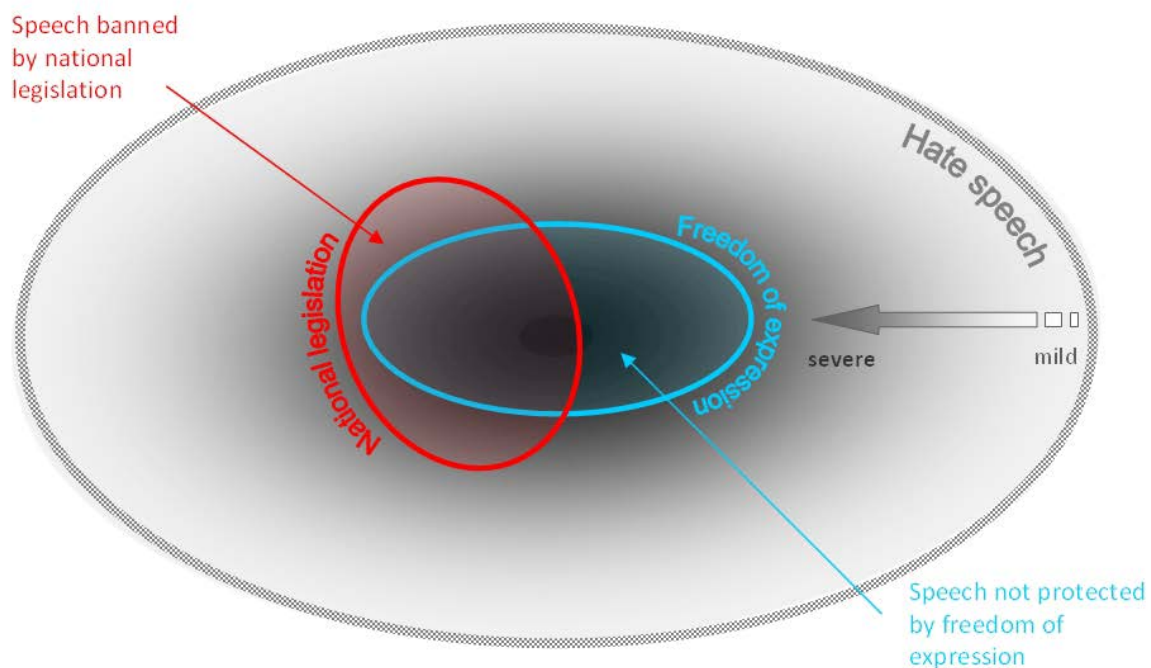


Diagram (© Council of Europe) extracted from the document Young People Combating Hate Speech On-line, *Mapping study on projects against hate speech online*, published by the Council of Europe on 15 April 2012<sup>51</sup> and reproduced with permission.

#### 4.2.1.3 Short definition - structure

Schematically speaking, hate speech that is potentially illegal might be summarised in four categories of actions, of which one category is committed against religion or the Divine, and of which the three other categories are committed against persons.

In the latter case, the actions should be committed by reason of the belonging or not belonging to a real or supposed particular group or on the basis of one of the particular individual characteristics of the victim(s), which might be physical, psychological, philosophical, or behavioural.

These categories are the following:

##### Illegal actions committed against persons:

- To incite, propagate or even support hatred, violence, discrimination, segregation, hostility; to incite or threat to commit harm, violence, a misdemeanour or a crime;
- To humiliate, offend the dignity, insult, defame, discriminate and harass;
- To force or prevent or commit threat in order to compel someone to do something against his/her will.

##### Illegal actions committed against religion or the Divine:

- To outrage, insult, defame, blaspheme religion, ideology, the Divine, or to offend religious feelings of believers.

<sup>51</sup> Young People Combating Hate Speech On-line, *Mapping study on projects against hate speech online*, prepared by the British Institute of Human Rights, 15 April 2012, Council of Europe publishing 2012 (DDCP-YD/CHS (2012), <https://rm.coe.int/16807023b4> (last accessed on 21 August 2017), Section 2.1.1, 2, p. 9.

#### **4.2.1.4 Short definition - details**

The short schematic definition exposed above can be slightly detailed as follows.

Potentially illegal hate speech includes:

***1 - Actions committed against a person, and possibly against a group of persons or a community, committed by reason of their belonging or not belonging to a real or supposed particular group or on the basis of one of their particular individual characteristics (physical, psychological, philosophical, or behavioural):***

***1. To incite, propagate or even support hatred, violence, discrimination, segregation, hostility; to incite or threat to commit harm, violence, a misdemeanour or a crime***

- To incite, promote, advocate, propagate, cause, call for, cause, induce, encourage, incite acts which can lead to hatred, violence, discrimination (which might include racial differences or arbitrary measures), segregation, or hostility (which might include a feeling of ill).
- To establish, participate, form, lead, support, recruit for, initiate, an organisation that promotes, incites or propagates hatred, violence, discrimination, segregation, hostility or that disseminates ideas or theories which attempt to justify or encourage, or systematically seeks to carry out these activities or with a fascist, racist or xenophobic character.
- To incite the commission of a crime/misdemeanour.
- To threat to do harm or to commit violence, or a crime/misdemeanour.
- To threat to commit crimes of war, of genocide, against humanity, against peace (might be seen in addition [4]: holocaust, collaboration with the enemy).

***2. To humiliate, offend the dignity, insult, defame, discriminate and harass***

- To defame, insult, injure, or create a hostile, degrading, humiliating, offensive, intimidating environment.
- To directly or indirectly discriminate or harass someone (particularly but not systematically in relation to employment, self-employment, training, working conditions, involvement in professional organisations, social protection and advantages; education; access to and supply of goods and services).
- To condone, deny, (grossly) trivialise (might also be found: justify, grossly palliate, grossly minimise, approve, apology, contest, maliciously deny the existence or severity, to extol) crimes of war, of genocide, against humanity, against peace (might be seen in addition: holocaust, collaboration with the enemy).
- To send a message which is grossly offensive and/or indecent or obscene or menacing or infringing a person's dignity, offending human dignity, abusive, insulting, defaming, violent, or inciting terrorism.
- To send a false content that can cause annoyance, harassment and / or needless anxiety.
- To realise a montage with the talk or images of a third party without his or her consent, if it is not obvious or if it is not specified that it is a montage.

- To misuse or usurp someone else's identity.
- To record images of the commission of a crime or misdemeanour.

**3. *To force or prevent or commit threat in order to compel someone to do something against his/her will, to threat to commit violence against this person***

- To force or prevent or disturb (including by force or threat) the freedom to practice religion (including attending worship services, celebrating religious feasts, observing religious holidays and, as a consequence, opening or closing shops or stores, and doing or leaving certain works).
- To commit threat in order to compel someone to do, to omit or to suffer something contrary to his/her will.

***II - Actions committed against a religion or ideology, or against god or the Divine***

**4. *To outrage, insult, defame, blaspheme religion, ideology, the Divine, or religious feelings***

- To defame, insult, outrage, or blaspheme religion or possibly other ideologies, god or the Divine.
- To offend the feeling of believers or mock their dogmas, beliefs, rites or ceremonies.
- To outrage an object or minister of worship in the exercise of his or her ministry.

**4.2.2 Attempt to classify in a table the key elements or main components of civil and penal offences that are identified in the ten E.U. countries studied.**

The table below identifies actions that are likely to be illegal in one E.U. country or in another, based on the study of ten E.U. countries. Since the definition of these actions aggregate elements of definitions of all the countries studied, these actions might be only partly illegal or even not illegal at all in some countries, as it has been already recalled. Moreover, in some or in all countries, identified behaviours might only be illegal under certain particular circumstances that are not mentioned here (such as a particular motivation of the perpetrator, or a risk to compromise the public order).

**Legend:**

(1) Motivations or "grounds" for committing illegal hate speech that are taken into account at national levels are detailed in Section 4.1 of the current study. All taken together and all penal infringements or civil/administrative torts taken together, they are the following (knowing that, in some countries, other grounds can be admitted where the offence is punished whatever the ground of the perpetrator):

Race; national and ethnic origins; religion; sexual preferences or orientation or hetero or homosexuality; disability or bodily, psychological or mental handicap; sex or gender; sexual identity or gender identity; national or ethnical ancestry or genealogical origin or descent or ethnic, racial or national belonging of family members; origins or social origins; nationality; national-chauvinism; skin colour; ideology or beliefs or political or philosophical beliefs; familiar situation; age; civil status; birth; fortune; language; state of health; illness; physical or genetic characteristics; membership of the travelling



community; flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines; social category, non-transmissible chronic disease, HIV infection, belonging to a disadvantaged category, as well as any criterion which would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by law, in the politic, economic, social and cultural field or in any other field of the public life; racist, xenophobic or other inhuman; wealth, chronic non-contagious disease or HIV/AIDS infection, social category, inclusion in a unflavoured category, or any other criterion (Romania, in relation to harassment); membership in a trade union, or the support of such organisation, or Union activities, or another type of organisation, political party, organisation, movement or coalition with political objective; the next-of-kin political convictions; the community or special needs, home place, pregnancy, physical appearance, surname, way of living/moral, fact to have suffered or refused to suffer sexual harassment (as defined by the penal Code) or to have testified about such facts, motherhood, marital status, family status, social category or unprivileged category, kinship with other workers in the company.

- (2) Offences must most of the time be publicly committed in order to be sanctioned, but in some countries, they might be punished even where committed in private.
- (3) Additional requirements might apply.
- (4) Concerns only one or a very few countries.

Table - Attempt to summarise hate-speech related behaviours

Action	complement to the action								against who				why	means		
	hatred	violence	discrimination (might be seen instead [4]: racial differences, or arbitrary measures)	segregation [4]	hostility , feeling of ill [4]	to do harm (or to compel someone to do, to omit or to suffer something contrary to his/her will)	crimes of war, of genocide, against humanity, against peace (might be seen in addition [4]: holocaust, collaboration with the enemy)	a misdemeanour or a crime	person	a group of persons	a community	religion or the Divine (or [4] ideology)	Object or minister of worship in the exercise of his or her ministry [4]	by reason of their belonging [4: or not belonging] to a real [4: or supposed] particular group or on the basis of one of their particular individual characteristics [1]	whatever the ground	any (including a computer system)
To incite, or To make available a content which incites, or promotes, or advocates (or [4] propagates, calls for, causes, induces, incites acts which can lead to, encourages, intends or is likely to stir up, directly or indirectly foment; express a behaviour with a nationalist-chauvinist propaganda character, instigating to racial or nationalistic hatred) [2] [3]	x	x	x	x [4]	x [4]	-	-	-	x	x	x [4]	-	-	x	x	x
To insult (or injure another's reputation or dignity, or express behaviour that has the scope or aims at affecting dignity or creating a hostile, degrading, humiliating, offensive or intimidating environment [2] [3])	-	-	-	-	-	-	-	-	x	x	x [4]	-	-	x	x	x
To insult (or outrage, blaspheme, even [4] offend the feeling of believers or mock their dogmas,	-	-	-	-	-	-	-	-	-	-	-	x	-	-	-	x

beliefs, rites or ceremonies) [3]																	
To outrage	-	-	-	-	-	-	-	-	x	x	x	-	x	-	x	x	x
Forcing or preventing or disturbing (including by force or threat) the freedom to practice religion (including attending worship, celebrating religious fests, observing religious holidays and, as a consequence, opening or closing a shops or stores, and doing or leaving certain works) [3]	-	-	-	-	-	-	-	-	x	x	x	-	-	-	-	x	x
Defamation (particular allegation or particularly damaging injury to the honour and reputation, depending on the country) [2] [3]	-	-	-	-	-	-	-	-	x	x	x [4]	x	-	-	x	x	x
Direct or indirect discrimination (including harassment) in several areas mostly relating to employment, self-employment, training, working conditions, involvement in professional organisations, social protection and advantages; education; access to and supply of goods and services (harassment might be prohibited whatever the area; idem for discrimination in 1 country). [3]	-	-	x	-	-	-	-	-	x	x [4]	x [4]	-	-	-	x	x	x
Establishing or participating ([4]: forming, leading, supporting, recruiting members or supporters for it, initiating) in organisations that promote or incite ([4]: or disseminate ideas or theories which attempt to justify or encourage; or systematically seeks to carry out; or with a fascist, racist or xenophobic character [3]	x	x	x	x (only in rel. to promotion)	x [4]	-	-	-	x	x (including [4]: association)	x [4]	-	-	-	x	x	x
To condone, deny, (grossly) trivialise (might also be found -[4]: justify, grossly palliate, grossly minimise, approve, apology, contest, threat to	-	-	-	-	-	-	x (threat to commit; only in rel.	-	-	-	-	-	-	-	-	x	x

commit, maliciously deny the existence or severity, to extol) [3] <sup>52</sup>							to war crimes)									
Sending a message which is [4] grossly offensive and/or indecent or obscene or menacing or infringing a person's dignity, offending human dignity, abusive, insulting, defaming, violent, or inciting terrorism [3]	-	-	-	-	-	-	-	-	x	x	x	-	-	x	x	x
Direct public incitement to commit [2] [3]	-	-	-	-	-	-	-	x	-	-	-	-	-	x	x	x
Threat to commit [3]	-	x	-	-	-	x	-	x	x	x	-	-	-	x	x	x
Sending a false content which can cause annoyance, harassment and / or needless anxiety [4]	-	-	-	-	-	-	-	-	x	-	-	-	-	-	x	x
Recording of images of the commission of [4]	-	-	-	-	-	-	-	x	x	-	-	-	-	-	x	x
Realising a montage with the talk or images of a third party without his or her consent, if it is not obvious that it is a montage or if it is not specified that it is a montage [4]	-	-	-	-	-	-	-	-		-	-	-	-	-		
To misuse or usurp someone else's identity [3] [4]	-	-	-	-	-	-	-	-	x	-	-	-	-	-	x	x

<sup>52</sup> *Inter alia*, this action might be punished only if directed against a group of persons or a member of such a group defined by reference to certain of their characteristics (most commonly race, colour, religion, descent or national or ethnic origin) when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group. As a consequence, the action must be combined with some elements of the first action described in the current table.

## 5 Determination of liabilities

Persons responsible for hate speech offences are natural persons (Section 5.2) and legal persons (Section 5.3), where their criminal intent (Section 5.1) is established. In addition, intermediaries of the information society might be responsible for taking or not taking certain actions in certain situations (Section 5.4).

### 5.1 Criminal intent (*mens rea*)

In all the countries where the behaviours described below are penally sanctioned, the criminal intent required from the perpetrator(s) is in principle a (direct<sup>53</sup>) intention to commit the infringement<sup>54</sup>. Where a lower criminal intent or negligence is enough, it is specified in the relating cell of the table proposed in Section 7 of the current report.

### 5.2 Liability of natural persons

In all the countries studied, the persons who are potentially liable of a penal infringement are, in principle and in practice<sup>55</sup>, at least the author, accomplices, and (expressly or not) instigators.

In all cases, the notion of accomplice includes or covers aiding and abetting. In some countries, the definition of complicity covers the instigation as well (France, Belgium, the Netherlands<sup>56</sup>, and Ireland<sup>57</sup>). In one country, the notion of instigation is covered by the definition of the author (Spain<sup>58</sup>). In the other countries, instigation is separately and expressly punished (Germany, Romania, Greece, Cyprus<sup>59</sup>, Bulgaria).

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<sup>53</sup> The criminal intent may be defined differently according to the country. However, "intent" (such as in France) or "direct intent" (such as in Romania) refers to the intent to violate the law in the expectation of causing the outcomes of the action, or at least with the conscience that the outcome of the action may occur. National provisions may additionally provide for the possibility to sanction certain kind of infringements in case the perpetrator has a "lower" criminal intent (called for example "basic" or "oblique" intent in Romania, or "fault of negligence, of imprudence, or failure to discharge a duty of care or of safety provided for by the law or an administrative act" in France). Most of the infringements referred to in Section 7 require an "intent" (where a lower intent is enough, this particularity is specified in the table).

<sup>54</sup> In Ireland the intent required by the Prohibition of incitement to hatred act, 1989, is unclear. Indeed, the act covers cases where a person "distributes" material, or "uses words", or have a behaviour that "having regard to all the circumstances are likely to stir up hatred". This means it is not the intent of the person but the likely effect that is judged. However, it is a defence for the accused to prove that he or she had no intent to stir up hatred, by proving that he/she was not aware of the content and that he/she had no reason to suspect that the material or recording was threatening, abusive or insulting. Lack of intent, in other words, is a defence, and therefore intent could be assumed as a requirement.

<sup>55</sup> In some countries the distinction between author and accomplice is not formulated with these terms or does not allocate prohibited acts the same way under these categories. However, in practice, principal commission, complicity and instigation are covered.

<sup>56</sup> Section 48 of the Dutch penal Code: accomplices are persons who intentionally aid and abet the commission of the serious offence, or persons who intentionally provide opportunity, means or information for the commission of the serious offence.

<sup>57</sup> In Ireland there is no notion and definition of "complicity", but there is a provision that punishes aiding, abetting, counselling and procurement (which may be considered as covering the instigation, at least some of the instigator's actions).

<sup>58</sup> Art. 28 of the penal Code: those who induce the author to commit the crime and those who co-operate in the commission of the crime by an act without which this crime could not have been committed are defined and liable as

However, this regime of liability (of authors, accomplices and instigators) does only apply in seven countries out of ten, to all the penal infringements that are studied in Section 7 below.

**The first exception is Ireland, where accomplices<sup>60</sup> are only punishable for indictable offences<sup>61</sup>.** Indictable offences are offences that "*may or must be tried on indictment before a judge and jury*", which is the case in practice for many offences<sup>62</sup>, but not all. Therefore, these four actions are punishable in relation to most of the infringements mentioned in Section 7 of the current report, including those provided for by the *Prohibition of incitement to hatred act, 1989*<sup>63</sup>, but not in all cases, for example in situation of threatening or insulting behaviours that are not particularly motivated by illegal grounds<sup>64</sup>. The indictable nature of the offence is mentioned for each infringement in Section 7 below.

**The second exception is Spain, where a special media liability regime applies in relation to online contents<sup>65</sup>.** Indeed, the liability of accomplices and of those who have personally or actually favoured the infringement is expressly excluded in felonies and misdemeanours that are committed using media or supports of mechanical diffusion<sup>66</sup>. In such case (and therefore in all the cases handled in this report), principal authors are the only ones to be accountable, in a progressive, excluding and subsidiary manner, in the following order<sup>67</sup>:

- 1º. Those who materially drafted the text or produced the sign concerned and those who induced others to perpetrate the act;
- 2º. The directors of the publication or programme in which it is disseminated;
- 3º. The directors of the printing, broadcasting or distribution company;

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principal authors. According to art. 29 of the penal Code, accomplices are those who, not being considered as principal authors, co-operate in carrying out the offence with prior or simultaneous acts.

<sup>59</sup> Cyprus punishes more exactly the act of counselling another person to commit an offence (art. 22 of the penal Code).

<sup>60</sup> More exactly those who aid, abet, counsel and procure (complicity is not mentioned as such).

<sup>61</sup> Subsection 7 (1) of the 1997 Criminal Law ACT, <http://www.irishstatutebook.ie/eli/1997/act/14/section/7/enacted/en/html#sec7> (last accessed on 3 June 2016).

<sup>62</sup> See "Citizens Information", [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_offences/classification\\_of\\_crimes\\_in\\_criminal\\_cases.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_offences/classification_of_crimes_in_criminal_cases.html) (last accessed on 3 June 2017).

<sup>63</sup> The act provides for sanctions "on conviction on indictment", see section 6, <http://www.irishstatutebook.ie/eli/1989/act/19/section/6/enacted/en/html#sec6> (last accessed on 3 June 2017).

<sup>64</sup> Section 6 of the Criminal Justice (Public Order) Act, 1994, <http://www.irishstatutebook.ie/eli/1994/act/2/enacted/en/html> (last accessed on 3 June 2017).

<sup>65</sup> In Ireland there is also a special liability regime in case of broadcasting and distribution of hatred-related images and sounds, but it does not exclude the liability of authors and accomplices. In this regime, are (all potentially) liable (without any imperative order) the person providing the broadcasting service, any person by whom the item is produced or directed, and any person whose words or behaviour in the item are threatening, abusive or insulting (Section 3 of the Prohibition of incitement to hatred act, 1989). Broadcasters can be asked to remove material if practicable, and broadcasters, directors and producers have a defence consisting of lacking knowledge of the nature of the material concerned, if they had no intent. This list of stakeholders covers all material acts that might be accomplished by a "traditional" author. Accomplices can be liable in addition since the infringement is indictable and their liability is not excluded.

<sup>66</sup> Article 30 of the penal Code.

<sup>67</sup> When, for any reason other than extinction of criminal accountability, or for declaration of contempt of court or not residing in Spain, any of the persons included in any of the subsections of the preceding Section may be prosecuted, proceedings shall be taken against those mentioned in the subsection immediately following (Article 30, 3 of the penal Code).

4º. The directors of the recording, playing or printing company.

In addition, provocation, conspiracy and solicitation can in some situations be punished, but where the law foresees it specifically in the provisions relating to the infringement to be punished.

**The third exception is France, where a special press liability regime applies to some online contents**, more exactly to infringements considered as "press offences"<sup>68</sup> (pointed out in Section 7 of the current report in this regard). Within the framework of this special liability regime<sup>69</sup> (which is applicable to Internet websites), the "publication director"<sup>70</sup> is being prosecuted first as he or she were the author. If there is no publication director, is liable the author, and if there is no author, the producer. Where the publication director is prosecuted, the author may also be prosecuted as accomplice. This special liability regime excludes the liability of legal persons<sup>71</sup>.

### 5.3 Liability of legal persons

In five countries out of ten, legal persons might always be penally liable and therefore sanctioned in case of infringement committed by one of their representatives and/or committed in their benefit. It is especially the case in Belgium<sup>72</sup>, Germany<sup>73</sup>, and Romania<sup>74</sup>. In the Netherlands, legal persons may also always be held liable, but in a similar way to that for natural persons (without particular conditions such as the necessity that the infringement is committed by one representative or in their benefit)<sup>75</sup>.

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<sup>68</sup> Because they are provided for in Law of 29 July 1881 on the freedom of Press.

<sup>69</sup> The special liability regime applicable to electronic communication to the public (including websites) is provided for in art. 93-3 of the law n° 82-652 of 29 July 1982 on audio-visual communication (despite the name of the law).

<sup>70</sup> Any electronic communications editor (even non-professional) must designate a so-called "publication director": art. 6,III, 1 of the law n°2004-575 on the digital economy (called "LCEN").

<sup>71</sup> Article 93-4 of the law n° 82-652 of 29 July 1982.

<sup>72</sup> Art.5 of the penal Code: *"any legal person is penally liable of the infringements that are intrinsically tied to its corporate objects or to the defence of its interests, or of the infringements of which concrete facts show that the infringement has been committed on its behalf. [...] Are deemed equivalent to legal persons the following: (1) temporary partnership and joint-ventures; (2) companies referred to in article 2, § 3, of the coordinated laws on commercial companies, as well as societies pending recognition and admission; (3) civil entities that have not taken the form of a commercial company".* Cannot be deemed equivalent to legal persons penally liable the following persons: the Belgian Federal State and some of its listed subsections (such as Region, Communities, and Provinces).

<sup>73</sup> Section 30 of the Act on Regulatory Offences: *"Where someone acting (1) as an entity authorised to represent a legal person or as a member of such an entity, (2) as chairman of the executive committee of an association without legal capacity or as a member of such committee, (3) as a partner authorised to represent a partnership with legal capacity, or (4) as the authorised representative with full power of attorney or in a managerial position as proxy-holder or the authorised representative with a commercial power of attorney of a legal person or of an association of persons referred to in numbers 2 or 3, (5) as another person responsible on behalf of the management of the operation or enterprise forming part of a legal person, or of an association of persons referred to in numbers 2 or 3, also covering supervision of the conduct of business or other exercise of controlling powers in a managerial position, has committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person or on the association of persons have been violated, or where the legal person or the association of persons has been enriched or was intended to be enriched, a regulatory fine may be imposed on such person or association".*

<sup>74</sup> Article 135 paragraph 1 of the penal Code: Legal persons shall have liability for offences committed in the performance of the object of activity of legal entities or in their interest or behalf. Exceptions: State and public authorities.

<sup>75</sup> Section 51 of the penal Code. The unincorporated company, the partnership, the shipping company and the special purpose fund are considered as equivalent to the legal person.

In a fifth country, namely Greece, legal persons (through their representative) might be declared liable of certain penal infringements, but not in case of hatred-related infringements, and more concretely not in the situations referred to in the table proposed in Section 7 of the current report. However, in relation to hatred-related behaviours that are prohibited by the law 979/1979, legal persons systematically incur administrative sanctions where acts are committed for their benefit or in their name by a natural person acting either individually or as part of an organ of the legal person which it represents<sup>76</sup>.

In the five remaining countries that have been studied, namely Ireland, Spain, France, Bulgaria and Cyprus, the liability of legal persons is not organised, or is organised only in relation to certain infringements.

In Ireland and Spain<sup>77</sup>, legal persons might also be declared liable of certain penal infringements, but only where law provides for it. In Ireland, it is for example the case of the Prohibition of incitement to hatred act, 1989<sup>78</sup>, of the Defamation Act 2009 and of the Equal Status Act, 2000. In Spain, it is for example the case of Article 510 of the penal Code that prohibits *inter alia* incitement to hatred<sup>79</sup>.

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<sup>76</sup> Article 4 of Law 979/1979 as amended by act no 4285/2014: "(1) If any of the above acts were committed for the benefit or in the name of a legal person or group of legal persons, by a natural person acting either individually or as part of an organ of the legal person which it represents, on this legal person or group of legal persons, then the following administrative sanctions shall be imposed with a Joint Decision of the Minister of Justice, Transparency and Human Rights and of any other competent minister, cumulatively or alternatively, after final submission of the individual to trial: a) a fine of ten thousand (10 000) up to one hundred thousand (100 000) euros, b) exclusion from entitlement to public benefits, subsidies, aid, subsidies or awards of works and services, supplies, advertising and public competitions or competitions held by legal persons of the public sector lasting from one to six months. The administrative penalty in (a) will be always imposed, regardless of other penalties. In case of recurrence the penalties in (b) may be increased up to the double. (2) When the lack of supervision or control by a natural person referred to in paragraph 1 made possible the commission of any of the offences of this Act by a person under its authority for the benefit of the legal person or association of persons, then the legal person or association of persons will be imposed, cumulatively or alternatively, after the final referral under the authority or supervision proceedings, the following administrative sanctions: a) a fine of five thousand (5 000) to fifty thousand (50 000) euro b) provided for in point b of the preceding paragraph, for up to six months. (3) No penalty shall be imposed without prior summons of the legal person or persons to give explanations. The call is communicated at least ten days before the day of the hearing. Moreover, the provisions of paragraphs 1 and 2 of Article 6 of the Administrative Procedure Code shall be applied. (4) The Public Prosecutors shall inform the Minister of Justice, Transparency and Human Rights after the irrevocable referral for cases where there is a natural person involved in the sense of paragraphs 1 and 2 and shall notify the judicial rulings that have been issued. (5) If the act was committed in a radio or TV show, the penalties provided by this Article shall be imposed by the National Radio and Television Council, to whom the file shall be forwarded by the Minister of Justice, Transparency and Human Rights. (6) In case of acquittal of the defendant, the above administrative decisions shall be withdrawn. (7) The preceding paragraphs do not apply to the State, legal entities of public law, public legal persons in the exercise of public authority, and the public international organisations".

<sup>77</sup> Articles 31 bis of the penal Code. The Spanish penal Code is available in Spanish language at the following address [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=379477](http://www.wipo.int/wipolex/en/text.jsp?file_id=379477) (last accessed on 4 June 2017).

<sup>78</sup> According to Section 7 of the Prohibition of incitement to hatred act, 1989, legal persons (bodies corporate) are held liable (1) if the offence "is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity". In such case "that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence". In addition, "where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate".

<sup>79</sup> The liability of legal persons is specified in art. 510 bis of the penal Code in relation to infringements punished in article 510 (including public incitement to violence and hatred), and organisations or groups without legal identity are included in this group according to case law. The sanctions which are applicable to legal persons in relation to Article 510 are provided for in Article 33, Section 7, b to g, as stipulated in art. 66 bis.



In Bulgaria the system is quite the same, since legal persons might in principle be declared liable of the penal infringements expressly referred to in Article 83a of the *Administrative Violations and Sanctions Act*<sup>80</sup>.

In France, legal persons may be declared liable of all the penal infringements unless a special law excludes their liability<sup>81</sup>. However, a large part of the infringements relating to hatred are foreseen by Law of 29 July 1881 on the freedom of Press, which precisely excludes such liability<sup>82</sup>.

In Cyprus, the liability of legal persons is not provided for by penal law. In a few cases, the Cypriot jurisprudence has recognised that legal persons can be held liable under penal law, on the grounds of the principles of common law (doctrine of “*directing mind and will*”). However, there is no known judicial precedent in the area of hate speech.

Consequently, the liability of legal persons is specified in relation to each infringement considered in Section 7 of the current report.

Main sanctions<sup>83</sup> incurred by legal persons for crimes and misdemeanours (the following outcomes include Greece, where the liability is administrative and not penal) are a fine (Belgium<sup>84</sup>, Germany<sup>85</sup>, Romania<sup>86</sup>, France<sup>87</sup>, Spain<sup>88</sup>, the Netherlands<sup>89</sup>, Ireland<sup>90</sup>, Bulgaria<sup>91</sup>, Greece<sup>92</sup>), dissolution (Spain, Belgium except for public persons, Romania,

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<sup>80</sup> Article 83a of the Administrative Violations and Sanctions Act states that is liable the legal person which has enriched itself or would enrich itself from a crime under Articles 108a, 109, 110 (preparations for terrorism), Articles 142 - 143a, 152(3) item 4, Articles 153, 154a, 155, 155a, 156, 158a, 159 - 159d, 162 (1) and (2), 164 (1), 172a-174, 209 - 212a, 213a, 214, 215, 225c, 227 (1) - (5), 242, 243, 244, 244a, 246 (3), 248a, 250, 252, 253, 254b, 255, 255a, 255b, 256, 278c - 278e, 280, 281, 282, 283, 301 - 307, 307b, 307c, 307d, 308 (3), 319a - 319f, 320 - 321a, 327, 352, 352a, 353b - 353f, 354a - 354c, 356j and 419a of the Criminal Code, as well as from all crimes, committed under orders of or for implementation of a decision of an organised criminal group, when they have been committed by certain listed persons (an individual, authorised to formulate the will of the legal person; OR an individual, representing the legal person; OR an individual, elected to a control or supervisory body of the legal person, OR an employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of such task). In addition, the legal person is also liable where the persons referred to above "have abetted or assisted the commission of the (infringement), as well as when the (prohibited action was) stopped at the stage of attempt".

<sup>81</sup> Article 121-2 of the penal Code. The maximum fine amount is five times higher than the amount foreseen for natural person in the text that describes the behaviour penally sanctioned.

<sup>82</sup> Liability of legal persons is excluded art. 44 of this law for traditional press, and by art. 93-4 of the law n° 82-652 of 29 July 1982 in relation to online media.

<sup>83</sup> This list is not totally exhaustive. Some sanctions incurred in certain countries are not mentioned, such as banking prohibition in France and to enjoy tax or Social Security benefits and incentive in Spain (and Greece, with the possible exclusion from public aids and subsidies).

<sup>84</sup> Article 7 *bis* of the penal Code.

<sup>85</sup> Section 17, in conjunction with Section 30, of the Act on Regulatory Offences.

<sup>86</sup> Articles 135 to 151 of the penal Code.

<sup>87</sup> Art. 131-37 *et seq.* of the penal Code.

<sup>88</sup> Art. 33, 7 of the penal Code.

<sup>89</sup> In the Netherlands sanctions for legal persons are the same sanctions as those applicable to natural persons (Section 51 of the penal Code).

<sup>90</sup> In Ireland, sanctions for legal persons are defined in the act that organises their liability. Generally, they are the same as those applicable to natural persons. This is the case in the Prohibition of incitement to hatred act, 1989 (Section 7), and in the Defamation Act 2009 (Section 12).

<sup>91</sup> In Bulgaria a financial penalty (up to BGN 1,000,000) is the only one sanction that is foreseen by the Administrative Violations and Sanctions Act, along with the confiscation of the direct or indirect benefit derived by the legal person from

France), the confiscation of specific property (Belgium, France), the prohibition of the exercise of specific activities (Belgium, Spain for a maximum period of five years, France definitively or for a maximum period of five years, Romania), the suspension of the persons' activities (Spain for a maximum period of five years), closures of one or several establishments (Belgium, Spain for a maximum period of five years, France definitively or for a maximum period of five years, Romania), the publication or dissemination of the court's decision (Belgium, France, Romania), the prohibition to participate in public procurement procedures (for a term between one and three years in Romania; definitively or for a maximum period of five years in France; for a maximum period of fifteen years in Spain; from one to six months in Greece); the placement under judicial supervision (Romania, France); and the prohibition to receive public aids (Spain, France).

## **5.4 Liability of intermediaries of the Information Society**

Intermediaries of the information society can be considered as liable, in certain situations, for not properly contributing to crime prevention and repression. It does not seem necessary to propose an extended study of the liability regime of the information society intermediaries since it has been already widely documented<sup>93</sup>. However, it remains important to summarise the main aspects of this regime in order to be able to focus on interesting particularities of the legislation of certain countries.

### **5.4.1 Liability for not contributing properly to crime prevention and repression**

A specific liability regime of intermediaries of the information society has been created both in order to secure their activities, which are necessary to the functioning of the Information Society and the exercise of several freedoms such as the freedom to communicate and to trade, and (2) to ensure that, in case an offence is committed, mechanisms are in place in order to bring the offence to an end and to find perpetrators<sup>94</sup>.

As a consequence, the liability of these stakeholders is not linked to the commission of the offence, but to the lack of implementation of certain mechanisms that enable, in certain circumstances and in relation to certain categories of offences, to ease the prevention and repression of penal offences.

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the crime (if not subject to return or restitution, and if they are missing or have been expropriated, their BGN equivalent shall be adjudged). However, financial penalties cannot be imposed on states, state bodies and local self-government bodies, as well as on international organisations.

<sup>92</sup> See footnote n°76.

<sup>93</sup> See for example *Comparative Study on Blocking, Filtering and Take down of illegal Internet content*, Council of Europe 2017, <https://edoc.coe.int/en/internet/7289-pdf-comparative-study-on-blocking-filtering-and-take-down-of-illegal-internet-content-.html>; Euroispa, Intermediary Liability, <http://www.euroispa.org/policy-committees/intermediary-liability/>; Estelle De Marco, *Acteurs et services de la société de l'Information (Stakeholders and services of the information society)*, handout supporting the training course having the same name, University curricula « Cybercriminalité – droit, sécurité de l'information et informatique légale », University of Montpellier, 2016 - 2017. URLs last accessed on 29 August 2017.

<sup>94</sup> See for ex. Council of Europe, Committee of Ministers, *Declaration on freedom of communication on the Internet*, 28 May 2003, <https://rm.coe.int/16805dfbd5>; see also the preamble of Directive 2000/31/EC, especially recitals n° 5, 9, 52; See also Court of Appeal, Paris, 6 May 2009, *S.A. Dailymotion v. M. C., Société Nord-Ouest Production et S.A. UGC Images*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2634](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2634); Court of Appeal, Versailles, 14<sup>ème</sup> ch., 12 Dec. 2007, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2118](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2118). URLs last accessed on 29 August 2017.

Given the risks for fundamental freedoms that might be generated by the contribution of the industry to crime prevention and repression, sometimes before any judge has qualified targeted contents as being illegal, the duties as well as intervention and enforcement powers of intermediaries of the information society towards illegal publications authored by third parties are strictly framed.

#### **5.4.2 Short overview of the liability of access providers and hosting providers under the E.U. legislation**

The liability regimes of Internet access providers and Internet hosting providers are regulated by Articles 12, 14 and 15 of Directive 2000/31/EC (article 13 being dedicated to caching activities, which are of minor importance within the framework of the current study).

Access providers are not liable for the information they transmit on condition that they (a) do not initiate the transmission; that they (b) do not select the receiver of the transmission; and that they (c) do not select or modify the information contained in the transmission<sup>95</sup>.

Hosting providers are not liable for the information they store at the request of a recipient of their service, on condition that (1) the recipient of the service is not acting under their authority or control, and that (2a) they do not have actual knowledge of illegal activity or information and, as regards claims for damages, are not aware of facts or circumstances from which the illegal activity or information is apparent; or (2b) they do not, upon obtaining such knowledge or awareness, act expeditiously to remove or to disable access to the information<sup>96</sup>.

Both these liability regimes apply where service providers exercise a purely technical role, as it is specified in each liability regime itself. Since the border between actions that stay neutral and actions that are going beyond a purely technical role might be difficult to establish as regards hosting services, an important jurisprudence has determined what should belong to a hosting role (such as the provision of general information to customers, the setting of the terms of the services, the provider's remuneration for the service<sup>97</sup>) and what should be considered as being an active role that prevents the hosting provider to benefit from the hosting providers' liability regime (actions that give the provider knowledge of or control over the concerned data<sup>98</sup> such as the drafting of a commercial message which accompanies a given advertising link, or an active optimisation or promotion of certain contents<sup>99,100</sup>).

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<sup>95</sup> Article 12 of Directive 2000/31/EC.

<sup>96</sup> Article 14 of Directive 2000/31/EC.

<sup>97</sup> EUCJ, gr. ch., 12 July 2011, *L'Oréal SA and others v. eBay and others*, case C-324/09, § 115, <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-324/09> (last accessed on 24 August 2017).

<sup>98</sup> See for ex. EUCJ, 12 July 2011, *L'Oréal SA and others v. eBay and others*, *op. cit.*, § 113.

<sup>99</sup> EUCJ, 7<sup>th</sup> ch., 11 September 2014, *Sotiris Papasavvas v. O Fileleftheros Dimosia Etaireia Ltd e.a.*, case C-291/13, §§43-44, <http://curia.europa.eu/juris/liste.jsf?num=C-291/13> (last accessed on 24 August 2017).

<sup>100</sup> Examples of other court decisions are the following: EUCJ, 23 March 2010, *Google France v. LVM, Viaticum, Luteciel, CNRRH and others*; At the French level, C. cass., 1<sup>st</sup> ch. civ., 17 February 2011, *Sté Nord-Ouest and others v. Sté Dailymotion*, [http://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/165\\_17\\_19033.html](http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/165_17_19033.html); C. cass., 1<sup>st</sup> ch. civ., 17 Feb. 2011, *M.O. X. v. Bloobox.net*, [http://www.legalis.net/spip.php?page=jurisprudencedecision&id\\_article=3103](http://www.legalis.net/spip.php?page=jurisprudencedecision&id_article=3103); TGI Troyes, 4 June 2008, *Sté Hermes international v. C. F. and others*,

These liability regimes are often accompanied with an obligation of data retention, initially regulated by Directive 2006/24/EC. However, this Directive has been ruled disproportionate by the European Union Court of Justice (due to a too large scope and a lack of safeguards) and therefore contrary to the E.U. Charter of Fundamental Rights and the European Convention on Human Rights<sup>101</sup>. Formerly, this proportionality weakness had been highlighted (in 2004) by the Article 29 Working party<sup>102</sup>, and several data retention national legislations had been declared contrary to the local constitution because of a lack of appropriate safeguards (for ex. in Germany and in Slovenia). Less detrimental to privacy rights, the Council of Europe Convention on cybercrime organises an “expedited preservation” as an immediate provisional measure to keep evidence and give time to obtain judicial orders for the seizure or disclosure of the data<sup>103</sup>.

In addition, both these liability regimes do not affect the possibility for a court or administrative authority, in accordance with the concerned Member State's legal system, of requiring the service provider to terminate or prevent an infringement<sup>104</sup>. In addition, they do not affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information by hosting providers<sup>105</sup>.

However, limits to the actions to be taken by or asked to these service providers are the prohibition of general obligations to monitor contents and the protection of fundamental freedoms more generally.

Firstly, Article 15 of Directive 2000/31/EC provides that Member States shall not impose a general obligation on caching providers, access providers and hosting providers to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity. However, Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Secondly, when these providers act against illegal content on the basis of a legal obligation or on their own initiative, they must respect fundamental rights protection requirements<sup>106</sup>. Access providers must in particular stay neutral, since most

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[http://www.legalis.net/spip.php?page=jurisprudencedecision&id\\_article=2320](http://www.legalis.net/spip.php?page=jurisprudencedecision&id_article=2320) TGI Créteil, 14 December 2010, *INA v. YouTube*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3052](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3052); CA Paris, Pôle 5, 1<sup>st</sup> ch., 2 Dec. 2014, *TF1 and others v. Dailymotion*, [http://www.legalis.net/spip.php?page=jurisprudencedecision&id\\_article=4401](http://www.legalis.net/spip.php?page=jurisprudencedecision&id_article=4401).

<sup>101</sup> EUCJ, 8 April 2014, *Digital Rights Ireland Ltd*, joined cases C-293/12 and C-594/12.

<sup>102</sup> Article 29 Data Protection Working Party, *Opinion 9/2004 on a draft Framework Decision on the storage of data processed and retained for the purpose of providing electronic public communications services or data available in public communications networks with a view to the prevention, investigation, detection and prosecution of criminal acts, including terrorism*, adopted on 9 November 2004 (WP 99).

<sup>103</sup> Article 16 and 17 of the Convention. Article 16 relates to traffic data and content data. Article 17 relates more specifically to traffic data.

<sup>104</sup> Articles 12, 3 and 14, 3 of Directive 2000/31/EC.

<sup>105</sup> Article 14, 3 of Directive 2000/31/EC.

<sup>106</sup> MANDOLA deliverable D2.2 - *Identification and analysis of the legal and ethical framework*, version 2.2.4 of 12 July 2017, MANDOLA project (Monitoring AND Detecting OnLine hAte speech) - GA noJUST/2014/RRAC/AG/HATE/6652,

interferences with Internet traffic “*may affect the quality of the Internet service delivered to users*”<sup>107</sup> as well as the exercise of fundamental freedoms such as the right to private life (including the right to the confidentiality of communications<sup>108</sup>), the right to “*freedom of expression, including the right to receive and impart information*”<sup>109</sup> and the right to conduct a business<sup>110</sup>. Hosting providers must also stay as neutral as possible where they act against an alleged illegal content within the boundaries set up by their domestic law, since the same freedoms are at stake. Consequences can be very practical and important, such as the closure of a business realising online most of its turnover, or the impossibility of expressing one important view in a closing debate. As a consequence, in all cases, any action from a service provider must be allowed by law, must pursue a legitimate aim, must be necessary and must be proportionate to the aim pursued<sup>111</sup>, which notably implies that the restriction must be “*narrowly tailored and executed with court oversight*”<sup>112</sup>. Any action that would not respect these principles could drive to incur the ISP liability before its national judge. Particularly, the use of certain online services might be considered as being a citizens' right (given their essential nature in the current exercise of private life, since they enable people to establish relationships with others, and of freedom of expression<sup>113</sup>). Services of this kind should more than the others take care to not restrict citizens' rights in a disproportionate way<sup>114</sup>.

### 5.4.3 Countries' particularities

Articles 12 to 15 of Directive 2000/31/EC have been transposed into the legislations that have been studied during the MANDOLA project (namely Belgium, Bulgaria, Cyprus, France, Germany, Greece, Ireland, the Netherlands, Romania, and Spain), but the latter show certain differences.

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<http://mandola-project.eu/publications>. See also recital 9 of Directive 2000/31/EC which states that it “is not intended to affect national fundamental rules and principles relating to freedom of expression”.

<sup>107</sup> Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality, 13 January 2016, [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2016\)1&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2016)1&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true), §2 (last accessed on 24 August 2017).

<sup>108</sup> Recital 15 of Directive 2000/31/EC states: “the confidentiality of communications is guaranteed by Article 5 Directive 97/66/EC; in accordance with that Directive, Member States must prohibit any kind of interception or surveillance of such communications by others than the senders and receivers, except when legally authorised”.

<sup>109</sup> Recommendation CM/Rec(2016)1 of the Committee of Ministers, *op. cit.*, §3.

<sup>110</sup> See the MANDOLA deliverable D2.2 - Identification and analysis of the legal and ethical framework, *op.cit.*

<sup>111</sup> See the MANDOLA deliverable D2.2 - Identification and analysis of the legal and ethical framework, *op.cit.*

<sup>112</sup> Council of Europe, *Guide to human rights for Internet users*, Recommendation CM/Rec(2014)6, p. 4, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d5b31> (last accessed on 29 August 2017).

<sup>113</sup> Implicitly, see for example EU CJ, judgment of 16 February 2012, case C-360/10, *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV*, recital 48 & 50, <http://curia.europa.eu/juris/document/document.jsf?docid=119512&doclang=EN> (last accessed on 29 August 2017).

<sup>114</sup> See also Estelle De Marco in Cormac Callanan *et al.*, MANDOLA Deliverable D4.2 - Best Practice Guide for Responding to Online Hate Speech for Internet Industry, March 2017, MANDOLA project (Monitoring AND Detecting OnLine hAte speech) - GA n° JUST/2014/RRAC/AG/HATE/6652, <http://mandola-project.eu/>, p. 27.

### 5.4.3.1 Prohibition of general obligations to monitor

Certain legislations do include a provision that explicitly prohibits imposing on service providers a general obligation to monitor the information which they transmit or store, or a general obligation actively to seek facts or circumstances indicating illegal activity (Belgium<sup>115</sup>, Cyprus<sup>116</sup>, Greece<sup>117</sup>). Other countries do not include such an explicit mention but the prohibition exists more or less explicitly in other provisions or courts decisions (France<sup>118</sup>, Germany<sup>119</sup> and Spain<sup>120</sup>) while other legislations remain silent on this issue (Bulgaria, Ireland, and the Netherlands).

### 5.4.3.2 Blocking of contents by access providers

The possibility for a judge to order an access provider to block a given content<sup>121</sup> is provided for by law in several countries in relation to all contents (for example in France<sup>122</sup>) or to

<sup>115</sup> Article XII.20, §1, al.1 and 2 CDE. For a discussion concerning the extent of a temporary obligation, see Court of cassation, 22 October 2013, [http://jure.juridat.just.fgov.be/pdfapp/download\\_blob?idpdf=N-20131022-4](http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20131022-4), Revue du Droit des Technologies de l'Information [R.T.D.I.] MONVILLE, Pierre; GIACOMETTI, Mona; Note d'observations 'Les fournisseurs d'accès à internet, nouveaux gendarmes de la toile?' 2014, n° 55, pp. 61-76. Surprisingly, according to the Supreme Court, an injunction to block several domain names, the list of the domain names to be blocked being determined by the police afterwards (hence without control of a jurisdiction) is not contrary to Article XII.20, §1, al.2 CDE.

<sup>116</sup> Section 18 of Law 156 (I) 2004 implementing Article 15 of the E-Commerce Directive.

<sup>117</sup> Article 14 (1) P.D. 131/2003 implementing the provision of Article 15 of the e-commerce Directive.

<sup>118</sup> Art. 6, I, 7 of the Law n° 2004-575 states that service providers "are not subjected" to such an obligation. This provision is however read in conjunction with Art. 15 of Directive 2000/31/EC, and the prohibition is applied by Courts. See for ex. Cass., 1<sup>st</sup> civ. ch., 12 July 2012, *Google France v. Bac Films* (in relation the movie « les dissimulateurs »), [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3460](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3460) ; Cass., 1<sup>st</sup> civ. ch., 12 July 2012, *Google France v. Bac Films* (in relation the movie « l'affaire Clearstream »), [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3461](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3461) ; Cass., 1<sup>st</sup> civ. ch., 12 July 2012, *Aufeminin.com v. Google France*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3462](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3462). (URLs last accessed on 29 August 2017)

<sup>119</sup> Section 7 ff. of the *Telemedia Act* (of which an English translation is available at [http://www.cgerli.org/fileadmin/user\\_upload/interne\\_Dokumente/Legislation/Telemedia\\_Act\\_TMA\\_.pdf](http://www.cgerli.org/fileadmin/user_upload/interne_Dokumente/Legislation/Telemedia_Act_TMA_.pdf) (last accessed on 29 August 2017) only states that service providers "are not required to monitor the information transmitted or stored by them or to search for circumstances indicating an illegal activity". However access providers are (due to sec. 88 subsec. 1 of the German Telecommunications Act) generally not permitted to monitor the contents of transmissions without statutory authorization. Information society services are generally not prohibited to monitor information, but still can be limited by data protection rules of the Telemedia Act in case the monitoring of information goes along with storing user data (c.f. sec. 15 of the Telemedia Act). Furthermore, in both cases, a legal obligation to monitor the contents of transmissions or stored data might be considered as a violation of constitutional rights like the secrecy of telecommunication or right to informational self-determination, depending on the specific statutory framework stipulating such an obligation. Nevertheless, the unjustified deletion or blocking of contents can represent a violation of the service contract between the provider and the user. In addition, since the objective values of the constitution also indirectly affect the private law, where they have to be respected in disputes between individuals, the deletion or blocking of contents might be considered as unlawful with regard to Freedom of Speech.

<sup>120</sup> Based on a Provincial Court decision 11/2014 and Article 15 of Directive 2000/31/EC, the Spanish Justice Court has declared that the prohibition of monitoring information includes the national measurement that obliges intermediary service providers, as a service data hosting provider, to carry out an active monitoring of all the users' data with the purpose of avoiding any future damage to their rights (Province audience, decision M 4/2014 <http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=6955036&links=%22505/2012%22&optimize=20140210&publicinterface=true>).

<sup>121</sup> Which is more controversial than the request to a hosting provider to remove a hosted content. Indeed, "the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general" and blocking Internet access may be 'in direct conflict with the actual wording of paragraph 1 of Article 10 of the Convention, according to which the rights set forth in that Article are secured 'regardless of frontiers'": see ECtHR, 2<sup>nd</sup> Sect., 18 December 2012, *Ahmet Yıldırım v. Turkey*, appl. n°3111/10, respectively §48 and §67, <http://hudoc.echr.coe.int/eng?i=001-115705>; ECtHR, Research division, *Internet: case-law of the European court of Human*



certain kinds of contents only (for example in Cyprus<sup>123</sup> and Spain<sup>124</sup>). In some countries, blocking orders can also be issued by the administrative authority (in France<sup>125</sup>, in Cyprus<sup>126</sup>, in Germany<sup>127</sup> and in Greece<sup>128</sup>), which might be criticised since only independent

*Rights*, op. cit. p. 22 and pp.44-45. In addition, blocking is technically complex and might be counterproductive: see on this issue Cormac Callanan, Marco Gercke, Estelle De Marco and Hein Dries-Ziekenheiner, *Internet blocking - balancing cybercrime responses in democratic societies*, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>), URLs last accessed on 29 August 2017.

<sup>122</sup> Article 336-2 of the intellectual property Code, in relation to IPR infringements; Article 6, I, 8 of the Law n° 2004-575 in relation to online content, and more largely Article 809 of the civil procedure Code (which might however found too imprecise to base a filtering measure - see below the footnote dedicated to Cyprus and see the Opinion of Advocate General Cruz Villalon, 14 April 2011, delivered in case EUJ C-70/10 *Scarlett Extended SA v. Société belge des auteurs compositeurs et éditeurs (SABAM) and others*, §67, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=81776&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=735017> (the French provision being close to the Belgian one). In addition, Article 141-1 of the consumer Code enables the judge to order the blocking of online services that are contrary to certain provisions of the latter Code (see on this issue Marc Rees, *Blocage et DGCCRF : le PS victime d'un astucieux trou de mémoire*, 28 June 2013, NextInpact, <http://www.nextinpact.com/news/80892-blocage-et-dgccrf-ps-victime-d-un-astucieux-trou-memoire.htm>). Moreover, Law n°2014-1353 of 13 November 2014 relating to terrorism added Article 706-23 to the penal procedure Code, which enables the judge to order « the interruption of a service of online communication to the public » where requested by the public prosecutor or by any other interested party, in case of direct provocation or public apology of terrorist actions (newly sanctioned by Article 421-2-5 of the penal Code). The applicability of the latter provision to access providers is under debate, since « the interruption » of a service can a priori be obtained from the hosting provider only. URLs last accessed on 29 August 2017.

<sup>123</sup> In relation to child pornography (Article 11 of Law 91(I)/2014 implemented the article 25 of the Directive 2011/92/EU of 13 December 2011) and copyrights infringements (Article 13 (5) of Law 59/1976). In addition, articles 15, 16 and 17 of Law 156 (I) 2004 provide that the intermediaries' immunity regime that was established by the E-Commerce Directive does not affect the possibility for a court or administrative authority to impose to the service provider appropriate measures to terminate or prevent the infringement. It is a priori theoretically possible to order such measures toward all kind of illegal content on the grounds of section 32 of the Courts of the Justice Law no. 14/1960 about interim orders, but this possibility has not been confirmed by case law yet, but it could be argued that site blocking by ISPs requires special legislation. In this context, it could be ordered only in the specific cases clearly provided by law (in this sense see Civil file (Tel Aviv) 37039-05-15, 1 July 2015, *ZIRA v' John Doe et al.* See also Tatiana Synodinou, "Country report for Cyprus", in *Comparative Study on Blocking, Filtering and Take down of illegal Internet content*, Council of Europe, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680655507>.

<sup>124</sup> Article 578.4 of the penal Code states enables judges to order the removal of illegal online contents or services concerning terrorism exaltation, as well as, collaterally, ordering service providers to remove the illegal contents, ordering search engines to remove their link, and ordering service electronic communications providers to block their access, whenever the severity of the measure is proportional to the crimes as well as the significance of the information. In addition, Article 578 of the penal includes precautionary or final measures that can lead to the destruction or erasure of documents, files and materials by which the crime has been committed, or even to block their access.

<sup>125</sup> Article 6-1 of Law n°2004-575 and Decree n°2015-125 of 5 February 2015, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030195477&dateTexte=>.

<sup>126</sup> According to the section 65 of the law 106/2012 about online betting, Internet providers have the obligation to block websites which do not have the permission to provide services of online betting (the list is provided by the National Betting Authority). According to Section 11 of Law no. 91(I)/2014, service providers must prevent the access to child pornography contents that are notified to them by a large number of public departments and Ministries. If they do not comply with this obligation, they are penally liable and subject to a penal offense which is punishable by imprisonment not exceeding three (3) years or a fine not exceeding one hundred and seventy thousand euros (€ 170.000) or with both penalties. It is noteworthy that the law does not specifically define whether Internet service providers can contest the notification addressed to them by the "competent authority" and the relevant procedure. But since the non-compliance of the ISPs with the notification is a criminal offence, ISPs can normally exercise an appeal against the court decision which condemns them on the grounds of the general provisions of criminal procedure law.

<sup>127</sup> In administrative law, an obligation to block contents that are harmful to young people theoretically is stipulated in sec. 20 Subsec. 4 of the Interstate Treaty on the Protection of Minors from Harmful Media ('Jugendmedienschutz-Staatsvertrag', JMStV) in combination with sec. 59 subsec. 2-4 of the Interstate Broadcasting Treaty ('Rundfunkstaatsvertrag', RStV). Due to legal and technical concerns, such a blocking order has never been issued by the competent authority.

authorities such as the judiciary offer the necessary guarantees against arbitrary decisions<sup>129</sup>. In any case, such measures must not lead in practice “to require an ISP to carry out general monitoring of the information that it transmits on its network”<sup>130 131</sup>.

#### 5.4.3.3 *Obligation of hosting providers to act against known illegal contents*

Secondly, hosting providers have in certain countries an obligation to report and/or block or remove any illegal content (Belgium<sup>132</sup>, Spain<sup>133</sup>, Romania<sup>134</sup>) or any illegal content of a certain kind (France<sup>135</sup>, Cyprus<sup>136</sup>) they are aware of, whereas in some other countries the legislation is less demanding, such as in Bulgaria<sup>137</sup>, Germany<sup>138</sup>, Greece<sup>139</sup>, Ireland<sup>140</sup> and the Netherlands<sup>141</sup>.

<sup>128</sup> The Law on Gambling (4002/2011) provides that only licenses gambling providers can provide relevant activities based on land and online or remotely. The Independent Authority on Gambling makes a list of non-licensed providers, i.e. a black list with the domain names of such providers and ISPs are obliged to block access to their websites. The blocking of sites with child pornography is provided for in the Directive 2011/93, but although this Directive has been implemented into Greek law, the blocking requirement was not implemented.

<sup>129</sup> ECtHR, plen., 6 September 1978, *Klass and others v. Germany*, application n° 5029/71, especially § 55, <http://hudoc.echr.coe.int/eng?i=001-57510>; see also for ex. Xavier Berne, *L'avis de la CNIL sur le déréférencement administratif des sites, sans juges*, 17 March 2015, <http://www.nextinpact.com/news/93478-l-avis-cnil-sur-dereferencement-administratif-sites-sans-juge.htm>. On arbitrary decisions that took place, see for ex. Guillaume Champeau, *Moi, censuré par la France pour mes opinions politiques*, 18 March 2015, Numerama, <http://www.numerama.com/magazine/32516-moi-censure-par-la-france-pour-mes-opinions-politiques.html>. Also see Council of Europe, *Recommendation CM/Rec(2014)6 of the Committee of Ministers on a guide to Human Rights for Internet users*, explanatory memorandum, 16 April 2014, especially §49 et seq., [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016804d5b31](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804d5b31).

<sup>130</sup> EUCJ, 3<sup>rd</sup> ch., 24 November 2011, *Scarlett Extended SA v. Société belge des auteurs compositeurs et éditeurs (SABAM)*, Case C-70/10, §35 et seq., <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-70/10> (last accessed on 29 August 2017).

<sup>131</sup> For a detailed study on access blocking, see the *Comparative Study on Blocking, Filtering and Take down of illegal Internet content*, Council of Europe 2017, <https://edoc.coe.int/en/internet/7289-pdf-comparative-study-on-blocking-filtering-and-take-down-of-illegal-internet-content-.html> (last accessed on 29 August 2017).

<sup>132</sup> Article XII.19 §3 of the CDE. Hosting providers can only prevent access to the targeted contents in the absence of a specific request from the public prosecutor.

<sup>133</sup> Article 14-17 of Act 34/2002. However a focus is made on child pornography and terrorism.

<sup>134</sup> Article 16 of Law 365/2002. The Romanian law specifies that service providers must report *all activities that seem illegal*.

<sup>135</sup> Article 6, I, 2° and 3° of Law n°2004-575.

<sup>136</sup> The provisions of the Directive have been implemented but the Dutch penal code provides in article 54a that no provider can be held liable without a prior request for measures. Art. 54a: “An intermediary which provides a telecommunication service that consists of the transfer or storage of data from a third party, shall not be prosecuted in its capacity as intermediary telecommunication provider if it complies with an order from the public prosecutor to take all measures that may be reasonably required of it in order to disable this data, which order shall be issued by the public prosecutor after he has applied for and received a written authorisation from the examining magistrate”.

<sup>137</sup> Providers are only obliged to ensure the conditions for restriction and discontinuance of contents and interception of electronic communications (Art. 73 (3) 9 of the electronic communications act).

<sup>138</sup> Sec. 7 subsec. 2 sent. 2 of the Telemedia Act clarifies that the service providers exemption to monitor the contents they host or broadcast shall be without prejudice to obligations to remove or disable access to information under general legislation, even if the service provider does not bear responsibility pursuant to sec. 8 to 10. This means, for instance, that if a hosting provider has no knowledge of the illegal activity according to sec. 10 of the Telemedia Act and therefore does not have to compensate damages and has no criminal liability, it still can have the obligation to remove or disable access to information under general legislation. In civil law, such general legislation can be found in sec. 1004 of the German Civil Code, which is the general provision for claiming removal and injunction. If a provider is liable under this provision (so called ‘Störerhaftung’, which means breach of duty of care) depends on if the provider contributed willingly and adequately causally to the infringement of a protected legal interest and if due diligence obligations were violated. The fulfilment of the



#### 5.4.3.4 Safeguards related to hosting providers' actions

As regards the obligation of hosting providers to remove or to block illegal contents where they have knowledge of their existence, Directive 2000/31/EC does not provide for any measures that would enable to safeguard the fundamental freedoms that might be threatened by such an action (including presumption of innocence and right to a fair trial, freedom of expression and right to access information, as well as freedom of trade, including the service provider's freedom of trade in case the latter would be pursued for unduly limiting freedoms). In countries that have implemented almost verbatim the provisions of the Directive, the legislation presents the same pitfalls, such as in Cyprus<sup>142</sup>.<sup>143</sup> Other countries have provided for certain safeguards:

- In some countries such as Belgium<sup>144</sup> and France<sup>145</sup>, only obviously illegal content is supposed to be blocked or removed.
- In France only, service providers have the obligation to remove or to prevent the access to a given content where they have been warned about the existence and the electronic address of this content through a formal procedure set-up by law (notice and take down procedure)<sup>146</sup>.

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latter requirement depends on if an overall balancing of interests and whether the compliance with due diligence is reasonable. Up to now, the liability of providers under sec. 1004 of the German Civil Code is mainly discussed in the field of copyright and trademark violations. In recent cases where personality rights have been violated by Wikipedia entries and blog articles, a breach of duty of care of the hosting provider (Wikipedia and Blogspot) has been negated, because such a liability would not be reasonable as long the provider has not received any specific information about the violation of personality rights (see e.g. BGH, GRUR 2012, 311). In another recent decision of the Federal Court, the abstract possibility of a breach of duty of care by an access provider has not been denied, even if in the specific case the court denied an obligation to block specific contents, because the right owner had not undertaken sufficient measures to prevent the violation of rights by other means, e.g. by tracking the perpetrator directly (BGH MMR 2016, 188).

<sup>139</sup> Such an obligation does only exist in relation to gambling activities.

<sup>140</sup> A specific obligation for service providers was not implemented in the regulations. The General Criminal justice regime does also not feature internet intermediaries under the parties obliged to report criminal offences.

<sup>141</sup> There is no generic regime in place that regulates this. A voluntary notice and takedown initiative is in existence however, and is motivated mainly by the wish to prevent civil liability.

<sup>142</sup> Tatiana Synodinou, Philippe Jougoux, "The Legal framework of Online Service Providers (OSPs) in Cyprus", in Graeme Dinwoodie, *Secondary Liability of Internet Service Providers*, Springer, *Ius Comparatum - Global Studies in Comparative Law* (in press). Th

<sup>143</sup> This sentence has been written with the contribution of Tatiana Synodinou.

<sup>144</sup> This criterion is not in the Code of economic law (CDE) but applied by the courts under the influence of France.

<sup>145</sup> Conseil constitutionnel, Decision 2004-496 DC, 10 June 2004, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2004/2004-496-dc/decision-n-2004-496-dc-du-10-juin-2004.901.html>; See also TGI Paris, 17th ch., 15 November 2004, *Comité de défense de la cause arménienne v. M. Aydin A., France Télécom*, <http://juriscom.net/2004/11/tgi-paris-15-novembre-2004-comite-de-defense-de-la-cause-armenienne-c-m-aydin-a-france-telecom/>.

<sup>146</sup> Article 6, I, 5° of Law 2004-575. Observance of the procedure described in this provision (including all the requested mentions) is a condition to engage the hosting provider's liability: TGI Paris 24 June 2009, 3<sup>rd</sup> ch., 3<sup>rd</sup> section, *Jean-Yves Lafesse and others v. Google and others*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2682](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2682); Court of Appeal Paris, 6 May 2009, *S.A. Dailymotion v. M. C., Société Nord-Ouest Production et S.A. UGC Images*, <http://juriscom.net/2009/05/ca-paris-6-mai-2009-s-a-dailymotion-c-m-c-societe-nord-ouest-production-et-s-a-ugc-images/>, invalidating TGI Paris, 13 July 2007, *Christian C, Nord-Ouest Production v. SA DailyMotion, SA UGC Images*, <http://juriscom.net/2007/07/tgi-paris-13-juillet-2007-christian-c-nord-ouest-production-c-sa-dailymotion-sa-ugc-images/>; Court of cassation, 1<sup>st</sup> ch. civ., 17 February 2011, *Amen v. M. K.*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3426](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3426); C. cass., 1<sup>st</sup> ch. civ., 17 February 2011, *Sté*

- In Spain, the Supreme Court has identified the concept of "*effective knowledge*", but without providing clear interpretive guidelines<sup>147</sup>.
- In most countries, the fact to notify, to a provider, a content in order to obtain its removal, while knowing that this content is not unlawful, is penally sanctioned by a specific law (in France<sup>148</sup>) or through the general offence of false accusation (in France<sup>149</sup>, Belgium<sup>150</sup>, Bulgaria<sup>151</sup>, Germany<sup>152</sup>, Greece<sup>153</sup> and Spain<sup>154</sup>). In some other countries, general civil or penal rules may apply (such as in Cyprus<sup>155</sup>). In other countries

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*Nord-Ouest* and *others* v. *Sté* *Dailymotion*, [http://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/165\\_17\\_19033.html](http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/165_17_19033.html); CA Bordeaux, 1<sup>st</sup> ch., section B, 10 May 2012, *Amen v. M. K.*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3425](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3425).

<sup>147</sup> In a decision of December 2009, the Supreme court considers that there is "*effective knowledge*", according to Article 16.1 of Act 34/2002, where a competent organ has declared the data's illegality, ordering its withdrawal or the impediment to its access, but it also considers that according to article 14 of Directive 2000/31, there can be other effective means of knowledge, namely facts or circumstances apt to enable an effective knowledge.

<sup>148</sup> Art. 6, 4 Law 2004-575.

<sup>149</sup> An offence of false accusations is provided in art. 226-10 of the penal Code: "*A denunciation made by any means and directed against a specified person, of a fact that is liable to cause judicial, administrative or disciplinary sanctions and that the maker knows to be totally or partially false, where it is sent either to a judicial officer or to a judicial or administrative police officer, or to an authority with power to follow it up or to refer it to the competent authority, or to hierarchical superiors or to the employer of the person concerned, is punished by five years' imprisonment and a fine of €45,000. The falsity of the act denounced is conclusively established by a final decision of acquittal, or decision to drop the prosecution, which declares that the alleged facts are not established or that they are not attributable to the person denounced. In any other case, the court seized with the prosecution of the denouncer weighs the accuracy of the denouncer's accusations.*"

<sup>150</sup> There is no special provision related to online content but Articles 443 to 452 of the penal Code BPC (slander, defamation & offense) are applicable to both the offline and online contexts.

<sup>151</sup> There is no special provision related to online content but Articles 282 (targeting officials) and 286 of the penal Code do apply. Article 286: "(1) (Amended, SG No. 62/1997) A person who falsely accuses, before the respective state authorities, another person of a crime, knowing that such person is innocent, or who produces false evidence against such person, shall be punished for false accusation by imprisonment for one to six years and by public censure. (2) (Repealed, renumbered from Paragraph 3, amended, SG No. 62/1997) If penal proceedings have been started against the falsely accused person, the punishment shall be imprisonment for one to ten years".

<sup>152</sup> Sec. 164 of the German Criminal Code, [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1469](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1469).

<sup>153</sup> Article 229 of the penal Code: "1. Whoever knowingly files falsely criminal charges against a third person or makes a report before the competent authority that this person has committed a criminal act or a disciplinary offense in order to cause his/her criminal prosecution, shall be punished with imprisonment of at least one year. 2. The same penalty is imposed to whom for the same purpose, knowingly and falsely makes another suspect for a criminal or a disciplinary offence by making, altering or concealing any evidence. (...)".

<sup>154</sup> Articles 205-207 of the Spanish penal Code. Art. 205: "Slander involves accusing another person of a felony while knowing it is false or recklessly disregarding the truth"; Art. 206: "Slander shall be punished with imprisonment of six months to two years or a fine of twelve to twenty-four months, if propagated with publicity and, in other cases, by a fine from six to twelve months"; Art. 207: "Whoever is accused of the offence of slander shall be exempt from all punishment by proving the criminal act of which he has accused the other person". In addition, offences of false accusation made before an officer of the court or administration who has the duty to proceed to investigate are punished by articles 456 and 457 of the Spanish penal Code.

<sup>155</sup> Cap 148 (law on torts) provides the tort of malicious prosecution (Article 32). According to this provision, "*malicious prosecution consists of actually, maliciously and without reasonable and probable cause instituting or carrying against any person any unsuccessful criminal, bankruptcy or winding-up procedures, where such proceedings (a) caused scandal to the credit or reputation of, or possible loss of liberty by, such person and (b) terminated, if in fact they were capable of so terminating, in favour of such a person. Provided that no action for malicious prosecution shall be brought against any person by reason only that he furnished information to some competent authority by whom any proceedings were instituted*".

there are no provisions in this regard (such as in Ireland<sup>156</sup>, the Netherlands and Romania<sup>157</sup>).

#### 5.4.3.5 Identification of hosting providers

In relation to the qualification of stakeholders that are not mentioned by Directive 2000/31/EC, most countries seem to follow the Council of Europe Committee of Ministers recommendation<sup>158</sup> and the EUCJ opinion<sup>159</sup> which are to qualify the activities involved in the specific case, in order to determine if the hosting providers' liability regime applies, rather than finding a qualification that would apply to one given stakeholder in all cases<sup>160</sup>. As a result, the following stakeholders have been considered to be hosting providers in specific cases, but could be considered as liable under another liability regime such as the general civil one in case their activities at stake (judged in relation to a given illegal content) would be different than those that have been already examined by courts: eBay<sup>161</sup>, discussion forums<sup>162</sup>, Wikipedia<sup>163</sup>, Facebook<sup>164</sup>, Youtube<sup>165</sup>, Google Video<sup>166</sup>,

<sup>156</sup> It might constitute defamation (see Section 7). Section 12 of the Criminal law act 1976 only punishes false accusations made to the Garda Síochána.

<sup>157</sup> Article 268 of the Criminal Code only introduces a sanction for misleading judiciary authorities when submitting a false complaint.

<sup>158</sup> Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2011)7 of 21 September 2011 on a new notion of media, Annex n°49, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cc2c0](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc2c0).

<sup>159</sup> See for example EUCJ, gr.ch., 23 March 2010, *Google France SARL and others vs. Louis Vuitton Malletier SA and others*, joined Cases C-236/08 to C-238/08, §114 *et seq.*, <http://curia.europa.eu/juris/liste.jsf?num=C-236/08>; EUCJ, 7<sup>th</sup> ch., 11 September 2014, *Sotiris Papasavvas v. O Fileleftheros Dimosia Etaireia Ltd e.a.*, case C-291/13, §41 *et seq.*, <http://curia.europa.eu/juris/liste.jsf?num=C-291/13> (URLs last accessed on 24 August 2017).

<sup>160</sup> As French courts were doing in the past: see for ex. CA Paris, 7 June 2006, *Tiscali Media v. Dargaud Lombard*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=1638](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=1638), validated by C. cass, 14 January 2010, *Telecom Italia (Tiscali) v. Dargaud lombard and Lucky Comics* [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2829](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2829); CA Paris, 3 September 2010, pôle 5, ch. 2, *eBay v. Parfums Christian Dior, Kenzo Parfums, Parfums Givenchy, Guerlain*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2972](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2972).

<sup>161</sup> In **Belgium** (see for ex. Trib. Com. Brx, 31 July 2008, *L'Oréal v. eBay*, *Revue du droit des technologies de l'information* [R.D.T.I.], MONTERO, Etienne, Note d'observation sous Comm. Bruxelles (7<sup>th</sup> ch.), 31 July 2008, n° 33); in **France** (see for ex. TGI Paris, 13 May 2009, *L'Oréal et autres v. eBay France et autres*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2639](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2639); Cass. com., 3 May 2012, *eBay Inc., eBay International v. Christian Dior Couture*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3400](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3400); Cass. com., 3 May 2012, *eBay Inc., eBay International v. Louis Vuitton Malletier*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3401](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3401)); in **Germany** (especially in relation to items' description); in **Spain**.

<sup>162</sup> In **Belgium** (ex. Civ. Anvers, Dec 3rd, 2009, quoted in *Revue du droit des technologies de l'information* [R.D.T.I.], n° 59-60, Sept 2015, p. 28); in **France** (only where there is no a priori moderation, ex. TGI Paris, réf., 18 February 2002, *SA Telecom City, Monsieur J. M. et Monsieur N. B. c/ SA Finance.net (affaire Boursorama)* [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=200](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=200); TGI Lyon, 21 July 2005, 14<sup>ème</sup> ch. du tribunal correctionnel, *Groupe Mace v. Gilbert D.*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=1589](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=1589); CA Versailles, 12 December 2007, *Les Arnaques.com v. Editions Régionales de France*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2118](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2118); TGI Lyon, 28 May 2002, *SARL Père-Noël.fr v. M. F. M., Mlle E. C. et SARL Deviant Network*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=16](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=16); in **Germany** (especially in relation to users' messages); in **Spain**.

<sup>163</sup> In **France** (TGI Paris, 29 October 2007, *Mme M. B., M. P.T., M. F.D. v. Wikimedia Foundation Inc.*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2071](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2071)); in **Germany** (in relation to articles); in **Greece** (Athens Single Member Court 9118/2014); in **Spain**.

<sup>164</sup> In **Ireland** (see judgement of the High Court, 23 August 2016, *Muwema -v- Facebook Ireland Ltd*, <http://www.bailii.org/ie/cases/IEHC/2016/H519.htm>); in **France** (TGI Paris, réf., 13 April 2010, *Hervé G. v. Facebook France*, [http://www.legalis.net/?page=breves-article&id\\_article=2898](http://www.legalis.net/?page=breves-article&id_article=2898)); in **Spain**.

DailyMotion<sup>167</sup>, Twitter<sup>168</sup>, Google Adwords<sup>169</sup>, searchers and link suppliers<sup>170</sup>, including video<sup>171</sup> and image<sup>172</sup> search engines. On the opposite, the following Internet services have not been granted from the benefit of the special liability of hosting providers: Google cache and Google news in Belgium, suggestions made within the autocomplete function of search engines in France<sup>173</sup> and Germany<sup>174</sup>.

#### 5.4.3.6 Data retention obligations

As regards data retention obligations,

- In some countries, operators and access providers have the obligation to retain an exhaustive list of traffic data, which did not change (at least in practice) with the invalidation of the data retention Directive (Directive 2006/24/EC) by the EUCJ. This is the case in France<sup>175</sup>, in Bulgaria<sup>176</sup>, in Cyprus<sup>177</sup>, in Greece<sup>178</sup>, in Ireland<sup>179</sup>, and in

<sup>165</sup> In France (TGI Créteil, 14 December 2010, *INA v. Youtube*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3052](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3052)); in Spain.

<sup>166</sup> In France (TGI Paris, 19 October 2007, *SARL Zadig Production, Jean-Robert V. et Mathieu V. v. Sté Google Inc. et AFA*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2072](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2072).

<sup>167</sup> In France: TGI Paris, 3<sup>ème</sup> ch., 4<sup>ème</sup> sect., 13 Sept. 2012, *TF1 et autres v. Dailymotion*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3486](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3486); C. cass., 1<sup>ère</sup> ch. civ., 17 February 2011, *Sté Nord Ouest et a. v. Sté Dailymotion*, [http://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/165\\_1\\_7\\_19033.html](http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/165_1_7_19033.html); CA Paris, Pôle 5, Ch. 1, 2 December 2014, *TF1 et autres v. Dailymotion*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=4401](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=4401).

<sup>168</sup> In Spain.

<sup>169</sup> In France: Cour de cassation, press release relating to its decisions of 13 July 2010 on the « Adwords » system developed by Google, [http://www.courdecassation.fr/jurisprudence\\_2/chambre\\_commerciale\\_financiere\\_economique\\_574/arrets\\_rendus\\_17008.html](http://www.courdecassation.fr/jurisprudence_2/chambre_commerciale_financiere_economique_574/arrets_rendus_17008.html); Cour de cassation, chambre commerciale, 13 July 2010, n° de pourvoi 06-15136, [http://www.courdecassation.fr/publications\\_cour\\_26/arrets\\_publices\\_2986/chambre\\_commerciale\\_financiere\\_economique\\_3172/2010\\_3324/juillet\\_3606/865\\_13\\_17043.html](http://www.courdecassation.fr/publications_cour_26/arrets_publices_2986/chambre_commerciale_financiere_economique_3172/2010_3324/juillet_3606/865_13_17043.html); Cour de cassation, chambre commerciale, 13 July 2010, n° de pourvoi 08 13944, [http://www.courdecassation.fr/publications\\_cour\\_26/arrets\\_publices\\_2986/chambre\\_commerciale\\_financiere\\_economique\\_3172/2010\\_3324/juillet\\_3606/861\\_13\\_17040.html](http://www.courdecassation.fr/publications_cour_26/arrets_publices_2986/chambre_commerciale_financiere_economique_3172/2010_3324/juillet_3606/861_13_17040.html); Cour de cassation, chambre commerciale, 13 July 2010, n° de pourvoi 05 14331, <http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000022490459&fastReqId=2146005923&fastPos=1>; Cour de cassation, chambre commerciale, 13 July 2010, n° de pourvoi 06 20230, [http://www.courdecassation.fr/publications\\_cour\\_26/arrets\\_publices\\_2986/chambre\\_commerciale\\_financiere\\_economique\\_3172/2010\\_3324/juillet\\_3606/862\\_13\\_17042.html](http://www.courdecassation.fr/publications_cour_26/arrets_publices_2986/chambre_commerciale_financiere_economique_3172/2010_3324/juillet_3606/862_13_17042.html). See also CJUE, gr. ch., 23 March 2010, cases C-236/08, 237/08 and 238/08, *Google France v. LVM, Viaticum, Luteciel, CNRRH et autres*, <http://curia.europa.eu/juris/liste.jsf?num=C-236/08>.

<sup>170</sup> In France (CA Paris, 4<sup>ème</sup> ch., section A, 19 Sept. 2001, *NRJ et Jean-Paul B. v. SA Europe 2 Communication*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=297](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=297)); In Spain (Act 34/2002 on Information Society Services and Electronic Commerce, [http://www.Act\\_34/2002.gob.es/proveedores-servicios/Paginas/proveedores.aspx](http://www.Act_34/2002.gob.es/proveedores-servicios/Paginas/proveedores.aspx)).

<sup>171</sup> In France (CA Paris, pôle 5, 2<sup>ème</sup> ch., 11 Dec. 2009, *Jean-Yves Lafesse v. OVH et a.*, [http://www.legalis.net/%22?page=jurisprudence-decision&id\\_article=2802](http://www.legalis.net/%22?page=jurisprudence-decision&id_article=2802)).

<sup>172</sup> In France (CA Paris 26 January 2011, *SAIF v. Google*, <http://www.juriscom.net/actu/visu.php?ID=1286>. For a case relating to the so-called « natural » Google search engine (attempt to private life) see TGI Paris, réf., 15 February 2012, *Diana Z. v. Google*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3362](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3362)).

<sup>173</sup> Ex. TGI Paris, 17<sup>ème</sup> ch., 8 Sept. 2010, *M. X... v. Google Inc., Eric S. et Google France*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2985](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2985); T. com. Paris, réf., 8 April 2011, *Rivalis v. Google*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3361](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3361).

<sup>174</sup> BGH GRUR 2013 751 (752 f.).

<sup>175</sup> Decree n° 2006-358 of 24/03/04 codified in articles R.10-12 and R. 10-13 of the post and electronic communications Code (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id>).

<sup>176</sup> Article 251b of the Electronic communications act.

Spain<sup>180</sup>. In France only, hosting providers have also the obligation to retain an exhaustive list of connection data<sup>181</sup>.

- In other countries, the domestic data retention law transposing Directive 2006/24/EC is no more in application, either following the invalidation of this Directive (in Belgium<sup>182</sup> and in the Netherlands<sup>183</sup>), or following a court's decision based on Constitutional

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<sup>177</sup> Directive 2006/24/EC has been implemented by Law no. 183 (I) 2007. This law has been found unconstitutional due to fact that while the Directive had as its aim the harmonization of the common market, the law resulted to the expansion of the scope of measures available to the authorities for the combating of criminal activity (Supreme Court, Alexandrou, Case 1/2010, 21 Jan. 2010, (2010) 1 CLR 17). As a consequence Article 17(2) C of the Constitution (4 June 2010) was amended via Law 51 (I)/2010 (6th Amendment of the Constitution), in order to include data retention into the privacy limitations that are constitutionally authorised. In addition, the annulment of the Directive brought as a consequence the collapse of the existing system of gaining access to electronic communications data by the police in order to investigate serious criminal offenses, since the latter now lacks its legal foundation (Supreme Court, Attorney General v Isaia and others, (Civil appeal no. 402/2012), 7 July 2014; Tatiana Synodinou, "Country report for Cyprus", in *Comparative Study on Blocking, Filtering and Take down of illegal Internet content*, Council of Europe, *op. cit.*). Consequently, the provisions of Law 183(I)/2007 that originally intended to implement the Directive remain fully in force but as a matter of national constitutional law (Article 17 of the Constitution as it has been amended) and not as a matter of E.U. law (Kombos, "Cyprus Rapport, Data Retention in Cyprus: Going beyond the Call of Duty", in: P. Birkinshaw (ed.), *European Public law: The achievement and the challenge*, Wolters Kluwer, 2014, p. 426).

<sup>178</sup> Law 3917/2011 implements the Data Retention Directive and provides for the obligation of network operators and access providers (providers of publicly available electronic communications services or of public communications networks, to retain traffic data (Article 1). Article 5 of Law 3917/2011 provides the list of the categories of data to be retained (see Article 5 of Directive 2006/24). The duration of data retention is 12 months and it should take place exclusively in Greek territory (Article 6). Following the CJEU decision which annulled the Data Retention Directive, a Committee was formed by the Ministry of Justice which considered whether to amend or repeal the above Law, but no decision has been taken yet.

<sup>179</sup> Data retention is subject of the Communications (Retention of Data) Act 2011, <http://www.irishstatutebook.ie/eli/2011/act/3/section/3/enacted/en/html> (last accessed on 29 August 2017). The retention period is of one or two years depending on the data's nature.

<sup>180</sup> Act 25/2007 which regulates data preservation concerning electronic communications and public communication networks states that telecommunication network operators must store and preserve certain data during one year, with the purpose of helping crime investigation, in case it is necessary.

<sup>181</sup> For hosting providers, article L.34-1 of the post and electronic communications Code and Decree n° 2011-219 of 25/02/2011 (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id>). Connection data to be retained (for a duration of one year) include the following technical data (excluding other types of information such as names, passwords... if such data are not usually collected): the identifier of the connection; the identifier attributed to the subscriber; the identifier of the terminal used for the purpose of the connection, where providers access such information; the dates and times at which the connection begins and ends; the specifications of the line of the subscriber; and certain information provided at the time of the contract subscription or of the creation of the users' account, including - only where the providers usually collect such information - the password and the data that enables the modification or verification of this password, in their last latest and updated form. In addition, hosting providers must retain some data identifying electronic communications service editors who want to remain anonymous online (article 6, II of law n°2004-575, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164>).

<sup>182</sup> The European condemnation has been followed by the complete annulment of the Act of July, 30th, 2013 modifying article 126 of the Act of June 13th, 2005 on electronic communications by the Belgian Constitutional Court. Belgium is therefore now back with its former Article 126, which does not include any data retention provisions. In practice, what the operators have put in place is still operational and the Public Prosecutors can still get information they might require. A preliminary draft of a new Act on data retention has been the subject of a public consultation in August 2015 and is still under discussion. As regards hosting providers, they are supposed to be able to provide information they have at their disposal. Retention durations are therefore determined by the host providers themselves, on the basis of their needs for contractual relationships with their customers.

<sup>183</sup> Following the digital rights Ireland case, the existing regime was found incompatible with European law by a Dutch court. A new text is under preparation and it is expected that the data retention obligation will be re-introduced in legislation shortly. The Netherlands has recently requested the EC to take the lead in a renewed European approach. See <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:2498> (in Dutch).



provisions (in Germany<sup>184</sup> and in Romania<sup>185</sup>). In Germany<sup>186</sup>, a new law with reduced scope has been adopted.

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<sup>184</sup> An obligation to retain traffic data for a certain period was introduced into the German Telecommunications Act (sec. 113a) by the legislature in 2007 while implementing Directive 2006/24/EG. However, the provision was declared null and void by the Federal Constitutional Court in its decision from 2 March 2010 due to constitutional deficiencies.

<sup>185</sup> The data retention law was declared twice unconstitutional by the Romanian Constitutional Court (Decision 1258/2009 available in English at [https://www.ccr.ro/files/products/D1258\\_091.pdf](https://www.ccr.ro/files/products/D1258_091.pdf) and Decision 440/2014 available in English at [https://www.ccr.ro/files/products/Decizie\\_440\\_2014\\_reviz.pdf](https://www.ccr.ro/files/products/Decizie_440_2014_reviz.pdf)). Internet hosting providers and social networks do not have an obligation of data retention. For Internet Service Providers, social networks and search engines the general principles of Law 677/2001 on personal data protection apply. For electronic communication providers, the right to collect metadata was introduced by the implementation of the ePrivacy directive. A recent 2015 amendment to Law 506/2004 on ePrivacy clarifies the conditions to access metadata for as long as it is necessary for the specific purposes of interoperability and billing, but no longer than 3 years.

<sup>186</sup> In October 2015, the Bundestag (Parliament) passed the *Law for the implementation of a retention obligation and a maximum retention period for traffic data*, which has been in force since 18 December 2015. However, the retention and other associated obligations need not be complied with before 1 July 2017. Sec. 113b of the German Telecommunications Act lists the data that can be requested from providers of publicly available telecommunication services (and not hosting providers). Location data must be retained for 4 weeks, while all other traffic data must be retained for 10 weeks. Section 113 Subsection 5 TKG explicitly stipulates that the content of communication, data regarding the internet sites accessed, and data from electronic mail services may not be retained. In addition, pursuant to Section 113 Subsection 6 TKG, the retention of traffic data may not cover connections to lines of telephone counselling services as per Section 90 Subsection 2 TKG.

## 6 Findings implications

Findings of the current study, in relation to the definition of illegal hate speech and to the determination of liabilities, lead to a series of conclusions relating to the contents to be taken into account within the framework of the MANDOLA project (Section 6.1), to the actions that should be and should not be taken against hate speech (Section 6.2), and to the ideal content of illegal hate speech and harmonisation efforts (Section 6.3).

### 6.1 Implications in terms of contents to be taken into account within the framework of the MANDOLA project

In Section 3.2.2 of the current report, we identified the need, for the MANDOLA consortium, to focus on illegal hate speech rather than on a definition of hate speech that would not be legal, and therefore that would encompass non-illegal behaviours without even trying to distinguish the latter from illegal contents.

As a result, it seems important to keep, as a basis of work, a detailed definition of illegal hate speech (rather than a more general and simplified one), since it enables to avoid, to the utmost extent, the inclusion of potentially legal contents.

Naturally, as it has already been highlighted in the current report, even a detailed definition of illegal hate speech encompasses behaviours that remain legal in one country or another. This is unavoidable given the huge disparity that has been noticed between the legislations of the ten E.U. Member States that have been studied. However, the category of behaviours that are prohibited in some countries but not in the others is in itself of high interest - and must therefore be kept in the analysis - for the following reasons:

- The provisions which penalise these behaviours will often serve as a basis to sanction hatred-related actions, since they are quite numerous.
- The heterogeneity of these provisions shows a non-equal treatment between victims that appears to have to be included in the MANDOLA research and conclusions, at least in order to issue some recommendations, where feasible, in this regard (see below Section 6.3.1).
- More widely, some of these provisions seem particularly interesting to study, since they question the border between the behaviours that should be prohibited and those that should remain allowed in a society governed by the rule of law, in order to ensure the best possible balance between rights and the good health of a democratic society (see below Section 6.3.2).

As a consequence of these finding, it appears obvious that the definition of hatred that the MANDOLA consortium must take into account within the framework of its legal and ethical research includes all the (oral and written, including non-verbal) hatred-related behaviours that are prohibited in the E.U. countries that have been studied, in addition to the hatred-related behaviours that should be prohibited in the E.U., according to the E.U. legal instruments and according to the International legal instruments that have been accessed or ratified by E.U. Member States (since a faithful transposition should lead to penalise these

behaviours). This definition of illegal hate speech is proposed in Section 4.1 of the current report.

Ideally, the above-mentioned list of hatred-related behaviours identified as being prohibited in the E.U. countries that have been studied must also serve as a basis of the other MANDOLA activities, such as the development of a reporting portal, of a smartphone reporting mechanism and of a monitoring dashboard demonstrating the trends in spread and penetration of online hatred-related speech. Consequently, the MANDOLA consortium has done its best efforts to base its technical developments on such a definition. Within this framework, it has been noticed that some additional technical developments of the dashboard might be needed in the future, in order to obtain a more accurate assessment of contents<sup>187</sup>, if deemed appropriate (taking into account the objectives of the use of this dashboard, and knowing that, in any case, specific disclaimers will have to be implemented in order to ensure the safeguarding of several fundamental rights<sup>188</sup>, including the reminder that before any decision is taken by an independent authority - in principle a court<sup>189</sup> on the legality of contents, the latter can only be considered as “potentially” illegal).

The more global definition of hate speech proposed in Section 4.2 of the current report could also present benefits in the future developments of this dashboard, depending once again on the precise purposes that will motivate its use. This more global definition may for example be of interest in projects where the aim is not primarily to focus on illegal hate speech but to map all the existing initiatives in the field of the combat against online hate content<sup>190</sup>.

## **6.2 Implications in terms of actions that should be or should not be taken against hate speech**

In the light of the findings of the current study, it seems that coercive measures should be avoided before any court decision, that safeguards against content removal or blocking should be more widely organised, and that alternatives to penal law should be explored.

### **6.2.1 Coercive measures should be avoided before any Court decision**

The respect of fundamental rights, at the first place the principles of the legality of sanctions and of presumption of innocence<sup>191</sup>, impose that in principle no sanction can be taken against an online content before a competent authority could legally qualify the content and decide which proportionate sanction needs to be applied. In addition, this competent

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<sup>187</sup> See the MANDOLA Deliverable D2.4b (final) - *Privacy Impact Assessment of the MANDOLA outcomes*, September 2017, Especially Sections 4.1.2 and 4.2.3, <http://mandola-project.eu/publications/>.

<sup>188</sup> See the MANDOLA Deliverable D2.4b (final) - *Privacy Impact Assessment of the MANDOLA outcomes*, *op. cit.*, especially Section 4.1.1.2.

<sup>189</sup> See below Section 6.2.1.

<sup>190</sup> See Young People Combating Hate Speech On-line, *Mapping study on projects against hate speech online*, prepared by the British Institute of Human Rights, 15 April 2012, Council of Europe publishing 2012 (DDCP-YD/CHS (2012), available at <https://rm.coe.int/16807023b4> (last accessed on 21 August 2017), notably Section 2.1.1.

<sup>191</sup> See Estelle De Marco *et al.*, MANDOLA deliverable D2.2 - *Identification and analysis of the legal and ethical framework*, version 2.2.4 of 12 July 2017, MANDOLA project (Monitoring AND Detecting OnLine hAte speech) - GA noJUST/2014/RRAC/AG/HATE/6652, Section 4.4, <http://mandola-project.eu/publications>.



authority should be a judge, at least in last resort<sup>192</sup>. Exceptions to these principles must be provided for by law, and must be necessary and proportionate taking into account the objective pursued (which must be precisely identified)<sup>193</sup>. An example of necessary and proportionate measure could be the prevention of the access to very obviously illegal contents (such as child pornography can be in numerous cases) on their hosting servers only, in order to protect the victims' image and to prevent further crime, provided that an impact assessment shows (1) that further crime is likely to be prevented by this measure, (2) that the extent of the latter effect worth the costs of the measure (in financial terms and in terms of impacts on the service and on Internet users), and (3) that the benefits of hiding the penal offence are higher than the interest of victims to raise citizens' awareness on the remanence of such kind of contents<sup>194</sup>. Such benefits might be for example higher in case strong means dedicated to the search of perpetrators and victims - including financial - do actually accompany the efforts to remove these contents from the Internet.

For this reason, Internet access and hosting providers - whose neutrality is of utmost importance for the preservation of fundamental rights on the Internet<sup>195</sup> - should neither be authorised, nor be incited to take, against online contents, measures that would not be provided for by their domestic law or by a legally authorised self-regulation that would efficiently comply with the principles of necessity and proportionality<sup>196</sup>, particularly in the area of hate speech, where the distinction against potentially legal and potentially illegal hate speech might be very difficult to make, as shown previously in the current report, and

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<sup>192</sup> ECtHR, plen., 6 September 1978, *Klass and others v. Germany*, application n° 5029/71, especially § 55, <http://hudoc.echr.coe.int/eng?i=001-57510> (relating to interferences of public authorities with the right to privacy, but applicable *mutatis mutandis* given the importance of the right to freedom of expression in a society governed by the rule of law (see the MANDOLA Deliverable D2.2, Section 4.3, *op. cit.*) and taking into account the wide power of Internet service providers, in practice, on Internet contents). See also the Committee of Ministers of the Council of Europe, Recommendation R(97)20 on "Hate speech", 30 October 1997, <https://rm.coe.int/1680505d5b> (URL last accessed on 4 September 2017), Principle 3: "[...] in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others".

<sup>193</sup> See the MANDOLA deliverable D2.2 - *Identification and analysis of the legal and ethical framework*, particularly Sections 4.1.3 and 4.3.3.1, *op. cit.*

<sup>194</sup> In this context, it is interesting to note the existence of a victims group called "Missbrauchsopfer gegen Internetsperren" (Abuse Victims Against Internet Blocking) that actively campaigns against blocking in Germany. See for ex. [https://en.wikipedia.org/wiki/MissbrauchsOpfer\\_Gegen\\_InternetSperren](https://en.wikipedia.org/wiki/MissbrauchsOpfer_Gegen_InternetSperren). See Cormac Callanan, Marco Gercke, Estelle De Marco and Hein Dries-Ziekenheiner, *Internet blocking - balancing cybercrime responses in democratic societies*, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>), Sections 7.4.2 and 7.5.1.3. URLs last accessed on 29 August 2017.

<sup>195</sup> See for example Council of Europe, Declaration of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, 7 December 2011, [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl\(07.12.2011\)\\_2&Language=lanEnglish&Ver=original&Site=CM&BackColorIntInet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl(07.12.2011)_2&Language=lanEnglish&Ver=original&Site=CM&BackColorIntInet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true) (last accessed on 29 August 2017).

<sup>196</sup> See for ex. Appendix to Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media, 21 September 2011, § 3, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cc2c0](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc2c0) (last accessed on 29 August 2017).

where non illegal speeches, even of a chocking nature, need to be particularly protected since they are necessary to the health of a democratic society governed by the rule of law<sup>197</sup>.

## 6.2.2 Strengthening safeguards that ensure the necessity and proportionality of Internet access and hosting providers' actions

The current study shows that, due to the wording of Directive 2000/31/EC<sup>198</sup>, France is the sole country - amongst those who oblige hosting providers to take certain actions against the illegal contents they host - where law provides several complementary guarantees such as a formal and detailed notice and take down to be strictly followed to demonstrate hosting providers' knowledge of illegal contents, a specific offence preventing abusive denunciations and, through the voice of the French constitutional and judicial judges, the necessity to remove "obviously" illegal contents only and the prohibition of measures leading to a general obligation to monitor the contents that service providers host<sup>199</sup>. The French legal framework seems therefore to be one of the most secure in terms of safeguarding citizens' fundamental rights, also thanks to the important volume of court cases in this area and to the growing specialisation of French judges, whose decisions are increasingly pragmatic and consistent with both ICT practical aspects and the need to preserve fundamental rights on the Internet<sup>200</sup>. However, French lawyers do actually debate several imperfections of this legal system<sup>201</sup>, in addition to the existence of a new liability regime created by the French Parliament in 2009, which does not ease the combat against illegal content while creating a lot of confusion in relation to the legal qualification of editors and hosting providers<sup>202</sup>.

<sup>197</sup> ECtHR, plen., 7 December 1976, *Handyside v. The United Kingdom*, §49, <http://hudoc.echr.coe.int/eng?i=001-57499> (Last accessed on 24 May 2017). See the MANDOLA deliverable D2.2 - *Identification and analysis of the legal and ethical framework*, particularly Section 4.3.2.1, *op. cit.*

<sup>198</sup> Tatiana Synodinou, Philippe Jougoux, "The Legal framework of Online Service Providers (OSPs) in Cyprus", in Graeme Dinwoodie, *Secondary Liability of Internet Service Providers*, Springer, *Ius Comparatum - Global Studies in Comparative Law* (in press).

<sup>199</sup> See Section 5.4.3 of the current report.

<sup>200</sup> See for ex. TGI Paris, 13 May 2009, *L'Oréal et autres v. eBay France et autres*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2639](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2639); Cass. com., 3 May 2012, *eBay Inc., eBay International v. Christian Dior Couture*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3400](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3400); Cass. com., 3 May 2012, *eBay Inc., eBay International v. Louis Vuitton Malletier*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3401](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3401); TGI Paris, 3<sup>ème</sup> ch., 4<sup>ème</sup> sect., 13 Sept. 2012, *TF1 et autres v. Dailymotion*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3486](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3486); TGI Paris, ordonnance de référé, 4 April 2013, *H&M v. Google Inc et Youtube*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3716](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3716).

<sup>201</sup> For example the fact that a large part of the jurisprudence still considers some offences such as misleading statements (TGI Paris, réf., 29 May 2007, *Benetton, Bencom v. Google Inc, Google France*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=2120](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2120)), speeches attempting private life intimacy (TGI Paris, réf., 15 February 2012, *Diana Z. v. Google*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3362](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3362)) and counterfeits (TGI Créteil, 14 December 2010, *INA v. Youtube*, [http://www.legalis.net/spip.php?page=jurisprudence-decision&id\\_article=3052](http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3052)) as being obviously illegal, whereas their illegality depends on some circumstances that hosting providers cannot know (such as the publicity of private facts made by the victims and the veracity of allegations or contractual relationships). See Estelle De Marco, *Acteurs et services de la société de l'Information (Stakeholders and services of the information society)*, handout supporting the training course having the same name, University curricula « Cybercriminalité – droit, sécurité de l'information et informatique légale », University of Montpellier, 2016 - 2017, p.25.

<sup>202</sup> Law 2009-258 has created a new legal category of stakeholders called « editor of service of online communication to the public », which it is not adapted to practices' reality. The liability regime attached to this qualification is a mix between the hosting providers' liability regime (with less guarantees since the notice and take down procedure is for example not applicable, neither the requirement of obvious illegality for removing a content) and the liability regime of the press (or

It seems regrettable that given the challenges at stake (including the preservation of freedom of access to information and of the right to private life), the commitment of the E.U. and of the E.U. Member States to respect both the European Convention on Human Rights and the E.U. Charter of fundamental rights (which both include a positive obligation of States to protect the above-mentioned rights), and the high number of recommendations of the CoE Committee of Ministers in that field<sup>203</sup>, domestic laws are not more clear and detailed on decisions that can and cannot be made by service providers, and not more comprehensive on safeguards that ensure the preservation of citizen's rights in this regard.

As a consequence, future legislative and harmonisation works should ideally address this issue.

### 6.2.3 Exploring alternative measures to penal repression

Studies performed during the MANDOLA research show that mainly, laws that define illegal hate speech sanction this kind of contents with fines and imprisonment. Measures of another nature are less frequent and may appear half-hearted<sup>204</sup>.

However, there are different ways of ensuring the respect of fundamental rights and *"recourse to the criminal law is not necessarily the only answer"*<sup>205</sup>.

As shown in the MANDOLA deliverable D4.4<sup>206</sup>, the French CNCDH<sup>207</sup> has for example recommended in 2015<sup>208</sup> to set-up partnerships in order to *"elaborate a coherent and homogenous normative corpus [with a diversification of] [...] answers brought to online hate*

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more practically of authors of illegal contents). Since this new stakeholder is not defined by law, it comes in conflict with both the hosting providers' regime and the editor or general liability regime, and creates a lot of confusion in jurisprudence, thereby creating legal insecurity. See Estelle De Marco, *Acteurs et services de la société de l'Information (Stakeholders and services of the information society)*, op. cit., Section 2.1.5.

<sup>203</sup> See Recommendations and declarations of the Committee of Ministers of the Council of Europe in the field of media and information society, Council of Europe publishing, 2016, <https://rm.coe.int/1680645b44>, particularly and for ex. Recommendation CM/Rec(2011)7 on a new notion of media, 21 September 2011, p. 166; Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters, 26 March 2008, p. 157; Recommendation CM/Rec(2011)8 on the protection and promotion of the universality, integrity and openness of the Internet, 21 September 2011, p. 188; Recommendation on the protection of human rights with regard to search engines, 4 April 2012, p. 2018 (esp. III p. 222); Recommendation CM/Rec(2012)4 on the protection of human rights with regard to social networking services, p.224 (especially §3, 5 and 10); Recommendation CM/Rec(2014)6 on a Guide to human rights for Internet users and its explanatory memorandum, pp. 234 and 239; Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, p. 336. See also the Recommendation CM/Rec(2015)6 of the Committee of Ministers to member States on the free, transboundary flow of information on the Internet, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c3f20](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c3f20); the Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality, [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2016\)1&Language=lanEnglish&Ver=original&BackCol=&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2016)1&Language=lanEnglish&Ver=original&BackCol=&direct=true).

<sup>204</sup> See the MANDOLA Deliverable D4.4 - Landscape and Gap Analysis, August 2017, <http://mandola-project.eu/publications/>.

<sup>205</sup> CEDH, ch., 26 March 1985, *X et Y v. the Netherlands*, appl. n° 8978/80, <http://hudoc.echr.coe.int/eng?i=001-57603>.

<sup>206</sup> Op. cit.

<sup>207</sup> French National Consultative Commission of Human Rights.

<sup>208</sup> CNCDH, Avis sur la lutte contre les discours de haine sur Internet, 12 February 2015, available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030862432> and at [http://www.cncdh.fr/sites/default/files/15.02.12\\_avis\\_lutte\\_discours\\_de\\_haine\\_internet\\_cncdh\\_0.pdf](http://www.cncdh.fr/sites/default/files/15.02.12_avis_lutte_discours_de_haine_internet_cncdh_0.pdf) (URLs last accessed on 4 September 2017).

speech”<sup>209</sup>. It has also recommended the adoption of “*a national action plan on education and digital citizenship, in order to enable citizens to gain the necessary skills to understand and interact on the Internet, with a free and responsible speech*”<sup>210</sup>. This recommendation meets some Greek conclusions in this same deliverable, according to which if young children were “*systematically educated, (they) may learn to accept otherness and reject hate speech and racist violence*”<sup>211</sup>.

Education seems indeed to be a critical need, as also highlighted by several authors, including the Venice Commission<sup>212</sup>, which considers that “*hate speech [...] justifies criminal sanctions*”<sup>213</sup>, as well as some authors who think that - on the opposite - hate speech should not be penalised since no serious study has shown that such penalisation has led to the decrease of hate, whereas other ways could prevent harm and attacks against persons<sup>214</sup>.

Indeed, education on common crucial values, and primarily the respect of others and the respect of their fundamental rights (including the right to non-discrimination based on a specific characteristic such as religion or gender) appears to be of high importance.

One of these fundamental values being the freedom of expression, cornerstone of democracy<sup>215</sup>, education should also cover acceptance of constructive criticism, since it conditions the very possibility to uphold debates of ideas<sup>216</sup>. The Venice Commission underlines that in a democratic society, even “*religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs*”<sup>217</sup> (“*provided that such criticism does not amount to incitement to hatred and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion*”<sup>218</sup>). “*In the long term*”<sup>219</sup>, the ideal would be that “*every member of a*

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<sup>209</sup> MANDOLA Deliverable D4.4 - Landscape and Gap Analysis, op. cit., Section 9.3.

<sup>210</sup> Ibid.

<sup>211</sup> MANDOLA Deliverable D4.4 - Landscape and Gap Analysis, op. cit., Section 5.4.5.

<sup>212</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, Council of Europe publishing, Science and technique of democracy, March 2010, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e) (last accessed on 4 September 2017), n°s. 47 and 85.

<sup>213</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, op. cit., n°57 p. 26.

<sup>214</sup> See for Example Eric Heinze, *Hate speech and democracy citizenship*, Oxford University Press, 2016; Andrew Reid, *Hate Speech and Democratic Citizenship* by Eric Heinze, <http://blogs.lse.ac.uk/politicsandpolicy/hate-speech-and-democratic-citizenship-by-eric-heinze/> (last accessed on 29 August 2017).

<sup>215</sup> According to the French Constitutional Council, freedom of expression “*is one of the cornerstones of a democratic society*”: see for ex. Decision n° 2015-512 QPC of 8 January 2016, §5, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-512-qpc/decision-n-2015-512-qpc-du-8-janvier-2016.146840.html>; According to the ECtHR, freedom of expression is “*one of the essential foundations of [...] (a democratic) society, one of the basic conditions for its progress and for the development of every man*” (ECtHR, plen., 7 December 1976, *Handyside v. The United Kingdom*, §49, <http://hudoc.echr.coe.int/eng?i=001-57499>). See also the MANDOLA deliverable D2.2 - Identification and analysis of the legal and ethical framework, version 2.2.4 of 12 July 2017, MANDOLA project (Monitoring AND Detecting OnLine hAte speech) - GA noJUST/2014/RRAC/AG/HATE/6652, <http://mandola-project.eu/publications>, Section 4.3.2.1. URLs last accessed on 29 August 2017.

<sup>216</sup> Freedom of expression includes a right to criticism: see ECtHR, plen., 8 July 1986, *Lingens v. Austria*, appl. n°9815/82, §42, <http://hudoc.echr.coe.int/eng?i=001-57523> and the MANDOLA Deliverable D2.2 - Identification and analysis of the legal and ethical framework, version 2.2.4 of 12 July 2017, MANDOLA project (Monitoring AND Detecting OnLine hAte speech) - GA n° JUST/2014/RRAC/AG/HATE/6652, <http://mandola-project.eu/publications>, Section 4.3.3.1.2.3 (URLs last accessed on 29 August 2017).

<sup>217</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, op. cit., p. 29, n°72.

<sup>218</sup> Ibid.; see also below our Section 6.3.2.

*democratic society [...] [is] able to express in a peaceful manner his or her ideas, no matter how negative, on other faiths or beliefs or dogmas. Constructive debates should take place as opposed to dialogues of the deaf*"<sup>220</sup>.

Education and awareness should however not target citizens and religious groups only, but also States officers, elected representatives, public figures and media. The MANDOLA Deliverable D4.4<sup>221</sup> has shown that politicians and media behaviours tend to regularly focus on (real or supposed<sup>222</sup>) national insecurity and subjectively chosen spot news, which feeds the construction of "*prejudices and preconceived ideas*"<sup>223</sup> in the minds of the general public. For its part, the ECRI notices "*the employment of a rude tone in many parliaments and by state officials [which] has been found to contribute to a public discourse that is increasingly offensive and intolerant*"<sup>224</sup>. It notes that "*such discourse has been exacerbated by some high-level politicians not being inhibited from using hate speech in their pronouncements*"<sup>225</sup> and that, in addition, "*attempts by public figures to justify the existence of prejudice and intolerance regarding particular groups [...] [tend] to perpetuate and increase hostility towards [...]*"<sup>226</sup> the latter.

As highlighted by the French CNCDH in relation to "*political, media and social elites*"<sup>227</sup>, the liability of all these stakeholders is in this field of particular importance, and actions programs<sup>228</sup> targeting these stakeholders such as training<sup>229</sup> and the promotion of an "*ethic of communication*"<sup>230</sup> that could be included in Code of conducts<sup>231</sup> seem to be as important as other educative and awareness measures in order to reach the ideal of "*mutual*

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<sup>219</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, op. cit., p. 31, n° 86.

<sup>220</sup> *Ibid.*

<sup>221</sup> MANDOLA Deliverable D4.4 - *Landscape and Gap Analysis*, August 2017, <http://mandola-project.eu/publications/>, Section 3.2.2.

<sup>222</sup> See for example Jacques ROBERT et Jean DUFFAR, *Droits de l'homme et libertés fondamentales*, éd. Montchrestien, 7<sup>th</sup> ed., 1999, p. 197 ; See also Merci Alfred, *Le paradoxe de la violence - pourquoi le monde ne va pas si mal (the violence paradox: why the world is not going that bad)*, <http://www.mercialfred.com/topos/paradoxe-violence-monde>, which explains in essence that we are today more sensitive to remaining violence because there is less than previously in the history, and because (despite violence decreases) media only shows daily violence, and rarely non-violence (URL last accessed on 26 June 2017).

<sup>223</sup> Translated from French. CNCDH, *Rapport sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, Année 2016, [http://www.cncdh.fr/sites/default/files/les\\_essentiels\\_-\\_rapport\\_racisme\\_2016\\_1.pdf](http://www.cncdh.fr/sites/default/files/les_essentiels_-_rapport_racisme_2016_1.pdf) (last accessed on 21 September 2017), p. 20.

<sup>224</sup> ECRI, *General Policy Recommendation n° 15 on combating hate speech* adopted on 8 December 2015, Explanatory Memorandum, [https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N15/REC-15-2016-015-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf), n°24 (last accessed on 21 September 2017).

<sup>225</sup> *Ibid.*

<sup>226</sup> *Ibid.*

<sup>227</sup> Translated from French. CNCDH, *Rapport sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, op. cit., p. 8.

<sup>228</sup> Committee of Ministers of the Council of Europe, Appendix to Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, 30 October 1997, <https://rm.coe.int/168050513b> (last accessed on 4 September 2017), n°3 of the Appendix.

<sup>229</sup> *Ibid.*, see for ex. n°1 of the Appendix.

<sup>230</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, op. cit., p. 31, n° 85. This formula is employed in relation to media and religious groups.

<sup>231</sup> Committee of Ministers of the Council of Europe, Appendix to Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, op. cit., see for ex. n°4 of the Appendix.



*understanding and acceptance*<sup>232</sup>, which “is perhaps the main challenge of modern societies”<sup>233</sup>.

More widely, this ideal or objective of “*mutual understanding and acceptance*”<sup>234</sup>, in other words of “*pacification of relations between human beings, between cultures and between nations*”<sup>235</sup> could be fed by further research on the best choices in terms of means to be implemented in this regard, in a democratic society governed by the rule of law, among all measures available. Such research should be funded and made visible<sup>236</sup>.

### **6.3 Implications in terms of ideal definition of illegal hate speech and of harmonisation efforts**

The study presented in the current report shows continued discrimination between victims of hate speech, which should be tackled. It also shows that borders between what should be allowed and what should be prohibited in a society governed by the rule of law could be further refined. These two actions would operate for the benefit of harmonisation efforts.

#### **6.3.1 Solving the issue of discrimination between victims**

A consequence of the lack of harmony between legislations, and, sometimes, between local provisions in one given country, is a non-equal treatment between victims within the European Union, and a legal insecurity for these victims. These differences in legislation may lead to the punishment, to the lower punishment or to the non-punishment of one given behaviour depending on the country that is competent to judge the case, and, in this very country, depending on the provision that is applicable (taking into account the precise circumstances that surround the potential offence and the grounds that are deemed illegal in this provision). As an example, “race” is an illegal motivation in ten countries out of ten, despite the fact that “*racial classifications do not make sense in terms of genetics*”<sup>237</sup> in relation to the human kind, whereas “colour” or “descent” might not be an illegal motivation

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<sup>232</sup>Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, Council of Europe publishing, Science and technique of democracy, No. 47, March 2010, §87 p.31, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e) (last accessed on 4 September 2017).

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> Alain Caillé, *Peace and Democracy*, International Centre for Human Sciences, Byblos, International Panel on Democracy and Development, 2004, UNESCO, <http://unesdoc.unesco.org/images/0013/001354/135498e.pdf>, p. 37, n°1.3.

<sup>236</sup> In this sense, in order to pursue the research initiated during the MANDOLA project, Inthemis (Estelle De Marco) ensures the scientific and technical support of a three-year thesis begun by Célie Zamora, Inthemis researcher, on *the compliance of public polices aiming to prevent and prosecute speeches and other acts motivated by hate to fundamental rights protection requirements*, under agreement with the French National Association for Research and Technology (ANRT) and in cooperation with the European Law of Human Rights Institute (*Institut de droit européen des droits de l’Homme* - IDEDH) and a National Centre for Scientific Research (CNRS)’ research unit (UMR 5815 - *Dynamiques du droit*).

<sup>237</sup> Michael Yudell, Dorothy Roberts, Rob DeSalle, Sarah Tishkoff, “Taking race out of human genetics”, *Science*, 05 Feb 2016, Vol. 351, Issue 6273, pp. 564-565, DOI: 10.1126/science.aac4951. Authors also write: “*the use of biological concepts of race in human genetic research— so disputed and so mired in confusion—is problematic at best and harmful at worst*”. [...] *phylogenetic and population genetic methods do not support a priori classifications of race, as expected for an interbreeding species like Homo sapiens (11, 18). As a result, racial assumptions are not the biological guideposts some believe them to be, as commonly defined racial groups are genetically heterogeneous and lack clear-cut genetic boundaries (10, 11)*”.

in certain countries or in the same country depending on the provision that bases proceedings, and sometimes whereas an international or European legal instrument requires its prohibition. Another example might be sexual orientation, which is an illegal motivation in certain circumstances and not in the others, even sometimes in one single country.

This difference of treatment between victims is difficult to understand, since it does not seem that the impact on society of one given hatred-related action is different depending on the characteristics of the victims that motivate this action. In addition, as already recalled previously in this report, the E.U. Member States have a positive obligation to ensure the respect of the right to non-discrimination (which should also be effective within the framework of the protection of persons and of society against hatred).

As a result, the adoption of a wider and more harmonised definition of the characteristics of victims that cannot justify hatred should be considered. Ideally, the question of whether a hatred-related behaviour is illegal, beyond its constitutive elements, could be summed up in the question of whether it has been performed on the grounds of one real or supposed<sup>238</sup> personal characteristics of the victim, whatever it is<sup>239</sup>: physical (skin, hair or eyes colour, gender, sex, handicap, etc.), psychological, philosophical (religion, other ideology, beliefs...), or behavioural (exercise or non-exercise<sup>240</sup> of a worship, belonging or non-belonging<sup>241</sup> to a particular group such as a professional organisation or an association, etc.)<sup>242</sup>.

### **6.3.2 Working towards a clearer identification of what is acceptable or not acceptable in a democratic society governed by the rule of law, in order to enable further harmonisation**

Our attempt for a short definition of illegal hate speech has shown that globally, hatred-related actions that might take place in a written (including non-verbal) or oral form and that are illegal in the ten E.U. Member States that have been studied are the following (outside blasphemy):

The incitement, propagation or support to hatred, violence, discrimination, segregation, or hostility; the incitement or threat to commit harm or violence or a crime or a misdemeanour; humiliation, offence to dignity, insult, defamation, discrimination or harassment; the action to force or to prevent or to commit threat in order to compel someone to do something against his/her will; committed intentionally against a person, a

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<sup>238</sup> Taking here inspiration from the French definition of illegal private incitement to hatred (see Section 7.1.1 below).

<sup>239</sup> In the same line, see ECRI, *General Policy Recommendation n° 15 on combating hate speech* adopted on 8 December 2015, Explanatory Memorandum, [https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N15/REC-15-2016-015-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf) (last accessed on 21 September 2017), n°7, h (definition of discrimination), footnote n°3: “[...] the grounds listed are not exhaustive and the GPR’s provisions can be applied mutatis mutandis to discrimination based on other personal characteristics or status”. See also n° 9 (definition of hate speech): “Hate speech for the purpose of the Recommendation entails the use of one or more particular forms of expression [...] that is based on a non-exhaustive list of personal characteristics or status [...]”.

<sup>240</sup> Taking here inspiration from the French definition of illegal incitement to hatred (see Section 7.1.1 below).

<sup>241</sup> *Ibid.*

<sup>242</sup> In relation to grounds, see Section 3 of the current report.

group of persons and possibly a community, on grounds of some of the particular characteristics of this person or of persons belonging to this group or community<sup>243</sup>.

Of course, some of these actions or some elements of these actions<sup>244</sup> are sanctioned in some countries and not the others, and this is a matter of State sovereignty that will be difficult to overcome, unless it could be demonstrated that these actions or elements of actions should or should not be illegal in a democracy governed by the rule of law - in other words in a "*liberal democracy*"<sup>245</sup>, which could serve as a basis for further harmonisation works.

In addition, where these actions are sanctioned, it might be in all circumstances or in certain circumstances only, depending on the country. For example, the offence of publicly inciting hatred is only punishable, in four countries out of ten, if the incitement is made in particular conditions: two countries impose that the incitement is carried out in a manner likely to disturb public order, two countries (one of them alternatively to the first condition above) impose that the incitement is threatening, abusive or insulting, and one country imposes that the incitement is carried out in a manner likely to disturb public peace<sup>246</sup>.

This is also a matter of State sovereignty that will be difficult to overcome, unless it could be demonstrated that these circumstances should or should not be taken into account in a liberal democracy, which could serve as a basis for further harmonisation works.

These findings lead to conclude that further efficient and professional research on what is acceptable in a liberal democracy, including the works referred to in our previous Section 6.2.3, should be funded and made visible<sup>247</sup>. This appears to be a condition to further harmonisation between countries' legislations.

This research could further focus on two actions which penalisation might be particularly problematic for the preservation of fundamental rights, and which are the following.

- **Access to illegal content**

The penalisation of the access to information is problematic in a democratic society since (1) access to an information piece does not mean endorsement of this given content and since (2) even endorsement should fall under the freedom of thought which cannot be punished if not materialised into a particular action that prejudices the society.

As a result, where absolutely unavoidable, for example in crucial areas (seriously affecting society such as terrorism) where evidence of the perpetration of the primary action is difficult to acquire, a penal intent to support or at least to benefit from the offence should be needed, and presumption of consultation in good faith should be the unique rule, without possible reversal of the burden of proof.

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<sup>243</sup> See Section 4.2.1.2 of the current report.

<sup>244</sup> See Section 4.2.1.3 of the current report.

<sup>245</sup> Larry Diamond, "Defining and Developing Democracy", in Robert Alan Dahl, Ian Shapiro and José Antônio Cheibud, *The democracy sourcebook*, Massachusetts Institute of Technology, 2003, p. 29.

<sup>246</sup> See Section 7.1.1 of the current report.

<sup>247</sup> See the MANDOLA Deliverable D4.4 - *Landscape and Gap Analysis*, August 2017, Section 7 and for example sub-section. 7.3.5, 7.4.5, 7.5.5 and 7.6.5, <http://mandola-project.eu/publications/>.



In particular, in cases where penal law punishes possession of hatred-related materials<sup>248</sup>, the temporary storage of contents in the computer's RAM (which is technically necessary to view the content on screen) should not be considered as fulfilling the requirement of "possession"<sup>249</sup> or undertaking to obtain possession<sup>250</sup>, primarily since this memorisation process is automatic and cannot demonstrate an intent to possess<sup>251 252</sup>.

- **The outrage, insult, defamation or blasphemy directed against religion, ideology, the Divine, or the offence of believers' religious feelings**

The current study has shown that within the E.U., a few number of countries do penally sanction blasphemy or the offence of believers' religious feelings<sup>253</sup>.

However, as mentioned above<sup>254</sup>, constructive criticism should be accepted by any citizen and group in a democratic society, since it conditions the possibility to express ideas, and therefore the possibility to uphold a democratic debate. This includes acceptance of "*critical public statements and debate about [...] activities, teachings and beliefs*"<sup>255</sup>. The objective is to enable "*every member of a democratic society [...] to express in a peaceful manner his or her ideas, no matter how negative, on other faiths or beliefs or dogmas*", in "*constructive debates [...] as opposed to dialogues of the deaf*"<sup>256</sup>.

As highlighted by the Venice Commission, "*a democracy should not fear debate, even on the most shocking or antidemocratic ideas. It is through open discussion that these ideas should*

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<sup>248</sup> Such as in Ireland (where Section 4 of the Prohibition of Incitement to Hatred Act (1989) prohibits (a) "(a) to prepare or be in possession of any written material with a view to its being distributed, displayed, broadcast or otherwise published, in the State or elsewhere, whether by himself or another"), in Spain (Article 575.2 of the penal Code which states that whoever, with terrorist intentions, accesses habitually to any online/electronic communication service or contents leading to the encouragement of joining or collaborating with a terrorist group or organization can be sentenced to 2 to 5 years of imprisonment) and in France (Art. 421-2-5-2 of the penal code: "*The habitual consultation of an online public communications service that makes available messages, images or representations that (1) directly provokes to the perpetration of acts of terrorism, or (2) constitute an apology for the perpetration of acts of terrorism where, for this purpose, the online public communications service includes images or representations showing the perpetration of such acts consisting of wilful attacks on life, is punished by deprivation of liberty of up to two years and a fine of 30 000 €. This provision is not applicable where the consultation is made in good faith, derives from the normal performance of an activity which purpose is to inform the public, is made within the framework of scientific research or is made with the purpose of serving as evidence in court*").

<sup>249</sup> As it has been judged in Belgium by the Court of cassation on 20 April 2011. In 2005 the French Court of cassation had on the opposite judged that simple consultation could not be considered as possession): on these two decisions, see for example Etienne Wery, *La « visualisation » de pornographie enfantine est-elle punissable?*, 31 July 2011, <https://www.droit-technologie.org/actualites/la-visualisation-de-pornographie-enfantine-est-elle-punissable/> (last accessed on 29 August 2017).

<sup>250</sup> As it has been judged in Germany, because it reaches the necessary level of data ownership: OLG Hamburg, MMR 2010, 342; BGH, NSTz 2007, 95; OLG Schleswig, NSTz-RR 2007, 41.

<sup>251</sup> In this sense, in relation to the German debate, see for example Fischer, StGB, 63th edition, 2015, § 184b, margin-no. 21b; Brodowski, StV 2011, 105.

<sup>252</sup> The current paragraph has been written with the contribution of Nicolas von zur Mühlen (see the Annex of the current report).

<sup>253</sup> See Section 7.4.1 of the current report.

<sup>254</sup> See Section 6.2.3 of the current report.

<sup>255</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, Council of Europe publishing, Science and technique of democracy, n° 47, March 2010, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e), n°72 p. 29 (last accessed on 4 September 2017).

<sup>256</sup> *Ibid.* n°72 p.29.

*be countered and the supremacy of democratic values be demonstrated. Mutual understanding and respect can only be achieved through open debate. Persuasion through open public debate, as opposed to ban or repression, is the most democratic means of preserving fundamental values”*<sup>257</sup>.

For this reason, the Venice Commission considers that *“the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced”*<sup>258</sup>, including insult to religious feelings<sup>259</sup>. Previously, the Parliamentary Assembly of the Council of Europe had considered that *“blasphemy laws should be reviewed by member states and parliaments’ and that ‘blasphemy, as an insult to a religion, should not be deemed a criminal offence”*<sup>260</sup>, both in view *“of the greater diversity of religious beliefs in Europe and the democratic principle of the separation of state and religion”*<sup>261 262</sup>

However, in a democratic society that has chosen to penally sanction the behaviours and speeches that are found to be incompatible with the preservation of fundamental rights<sup>263</sup>, the question lies in the identification of the boundaries between hate speech and permitted criticism.

The Venice Commission works have identified two main criteria that appear to be very relevant in this regard. The first one is that the *“criticism does not amount to incitement to hatred”*<sup>264</sup>, and the second one is that such criticism *“does not constitute incitement to disturb the public peace or to discriminate”*<sup>265</sup>). Indeed, as appropriately pointed out by the Venice Commission,

- *“The purpose of any restriction on freedom of expression must be to protect individuals holding specific beliefs or opinions, rather than to protect belief systems from criticism. The right to freedom of expression implies that it should be allowed to scrutinise, openly debate and criticise, even harshly and unreasonably, belief systems, opinions and institutions, as long as this does not amount to advocating hatred against an individual or groups”*<sup>266</sup>. As a result, a very precise understanding or interpretation<sup>267</sup> of advocating hate or inciting hate should be discussed including *“through rational*

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<sup>257</sup> *Ibid.* n° 44 p. 23.

<sup>258</sup> *Ibid.* n° 89 c p.32.

<sup>259</sup> *Ibid.* n° 68 p. 28.

<sup>260</sup> *Ibid.* n° 62 p.27.

<sup>261</sup> *Ibid.* n° 62 p.27.

<sup>262</sup> See also Ioannis Inglezakis. *The criminalisation of the criticism of religion*, presentation during the MANDOLA Workshop, Montpellier France, February, 2017, available at <http://mandola-project.eu/publications/>.

<sup>263</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, Council of Europe publishing, Science and technique of democracy, *op. cit.* n° 46; also see the MANDOLA Deliverable D2.2 - *Identification and analysis of the legal and ethical framework*, version 2.2.4 of 12 July 2017, MANDOLA project (Monitoring ANd Detecting OnLine hAte speech) - GA n° JUST/2014/RRAC/AG/HATE/6652, <http://mandola-project.eu/publications/>, Section 4.3.3.1.

<sup>264</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, Council of Europe publishing, Science and technique of democracy, *op. cit.*, p. 29, n° 72.

<sup>265</sup> *Ibid.*, p. 29, n° 72.

<sup>266</sup> *Ibid.*, p. 24 n° 49.

<sup>267</sup> *Ibid.*, p. 28, n° 68.

*consultation between people, believers and non-believers*<sup>268</sup>. In the Venice Commission's view, it would in addition be *"appropriate to introduce an explicit requirement of intention or recklessness, which only a few states provide for"*<sup>269</sup>.

- The exercise of freedom of expression carries duty and responsibilities<sup>270</sup>, which means that *"it is legitimate to expect from every member of a democratic society to avoid, as far as possible, wordings that express scorn or are gratuitously offensive to others and infringe their rights"*<sup>271</sup>. Indeed, *"diversity is undoubtedly an asset; but cohabiting with people of different backgrounds and ideas entails the need for everyone to refrain from gratuitous provocation and insults. In the end of the day, it is the price to pay for a new ethics of responsible intercultural relations in Europe and in the world"*<sup>272</sup>. As a result, it could be accepted that people who express *"ideas which [...] 'do not contribute to any form of public debate capable of furthering progress in human affairs'"*<sup>273</sup>, including those that are purely gratuitous, are sanctioned in case they cause damage<sup>274</sup>. In the Venice Commission's opinion, such sanctions could be of another nature than penal, such as the possibility to claim for (justified, motivated and proportional<sup>275</sup>) damages from the authors of the statement, even if this *"does not prevent the recourse, as appropriate, to other criminal law offences, notably public order offences"*<sup>276</sup>.

Ideally, these criteria should be further discussed within each individual Member State and between States, in view of fostering harmonisation on a penalisation of hate speech that would let room for the constructive criticism of all ideas, beliefs systems, institutions and practices that does not amount to advocating or inciting hatred, violence or discrimination against one or several individuals based on one or several of their particular characteristics, real or supposed.

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<sup>268</sup> *Ibid.*, p. 31, n° 84.

<sup>269</sup> *Ibid.*, p. 32, n° 89.

<sup>270</sup> *Ibid.*, p. 29, n° 73; also see the MANDOLA Deliverable D2.2 - *Identification and analysis of the legal and ethical framework*, op. cit., Section 4.3.3.1.

<sup>271</sup> Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, op. cit., p. 29, n° 73.

<sup>272</sup> *Ibid.*, p. 31, n° 87.

<sup>273</sup> *Ibid.*, p. 29, n° 74, referring to a ECtHR decision.

<sup>274</sup> *Ibid.*, p. 29, n° 74.

<sup>275</sup> *Ibid.*, p. 30, n° 76.

<sup>276</sup> *Ibid.*, p. 29, n° 74.

## 7 Table of prohibited behaviours

This Section presents the working tables that have been used in order to generate first outcomes of the comparative study.

The scope of the investigation has been deliberately broad in order to perform an extensive analysis of legislations. It has covered all the penal provisions, along with civil or even administrative ones, that prohibit actions that have a link with hate, even if relatively thin, in other words in which the perpetrator demonstrates a particular intent to hurt or prejudice another person or group of persons, or to commit an action that is very likely to have such an effect.

Furthermore, some provisions have been knowingly ignored. The first of these are the provisions relating to audiovisual media services, since they are not lying exactly inside the core of the current study. The second of these are the provisions protecting sensitive personal data, since they have been considered as being too far from the topic of hate speech (in hate speech situations, the processing of sensitive personal data will generally be a consequence of hate speech or one only of the constitutive elements of a hatred-related action, rather than a hatred-related action in itself), in addition to the fact that they will shortly be replaced by the E.U. Regulation 2016/679.

In each Subsection below, the first table constitutes an attempt to define a prohibited action based on constituent elements shared by Member States, where found possible. Where it was not possible due to a too wide heterogeneity of legislations, the reference illegal behaviour has been defined according to existing European and/or international instruments (this has been done in one situation only, in relation to the public denial, condoning or trivialising of certain crimes - see Section 7.1.8 below). Where there were no such instruments available (which has been found only in a few situations where targeted behaviours are punished in a minority of countries), the retained definition has been the more interesting one in terms of “novelty” compared to other close illegal behaviours already studied.

In all cases, the particularities of each country studied in relation to the general definition are highlighted in a second table. Where possible and relevant, elements which extend the scope of the prohibition are written in blue colour, and elements which are missing and therefore which reduce this scope are written in green colour.

For each of the contents listed in this Section, the criminal intent and the determination of responsible persons follow the rules identified in Section 5 of the current report.

### **Legend:**

1. *In relation to each numbered action, countries lines and cells show differences that exist compared with the first line that presents the characteristics of the prohibited behaviour. "Same extent" means "same extent than the first line that presents the characteristics of the prohibited behaviour".*

2. *Where possible and relevant, in blue colour is highlighted what comes in addition to the common definition, and in green colour is highlighted what is missing and therefore restricts the scope of the penal infringement, civil or administrative tort.*
3. *Fine in Germany: the maximum amount of the incurred fine is not mentioned in the criminal provision that penalises each given behaviour, because it is regulated by a general article of the criminal Code (Section 40) in relation to natural persons and by Section 30 (2) of the Act on Regulatory Offences in relation to legal persons. Moreover, infringements for which the penal Code does not mention the sanction of fine (and even if the offence is a felony - the difference between felony and misdemeanour is regulated in art. 12 of the penal Code), a fine can be pronounced in the course of the sentencing according to art. 12 (1) of the Implementation Law of the German penal Code. According to Section 40 of the penal Code applicable to natural persons only, (1) fines are imposed in so called daily units. The minimum fine shall consist of five and, unless the law provides otherwise, the maximum shall consist of three hundred and sixty full daily units.(2) The court shall determine the amount of the daily unit taking into consideration the personal and financial circumstances of the offender. In doing so, it shall typically base its calculation on the actual average one-day net income of the offender or the average income he could achieve in one day. A daily unit shall not be set at less than one and not at more than thirty thousand euros. (3) The income of the offender, his assets and other relevant assessment factors may be estimated when setting the amount of a daily unit. (4) The number and amount of the daily units shall be indicated in the decision. According to Section 30 (2) of the Act on Regulatory Offences, regulatory fines incurred by legal persons shall amount in the case of a criminal offence committed with intent, to not more than ten million euros and in the case of a criminal offence committed negligently, to not more than five million euros.*
4. *Fine in Romania: the maximum amount of the incurred fine is not mentioned in the criminal provision because it is regulated by a general article (art. 61) of the penal Code. According to this provision, (2) the amount of the fine is established in the system of fine-days. The amount for one fine-day ranges from 10 RON (approximately 2.22 euro) and 500 RON (approximately 111 euro), and will be multiplied by the number of fine-days, which ranges from 30 and 400. (3) Courts shall establish the number of fine-days according to the general criteria for customisation of sentencing. The amount that corresponds to one fine-day shall be calculated on the basis of the financial status of the convicted defendant and their legal obligations towards persons they are supporting.(4) The special thresholds for fine-days range between (a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offence; (b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years; and (c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years. (5) If the committed offence was intended to provide a material gain, and the penalty stipulated by law is only a fine or the court chooses to only sentence to that penalty, the special thresholds for fine-days can be increased by one-third. (6) Increments established by law for mitigating or aggravating circumstances shall apply to the special thresholds for fine-days stipulated at par. (4) and par. (5).*
5. *Fine in Spain: art. 50.2 of the Spanish penal Code states that the fines are imposed according to a day-fine system, unless the law provides otherwise. This system is characterised by two parameters to be distinguished in setting the amount of a fine. Firstly, the extent or duration of the fine, expressed in "days" or "months". Secondly, the amount of each fine day. In response to both the court decision must be adequately motivated.*
  - *Regarding the amount per day, it must be comprised between 2 € and 400 € for natural persons, and between 30 € and 5 000 € for legal persons. The amount of each fee or daily fine must be determined according to the economic situation of the defendant deducted from its assets, income, and family obligations and other personal circumstances loads (art. 50.5 CP), all at in order to safeguard the principle of equality.*
  - *Regarding the number of days or months, it must be comprised between a minimum and a maximum set out in the provision that describes the penal infringement, expressed in "days" or "months" fine (when determining the minimum and the maximum period of fine, the legislator must take into account art. 50.3of the penal Code which states that the minimum length is 10 days and the maximum length is 2 years - or 5 years for legal persons). The court must determine the number of days, in each case, within those limits and according to a general criteria (stated Chapter II of Title III, applicable to imprisonment as well), which imposes to take into account the extenuating circumstances or concurrence of defences, the degree of execution of the crime and participation in it, the gravity of the offence and the personal circumstances of the author. The computation must follow the rules set out in art. 50.4 of the penal Code, according to which a "month" corresponds to 30 days and a "year" corresponds to 360 days.*

## 7.1 Texts that appear to be particularly appropriate to sanction hatred-related contents, and that are or should be covered in all countries

### 7.1.1 Public incitement to violence, hatred or discrimination

N°	Prohibited conduct				Responsible persons	Range of main sanctions (for natural persons)	International/European basis
	A. Illegal material conduct (What)	B. Illegal grounds (Why)	C. Illegal ways (How)	D. Criminal Intent			
I.1	<p><b>Publicly inciting hatred</b> [10 out of 10 Countries], <b>or violence</b> [8 out of 10 Countries], <b>or discrimination</b> [8 out of 10 Countries - one of them with a lower sanction than the one incurred for violence/hatred; one possible more country in certain cases of qualified discrimination] directed against a group of persons or a member of such a group determined on the basis/grounds of... (see "Why"), ...</p> <p><u>A condition may apply [applies in 4 countries out of 10]:</u> .... if the incitement <b>is either carried out in a manner likely to disturb public order</b> [2 out of 10 Countries - 1 of them alternatively to the third one] <b>or public peace</b> [1 out of 10 Countries] <b>or which is threatening, abusive or insulting</b> [2 out of 10 Countries - 1 of them alternatively to the first one]</p> <p>7 out of 10 countries prohibit incitement to hatred <b>and</b> to violence <b>and</b> to discrimination (1 of them covers discrimination with another provision associated with a lower penalty)</p> <p>1 out of 10 countries prohibit incitement to hatred and to violence only (Germany - discrimination is missing - but might be sanctioned where it is "qualified")</p> <p>1 out of 10 countries prohibits incitement to hatred and to discrimination only (Romania - violence is missing)</p> <p>1 out of 10 countries prohibits incitement to hatred only (Ireland - discrimination and violence are missing)</p>	Race, national or ethnic origin, and (eventually if used as a pretext for any of the other factors) religion.	Any way.	Intentional conduct (which may be assumed in certain countries, with a reversal of the burden of proof)	<p><b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>- France, Spain (special press or media liability regimes)</li> <li>- France, Cyprus and Greece exclude the penal liability of legal persons (Greece provides however for an administrative liability of legal persons).</li> </ul>	<p>Imprisonment up to 5 years and/or a fine up to 45 000 €.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]) and Spain (up to 144 000 €).</p> <p>[*] Such a high amount has never been applied up to now.</p>	<p><b>Council Framework Decision 2008/913/JHA, art. 1 (1 to 3 years minimum)</b> - <b>What:</b> States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting [not required in most of the analysed countries]; <b>How:</b> notably by public dissemination or distribution of tracts, pictures or other material; <b>Why:</b> race, colour, descent, or national or ethnic origin or (at least if used as a pretext for one of the other factors) religion. <b>Who:</b> author, aiding, abetting, instigating, natural and legal persons.</p> <p><b>International Convention on the elimination of all forms of racial discrimination -</b></p> <p><b>-What:</b> States must prohibit racial discrimination and declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.</p> <p><b>- Why:</b> race, colour, descent, or national or ethnic origin. (<a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx</a>) - Signature + ratification or accession (<a href="http://indicators.ohchr.org/">http://indicators.ohchr.org/</a>): all countries studied).</p>

I.1 - Countries' particularities					
Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<b>Prohibited - Article 20.1</b> (public incitement to discrimination and to segregation) <b>and article 20.2°</b> (public incitement to hatred and to violence) <b>Moureaux Act:</b> imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000 €.	The condition does not apply. <b>Public incitement to segregation</b> is additionally punished.	National or ethnic origins are missing but covered by other notions ("nationality", "the national or the ethnical ancestry"). <b>Additional grounds are:</b> supposed race, skin colour, and (following the Constitution, two Acts of 10 <sup>th</sup> May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.	Same extent [1].	No other particularity.
Bulgaria	<b>Prohibited - art. 162 penal Code</b> - 1 to four years imprisonment and a fine from 2 500 € to 5 000 € (BGN 5 000 to 10 000) and public censure.	The condition does not apply. <b>Propagation</b> is additionally punished (propagation or incitement to discrimination, violence or hatred).	Same extent [1]. <b>Religion is missing but handled (with a wider extent of the penal infringement) in another text quoted in "other particularities".</b>	Same extent [1] ("by speech, press or other media, by electronic information systems or in another manner").	<b>Specific provisions relating to Religion - art. 164 penal Code - up to four years imprisonment or probation and fine from 2 500 to 5 000€):</b> <b>What:</b> A person who propagates hatred on religious basis; <b>How:</b> same ways as art. 162 PC. <b>In addition, a person who desecrates destroys or damages a religious temple, a house of prayer, sanctuary or an adjoined building, their symbols or gravestones, shall be punished by imprisonment up to three years or by probation, and a fine from 1 500€ to 5 000 €.</b>  <b>Non-public</b> propagation or incitement is also covered.
Cyprus	<b>Prohibited - art.3 L134(I)/2011;</b> up to 5 years of imprisonment and/or fine up to 10 000 €.	The condition does apply ("in such a way to cause public disorder or that has a threatening, abusive, or offensive [instead of insulting] character"). Incitement must be accompanied by a public transmission in order to be punished. <b>Incitement to</b>	Additional grounds are colour and "genealogical origin" ("descent" in JHA); <b>The motivation of "sexual orientation" is also punished, lower (up to 3 years and/or 5 000 €);</b>	Same extent [1]"in any way" (includes oral and physical dissemination).	<b>Additional infringement - Art. 2A L 12/1967 - up to 2 years imprisonment and/or fine up to 1000 pounds (1 700€):</b> <b>What:</b> publicly inciting acts which are likely to cause discrimination, hatred or violence; <b>Why:</b> race, ethnic origin, religion; <b>How:</b> orally, in writing, through the press, or by the use of images or in any other way



		discrimination is missing but covered (with a lower sanction) by another provision (inciting acts which are likely to cause discrimination is separately punished - see "other particularities").  Also covered by the more general 51A cap 21 (see 8.4.3)			
France	Prohibited - art. 24§7 and §8 of the Law of 1881: up to 5 years imprisonment and/or fine up to 45 000 € + possible complementary penalties.	Art.24§7: <i>a priori</i> same extent [1] ("provocation to discrimination, hatred or violence"). The condition does not apply <sup>277</sup> .  Art. 24§8: In addition the public incitement to discriminations punished by the penal Code based on person's gender, sexual orientation or identity, or disability is also punished (same penalty and legal basis);	The list is covered. Additional grounds are - the membership or non-membership of an ethnic group, nation, race or religion, in addition to origins (for discrimination, hatred or violence); - the gender, sexual orientation, gender identity, or disability (only for hatred and violence, and for discriminations where sanctioned by the penal Code - see Section 8.2.1).	Same extent [1] (whether through speeches, shouting or threats uttered in public places or meetings, or by written or printed matter, drawings, engravings, paintings, emblems, images or other form of written media, speech or images sold or distributed, offered for sale or displayed in public places or meetings, or by posters or notices displayed for public view, or by any public communication through electronical means).	<b>IN ADDITION, non-public incitement to hatred is penally punished.</b> Art. R.625-7 penal Code - Sanction: 5 <sup>th</sup> class fine - up to 1 500 €; up to 3 000 € in case of recidivism) - <b>What:</b> the non-public incitement to discrimination, hatred or violence against a person or group of persons; <b>Why: (for discrimination, hatred or violence)</b> because of their origin, membership or non-membership, real or supposed, of a given ethnic group, nation, race or religion; or <b>(for hatred or violence only)</b> because of their gender, sexual orientation, disability.  <b>This provision moreover punishes non-public incitement to commit discriminations punished by the penal Code based on gender, sexual orientation or identity and disability</b> (same sanction).  <b>Art. 48-1, 48-4 and 48-5 L 1881:</b> associations that are duly-registered for at least 5 years and that combat racism (or violence or discrimination on the grounds of sex, gender identity or sexual orientation in relation to related offences) or assist victims of discrimination can exercise the rights acknowledged to a party in civil matters with regards to these offences (where the offence has been committed toward persons taken individually, they must however justify to be granted with the agreement of these persons).

<sup>277</sup> In relation to the constitutive elements of the incitement to hatred offence, see Tribunal correctionnel de Paris, 3 June 2016, n° de parquet 15021000202, reproduit par Me Caroline MECARY, at <https://consultation.avocat.fr/blog/caroline-mecary/article-11490-tribunal-correctionnel-de-paris-3-juin-2016-provocation-a-la-haine-n-parquet-15021000202.html> (last accessed on 21 August 2017).



Germany	<p><b>Mostly prohibited</b> - <b>Section 130 Subsection (1) of the penal Code (Incitement to hatred):</b> 3 months to 5 years of imprisonment. Despite it is not mentioned in this provision, a fine between (theoretically) 5 and 10 800 000 € may (alternatively to imprisonment) be pronounced (in practice; 9 600 € is one of the higher financial penalties pronounced for incitement to hatred) [3].</p>	<p>To incite hatred or call for violent or arbitrary measures against a ... (<i>see why</i>). The condition applies ("in a manner capable of disturbing the public peace").</p> <p>Therefore incitement to violence is missing but covered by the "call for violence" (which has a broader meaning). Is also punished the call for arbitrary measures. Incitement to discrimination is missing but might be covered as well by the "call for arbitrary measures", where measures are discriminating and in conflict with elementary principles of humanity (definition of "arbitrary measure according to jurisprudence). Therefore discrimination must be "qualified", for instance where it contains elements of a threat or force (<i>for example, the pure slogan "foreigners out" ("Ausländer raus") is not seen as an arbitrary measure, while the call "Jews out" combined with a reference to the national socialism is considered as such</i>).</p>	<p>Same extent [1] (national, racial, religious group or a group defined by their ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population).</p>	<p>Same extent [1].</p>	<p>In addition, art. 4 of the Interstate Treaty on the protection of minors (JMStV) prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: content that (3.) incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups.</p>
Greece	<p><b>Prohibited</b> - Art. 1 Law 929/1979 amended by Act n°4285/2014 (3 months to 3 years of imprisonment and fine from 5 000 € to 20 000 €; at least 6 months and a fine if the action has led to the commission of a crime).</p>	<p>The condition applies ("in a manner that compromises public order or poses a threat to life, liberty or physical integrity" of the victims").</p> <p>It is prohibited to incite, to "cause" or to "induce"; to incite acts or activities which can lead to; discrimination,</p>	<p>Additional grounds are descent, sexual orientation, gender identity and disability;</p>	<p>Same extent [1] (orally or through the press, the Internet or by any other means or way).</p>	<p><b>In addition:</b> the intentional incitement, causing or inducement to damages or destruction of material objects with the same grounds and in the manner described in the third and fourth columns is also punished, with the same penalty (including more severity in case it leads to the commission of a crime).</p>

		violence or hatred.			
Ireland	Partly prohibited - Prohibition of incitement to hatred act, 1989 (on summary conviction, up to 6 months of imprisonment and/or fine up to £1 000 (1 250 €); on conviction on indictment, up to 2 years of imprisonment and/or fine up to £10 000 (12 500 €).	The condition applies (the conduct is punishable only if contents are "threatening, abusive or insulting"). Ireland does not punish properly the "incitement" (despite the name of the law) but contents that are "intended" or are "likely" to "stir up" hatred (it seems that the scope of the text is wider (intended / likely to); but difficult to apply since "stir up" is an unclear term). Inciting violence and discrimination are missing.	Additional grounds are nationality and membership of the travelling community.	Same extent [1] (publication, distribution or display of written material; use of words, behaviours; distribution, show or play of images or sounds). Using words, behave or display written material is legal in a private residence if it cannot be seen or heard outside; other ways mentioned above are illegal even in private.	Intent: intentional conduct but assumed if the accused known the content and in this case there is a reversal of the burden of proof (the accused person must prove he was not aware of the content and had no reason to suspect the illegal nature of the content). Other: underused, legal authors call for addition of discrimination, (racial) hatred and similar offences to the main body of public order legislation.
The Netherlands	Prohibited - art. 137d of the penal Code - up to 1 year imprisonment or a fine of the 2nd class (max. amount 4 200 €), with an exception for discrimination: up to 6 months imprisonment or a fine of the 3 <sup>rd</sup> category (max. amount 8 200 €).	137d: publicly encouraging ("aanzetten" - which covers the notion of "incitement") hatred or discrimination against persons or violence against persons or property.  137e: (1) to encourage (for any reason other than the provision of factual information) hatred or discrimination against persons or violence against their person or property because of their [see "why"].	137d and e: national /ethnic origins are missing in the text but covered by the term "race". Additional grounds are beliefs, sex, hetero or homosexuality, and bodily, psychological or mental handicap.	Same extent (1) ("orally, in a scripture or drawing", which in practice includes any ways.	Non-public hate is also covered by Art. 137e (1) of the penal Code - (1): imprisonment up to six months or a fine of the 3rd category (up to 8 200 €).
Romania	Partly prohibited - Article 369 penal Code: imprisonment between 6 months and 3 years or a fine between 400 € and 33 333 € [4].	The condition does not apply. The infringement is punishable where committed "against a category of people" which refers to one person or a group of a certain category. Publicly inciting to violence is missing.	Any ground.	Same extent [1].	No other particularity.
Spain	Prohibited - Art. 510.1 of the penal Code (Law 10/2015): 1 to 4 years of	The condition does not apply. Art. 510 prohibits to publicly directly or indirectly foment,	Race and religion are covered by "racist motives, anti-Semite motives or other motives	Art. 510.3: via the media, the Internet or through IT usage; so that it would be accessible	No other particularity.

	<p>imprisonment and a fine between 6 to 12 month (between 360 € and 144 000 €) [5].</p> <p><b>Art.510.4:</b> a higher sanction is incurred where the offence, in view of its circumstances, prove to be <i>suitable so as to undermine social order or create a profound sentiment of insecurity or fear</i> in the constituents of a group: penalty imposed in its superior half, which could rose up to a superior elevated degree.</p>	<p><i>encourage</i> or incite hatred, <i>hostility</i>, discrimination or violence against a group, <i>part of it</i>, or a certain individual</p>	<p><i>concerning ideology, religion or beliefs</i>"; national or ethnic origins are covered by "<i>their origins</i>"; Additional grounds are "<i>familiar situation, the ethnic, racial or national belonging of its members</i>" (covering "<i>descent</i>"); sex, sexual identity or orientation, or due to gender motives, illnesses or disabilities. Colour is missing but clearly covered by the other grounds.</p>	<p>to a high number of people.</p>	
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## 7.1.2 Making available xenophobic or racist material which incites or promotes hatred or violence

°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.2	<b>Making available to the public xenophobic or racist material</b> which incites hatred ( <i>10 countries out of 10</i> ) or incites violence ( <i>9 countries out of 10</i> ) or incites discrimination ( <i>fully covered in 8 countries out of 10</i> ) or promotes hatred ( <i>fully covered in 5 countries out of 10</i> ), discrimination ( <i>fully covered in 4 countries out of 10</i> ), or violence ( <i>fully covered in 4 countries out of 10</i> ), against a person or a group of persons.	Race, national or ethnic origin, as well as religion (eventually if used as a pretext for one of the other factors)	Through a computer system	Intentional conduct, without right	<p><b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>- France, Spain (special press or media liability regimes)</li> <li>- France, Cyprus and Greece exclude the penal liability of legal persons (Greece provides however for an administrative liability of legal persons)..</li> </ul>	<p>Imprisonment up to 5 years and/or a fine up to 45 000 € - depending on the country.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]) and Spain (up to 144 000 €).</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p><b>Additional protocol to the Convention on cybercrime.</b></p> <p><b>What:</b> distributing, or otherwise making available, racist and xenophobic material to the public through a computer system; racist and xenophobic material means any written material, any image or any other representation of ideas or theories, which <b>advocates</b> [<i>0 country out of 10</i>], promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on ...</p> <p><b>Why:</b> race, <b>colour</b> [<i>2 countries out of 10 expressly include it; 4 other countries cover it under another terminology</i>], <b>descent</b> [<i>1 country out of 10 expressly include it; 3 other countries cover it under another terminology</i>] or national or ethnic origin, as well as religion (if used as a pretext for any of these factors)</p> <p><b>Signed and ratified by:</b> Cyprus, France, Germany, Netherland, Romania, Spain</p> <p><b>Signed but not ratified by:</b> Belgium, Greece</p> <p><b>Not signed by:</b> Bulgaria, Ireland.</p>

I.2 - Countries' particularities					
Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p>Partly prohibited through -Art. 21 Moureaux Act, imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000€.</p> <p>-Art. 20.1 and 20.2° Moureaux Act.</p>	Express ideas that promote illegal hatred - <b>promotion of discrimination and of violence is missing</b> ; Public incitement to violence, hatred or discrimination are covered by art.20.1 and 20.2 ( <i>line 8.1.1</i> ).	Same as Section 8.1.1 therefore same extent [1]. Additional grounds are <b>supposed</b> race, <b>skin colour</b> , and <b>sex, age, sexual preference, civil status, birth, fortune, political or philosophical beliefs, language, state of health,</b>	<b>Any means</b> , including through a computer system.	No other particularity.

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	- same sanctions <i>[see 8.1.1]</i> .		disability, physical or genetic characteristics, and social origins.		
<b>Bulgaria</b>	<b>Partly prohibited through Section 8.1.1 (art. 162 penal Code):</b> 1 to four years imprisonment and a fine from 2 500 € to 5 000 € (BGN 5 000 to 10 000) and public censure.	"Making available" is punished through the notion of "propagation". Therefore making available contents that promote or incite discrimination, violence or hatred is covered by the wider prohibition of propagation of or incitement to discrimination, violence or hatred.	Same as Section 8.1.1 therefore same extent <i>[1]</i> . Religion is missing but handled in another text <i>[see "other particularities" in Section 8.1.1]</i> .	<b>Any means</b> , including through a computer system.	<b>Making available non-publicly is covered.</b>
<b>Cyprus</b>	<b>Prohibited - art. 4 of law 26(III)/2004:</b> up to 5 years imprisonment and/or a fine up to 20 000 pounds (34 000 €).	To, deliberately without right, distribute or in any other way make available xenophobic or racist material which incites or promotes racial differences, hatred or violence. Therefore the notion of "discrimination" is replaced in the penal text by the notion of "racial differences", which does not appear to be exactly the same. However, discrimination is covered, since the law refers to art. 2 of the Additional Protocol to the Convention on Cybercrime (which includes discrimination), in respect of the definition of xenophobic or racist material.	Same extent as the additional protocol to the Convention. Therefore additional grounds are <b>colour and descent</b> .	Same extent <i>[1]</i> .	<b>Making available non-publicly is covered.</b>
<b>France</b>	<b>Partly prohibited through Section 8.1.1 (art. 24§7 of Law of 1881):</b> up to 5 years imprisonment and/or fine up to 45 000 € + possible complementary penalties). Apology/condoning of violence may be punished through <b>art. 24 §5, L. 1881</b> (same sanctions).	<b>Art. 24§7 (see Section 8.1.1):</b> public incitement ("provocation") to discrimination, violence or hatred is covered; <b>Art. 24§5:</b> publicly condoning of wilful attacks on life and the physical integrity of the person, and condoning of sexual assaults are covered; therefore, <b>promotion of discrimination, of violence (forms of violence referred to above where promotion is not considered as condoning, and other forms of violence) and promotion of hatred are missing.</b>	<b>Art. 24§7:</b> same as Section 8.1.1 therefore same extent <i>[1]</i> . Additional grounds are the <b>gender, sexual orientation or identity, or disability</b> . <b>Art. 24§5:</b> <b>any ground</b> therefore wider extent.	<b>Any means</b> , including through a computer system.	<b>Art. 48-1, 48-4 and 48-5 L 1881:</b> associations that are duly-registered for at least 5 years and that combat racism (or violence or discrimination on the grounds of sex, gender identity or sexual orientation in relation to related offences) or assist victims of discrimination can exercise the rights acknowledged to a party in civil matters with regards to these offences (where the offence has been committed

					toward persons taken individually, they must however justify to be granted with the agreement of these persons).
Germany	Prohibited if materials are accessible to a person under 18 years - Section 130, Subsection (2) of the penal Code: imprisonment up to three years or a fine between (theoretically) 5 € and 10 800 000 € (In practice pronounced fines are lower than this maximum) [3].	<p><b>S.130 (2):</b> dissemination of materials covered in Section 8.1.1 (which incite to hatred against a group, segments of the population or individuals, or which call for violent or arbitrary measures against them) or public display, post, presentation or otherwise making them accessible; or offer, supply or making accessible to a person under eighteen, in addition to other operations such as (inter alia) producing, supplying, or exporting such materials.</p> <p>Incitement to hatred and the call for violence are more generally covered by Section 130 (1) [See Section 8.1.1] but only where public peace is disturbed.</p> <p>Therefore incitement to hatred is covered. Incitement to violence is missing but covered by the "call for violence" (which has a broader meaning). Incitement to discrimination is missing but might be covered as well by the "call for arbitrary measures", where measures are discriminating and in conflict with elementary principles of humanity (discrimination must be "qualified", for instance where it contains elements of a threat or force - see Section 8.1.1). Promotion of hatred is missing. Promotion of violence and of qualified discrimination is missing and might only be covered if the perpetrator exercises a specific influence on another person in terms of a mobilisation (a pure endorsement or approval is not enough).</p>	Same as Section 8.1.1. Therefore same extent [1].	Any means, including through a computer system ("Written materials" include any kind of audio-visual media, data storage media, illustrations and other depictions - see section 11(3) of the penal Code). The making available through electronic communication services to persons under 18 is additionally expressly punished. Offering, supplying or making such materials accessible to a person under eighteen years is also punished.	<p>Making available non-publicly is covered if recipients are under 18 years.</p> <p>According to subsection 7 of section 130, the behaviour is not punishable if the materials or the act is meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes</p>
Greece	Partly prohibited through Section 8.1.1 (art. 1 Law 929/1979 amended by Act n°4285/2014 (3 months to 3 years of imprisonment and fine from 5 000 € to 20 000 €; at least 6 months and a fine if the action has led to the commission of a crime).	<p>"Promotion" might be punished in several situations through the prohibited actions "cause", "induce", "incites acts or activities which can lead to". Incitement is separately punished. Prohibitions are illegal if the action "compromises public order or poses a threat to life, liberty or physical integrity of such persons".</p> <p>Therefore promotion of discrimination, violence or hatred is covered only if the material induces, causes or incites acts that can lead to discrimination, hatred or violence; in any</p>	Same as Section 8.1.1 therefore same extent [1]. Additional grounds are sexual orientation, gender identity and disability;	Any means, including through a computer system ("orally or through the press, the Internet or by any other means or way").	No other particularity.

		case, the behaviour is only prohibited if public order is compromised or if there is a threat to life, liberty or physical integrity.			
Ireland	Partly prohibited through Section 8.1.1 - Prohibition of incitement to hatred act, 1989 (on summary conviction, up to 6 months of imprisonment and/or fine up to €1 000 (1 200 €); on conviction on indictment, up to 2 years of imprisonment and/or fine up to €12 500.	"Promotion" might be punished in certain situations where the published / distributed content is "intended" or "likely to stir up hatred." However, the content must in addition have a "threatening, abusive or insulting" character. Therefore promotion of discrimination and of violence are missing, promotion of hatred may be covered where it may be assimilated to a content "intended" or "likely to stir up hatred" and where it has a "threatening, abusive or insulting" character"; incitement to discrimination and to violence are missing.	Same as Section 8.1.1 therefore same extent [1]. Additional grounds are nationality and membership of the travelling community.	Any means, including through a computer system (publication, distribution or display of written material; use of words, behaviours; distribution, show or play of images or sounds; Using words, behave or display written material is legal in a private residence if it cannot be seen or heard outside.	Making available non-publicly is covered.
The Netherlands	Partly prohibited through: - Section 8.1.1 - art. 137d of the penal Code: up to 1 year imprisonment or a fine of the 2 <sup>nd</sup> category (max. amount 4 200 €), with an exception for discrimination: up to 6 months imprisonment or a fine of the 3 <sup>rd</sup> category (max. amount 8 200 €). -art. 137 e of the penal Code - Imprisonment up to six months or a fine of the 3 <sup>rd</sup> category (up to 8 200 €).	137d: publicly encouraging ("aanzetten" - which covers the notion of "incitement", and covers promotion in so far as it is objectively effective) hatred or discrimination against persons or violence against persons or property. 137e: knowingly publishing a statement /distributing an object that encourages hatred, discrimination or violence against persons or violence against property. Therefore incitement to hatred, discrimination and violence is covered (137d, e); promotion of discrimination, violence and hatred might be covered by the notion of "encouraging"(137d,e).	Same as Section 8.1.1 therefore same extent [1]. Additional grounds are beliefs, sex, hetero or homosexuality, and bodily, psychological or mental handicap.	Publication covers computer systems.	No other particularity.
Romania	Prohibited - Article 4 § 3 of the Government Emergency Ordinance no. 31/2002 regarding the prohibition of organisations and symbols with a fascist, racist or xenophobic character and the promotion of cult of persons guilty of committing offences against peace and the human race - imprisonment between 1 and 5 years.	Distribution is also illegal and there is no condition that the material "incites or promotes discrimination, hatred or violence" - Non-inciting or non-promotional materials are only legal if made in the interest of art, science, research, education or for the purpose of debating a public interest.	Flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines. The ordinance does not specifically define racist and xenophobic material; therefore the interpretation can be very broad. Therefore race, colour, descent or national or ethnic origin, as well as religion, might	Same extent (through a computer system) [1].	No other particularity.

			be covered.		
Spain	<b>Prohibited - Art. 510.1 b) penal Code (Law 10/2015):</b> imprisonment sentence of a year to four years and a fine of between 6 up to 12 months (between 360 € and 144 000 €) [5].	<p>The <a href="#">production, elaboration, and possession with the aim of distributing, facilitation the access of third parties, distribution, diffusion or selling</a>:</p> <p>-of contents which <a href="#">directly or indirectly foment, encourage</a> or incite hatred, hostility, discrimination or violence against a group, a part of it or a certain individual,</p> <p>-or of any other material which, due to its content, being suitable for directly or indirectly fomenting, encouraging or inciting hatred, hostility, discrimination or violence against a group, part of it, or a certain individual because of his/her belonging to the group</p> <p>Therefore promotion of discrimination, violence and hatred are covered; incitement to discrimination, hatred and violence are covered.</p>	<p>Same as Section 8.1.1 therefore race and religion are covered by "racist motives, anti-Semite motives or other motives concerning ideology, religion or beliefs"; national or ethnic origins are covered by "their origins"; Additional grounds are "familiar situation, the ethnic, racial or national belonging of its members" (covering "descent"); sex, sexual identity or orientation, or due to gender motives, illnesses or disabilities. Colour is missing but clearly covered by the other grounds.</p>	<p>Via the media, the Internet or through IT usage; so that it would be accessible to a high number of people (art. 510.3).</p>	<p><a href="#">Making available non-publicly is covered.</a></p>



### 7.1.3 Establishing or participating in organisations that promote discrimination, violence or hatred

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.3	<p>Establishing <i>[mentioned or covered in 6 countries out of 10]</i> or participating <i>[mentioned or covered in 8 countries out of 10]</i> in organisations that:</p> <ul style="list-style-type: none"> <li>- promote discrimination <i>[mentioned or correctly covered in 9 countries out of 10]</i> or violence <i>[mentioned or correctly covered in 7 countries out of 10]</i> or hatred <i>[mentioned or correctly covered in 6 countries out of 10]</i>.</li> <li>- Incite discrimination <i>[mentioned or correctly covered in 8 countries out of 10]</i> or hatred <i>[idem- 8 out of 10]</i> or violence <i>[idem - 8 out of 10]</i>.</li> </ul> <p><i>8 countries out of ten provide for penal sanctions; 1 country out of 10 provides for disband only; 1 country out of 10 does not especially prohibit such groups.</i></p> <p><i>All these statistics include countries where a condition apply (such as the compromise of public order).</i></p>	<p>Race, or national or ethnic origin <i>[covered in 9 countries out of 9 that prohibit the behaviour], religion [fully covered in 7 countries out of 9].</i></p>	Any way.	Intentional conduct	<p><b>In principle:</b> Author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b> - Ireland (not prohibited) - France (no penal liability but disband) - Cyprus, Greece, Bulgaria and Spain exclude the penal liability of legal persons (Greece provides however for an administrative liability of legal persons).</p>	<p>Imprisonment up to 10 years and/or a fine up to 20 500 € - depending on the country.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), Spain (up to 288 000 €), and France (no sanctions - disband is organised instead).</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p>International Convention on the elimination of all forms of racial discrimination, art. 4b</p> <p>- <b>What:</b> As a minimum, States must declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and must recognise participation in such organisations <b>or activities</b> as an offence punishable by law.</p> <p>- <b>Why:</b> "racial discrimination" refers to any distinction, exclusion, restriction or preference based on race, <b>colour, descent</b>, or national or ethnic origin.</p> <p>(<a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx</a>) - Signature + ratification or accession (<a href="http://indicators.ohchr.org/">http://indicators.ohchr.org/</a>): France, Greece, Ireland, Cyprus, Bulgaria, Spain, the Netherlands).</p>

I.2 - Countries' particularities					
Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<b>Partly prohibited - Article 22 Moureaux Act:</b> 1 month to 1 year of imprisonment and/or a fine between 50 and 1 000 €.	Is prohibited the fact to be a member of OR to <a href="#">provide assistance</a> to a group promoting discrimination or segregation directed against a person". Therefore <a href="#">establishing is not covered</a> . <a href="#">Incitement to hatred, discrimination and violence are missing</a> ; <a href="#">promotion of violence and hatred is missing</a> .	The list is covered (national or ethnic origins are missing but covered by other notions such as "nationality", "the national or the ethnical ancestry"; religious beliefs are included). <a href="#">Additional grounds are: supposed race, skin colour</a> , and (following the Constitution, two Acts of 10 <sup>th</sup> May 2007 and case law) <a href="#">sex, age, sexual preference, civil status, birth, fortune, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins</a> .	Same extent <a href="#">[1]</a> .	No other particularity.
Bulgaria	<b>Prohibited - art. 162 (3) penal Code:</b> imprisonment for 1 to 6 years and a fine from BGN 10 000 to 30 000 (5 000 to 15 000 €) and by public censure; (4) imprisonment for up to 3 years and public censure.	(3) A person who forms or <a href="#">leads</a> an organisation or group which has set itself the objective of <b>committing acts referred to Section 8.1.1 rel. to Bulgaria</b> (therefore promotion - through the wider term of propagation- and incitement to discrimination, hatred or violence are covered) and acts of violence against a person or his/her property on illegal hatred related grounds or systematically allows the performance of such acts; (4) A person who is a member of such an organisation or group.	The list is covered except <a href="#">religion</a> ("race nationality, ethnic origins"). <a href="#">Religion or political convictions are also covered but only in relation to acts of violence, and not in relation to incitement or promotion to hatred, discrimination or violence</a> .	Same extent <a href="#">[1]</a> .	No other particularity.
Cyprus	<b>Partly prohibited - Article 2A (2) of the law 12/1967:</b> imprisonment up to 2 years or fine up to 1 700 € or both.	Establishing or participating in organisations that promote propaganda aiming at racial discrimination. Therefore promotion and incitement to discrimination seem to be covered. On the opposite <a href="#">incitement and promotion of violence and hatred are not covered</a> .	Racial discrimination. Refers to the meaning of the International Convention on the elimination of all forms of racial discrimination (therefore <a href="#">religion is missing</a> and <a href="#">colour and descent</a> are additionally covered).	Same extent <a href="#">[1]</a> .	No other particularity.
France	<b>Not penally sanctioned but disband is partly organised - - Art. L212-1 Internal security Code</b> - Sanction: disband by decree of the Council of Ministers).  -Art. 450-1 of the penal Code (criminal association) - up to 10 years of imprisonment and 150 000 € of fine.	- "any associations or groups of people: [...] that, either incite to discrimination, hatred or violence against a person or group of persons, or <a href="#">disseminate ideas or theories</a> [which is wider than "promotion"] which attempt to justify or encourage such discrimination, hatred or violence".  -Art. 450-1 punishes the participation in a criminal association which is defined as a group established with the aim of preparing one or several infringements punished by at least 5 years of imprisonment (therefore not applicable to incitement to hatred, which is lower	The list is covered (because of their <a href="#">origin, membership or non-membership</a> of a given ethnic group, nation, race or religion).	Same extent <a href="#">[1]</a> .	No other particularity.

		punished). Therefore establishing or participating in such associations is not especially punished. Other elements are covered.			
Germany	Prohibited - Section 129 of the penal Code (forming criminal organisations): imprisonment up to five years or a fine [3].	Whoever forms an organisation the aims or activities of which are directed at the commission of offences or whosoever participates in such an organisation as a member, recruits members or supporters for it or supports it. Therefore incitement to hatred is covered, as well as incitement to violence (see Sections 8.1.1 and 8.1.2). Incitement to discrimination is missing but might be covered as well by the "call for arbitrary measures", where measures are discriminating and in conflict with elementary principles of humanity (or "qualified" - see Section 8.1.1). Promotion of hatred is missing. Promotion of violence and of qualified discrimination is missing and might only be covered if the perpetrator exercises a specific influence in terms of a mobilisation see Section 8.1.2).	Same grounds as Sections 8.1.1 and 8.1.2, therefore same extent [1].	Same extent [1].	No other particularity.
Greece	Partly prohibited (Art. 1 (4) Law 929/1979 amended by Act n°4285/2014: 3 months to 3 years of imprisonment and fine from 5 000 to 20 000 €).	Whoever establishes or participates in an organisation or group of any kind that systematically seeks to carry out acts described in Section 8.1.1 above. Therefore a systematic seeking is required; promotion of discrimination, violence or hatred is covered if the material induces, causes or incites acts that can lead to discrimination, hatred or violence; in any case, the behaviour is only prohibited if public order is compromised or if there is a threat to life, liberty or physical integrity.	The list is covered. Additional grounds are colour, descent, sexual orientation, gender identity or disability.	Same extent [1].	No other particularity.
Ireland	Not prohibited.	-	-	-	-
The Netherlands	Partly prohibited. -Art. 137f penal Code - imprisonment up to 3 months or a fine of the 2 <sup>nd</sup> category (4 200 €). -Art. 137c, d and e of the penal Code, §2 - - imprisonment up to 2 years or a fine of the 4 <sup>th</sup> category (20 500 €).	-Art. 137f: any person who takes part in, or who extends financial or other material support to activities, aimed at discrimination against persons because of their ... (see "Why"). -137c,d & e: if the offence (c: insulting statement about a group of persons because of their...; d: encouraging hatred, discrimination or violence against persons or violence against property because of their...; e: publishing/distributing a statement or object that encourages hatred violence or discrimination for the same grounds) is committed by a person who makes a profession or habit of it or by two or more persons in	The list is partly covered, national and ethnic origins are missing (only "race" and "religion" are mentioned). Additional grounds are colour, beliefs, gender, hetero- or homosexual orientation or physical, mental or intellectual disability.	Same extent [1].	No other particularity.

		concert. Therefore establishing is missing; participating is covered in relation to incitement and might be covered in relation to promotion (of violence, hatred and discrimination) - (see 8.1.2).			
Romania	<p><b>Prohibited</b></p> <p><b>-Article 3 of Government Emergency Ordinance no. 31/2002</b> - between 3 to 10 years of imprisonment and denial of some rights.</p> <p><b>- Article 3 of Law 14/2003 on political parties</b> - sanction: dissolution by decision of the Constitutional Court.</p>	<p><b>- Art.3 GEO 31/2002:</b> initiating or establishing an organisation with a fascist, racist or xenophobic character or adhering or supporting, in any way, such a group is a crime.</p> <p><b>- Art.3 of Law 14/2003:</b> it is forbidden to establish a party which violates Article 30 (7) of the Constitution. (art. 30 §7 of the Constitution: "Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law".</p> <p>Therefore promotion and incitement to hatred, violence or discrimination should be covered by this very broad formulation (see in conjunction with the column on the right).</p>	<p>The list is covered and additional grounds are included:</p> <p>-GEO 31/2002: refers to "flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines", which are not more precisely defined, therefore the interpretation can be very broad.</p> <p>-Government Ordinance 137/2000 defines in Article 2 discrimination as any difference/distinction, exclusion or preference on basis of race, nationality, ethnicity, language, religion, social category, conviction, sex, sexual orientation, age, handicap, non-transmissible chronic disease, HIV infection, belonging to a disadvantaged category, as well as any criterion which would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by law, in the politic, economic, social and cultural field or in any other field of the public life may be seen as prohibited behaviour.</p>	Same extent [1].	No other particularity.
Spain	<p><b>Prohibited - Art. 515.4 of the penal Code (sanctions: art. 517):</b> imprisonment of 1 to 3 years (active members) or 2 to 4 years (founders, directors and chairpersons) and a fine of 12 to 24 months (between 720 € and 288 000 €).</p> <p><b>Art. 514 of the penal Code:</b> imprisonment of 1 to 3 years and a fine of 12 to 24 months (720 € and 288 000 €) [5].</p>	<p><b>Art. 515.4:</b> are punishable unlawful associations that encourage, promote or incite directly or indirectly to hatred, hostility, discrimination or violence against persons, groups or associations because of their ... (see why).</p> <p><b>Art 514:</b> the promoters or directors of any meeting or demonstration held in order to commit an offence, who have not tried to prevent by all means at their disposal this circumstance.</p>	<p><b>515.4:</b> the list is covered (membership of its members or any of them to an ethnic group, race or nation; religion). Additional grounds are ideology, beliefs, sex, sexual orientation, family situation, illness or disability.</p> <p><b>514:</b> any ground.</p>	Same extent [1].	No other particularity.

## 7.1.4 Publicly insulting persons on illegal hatred relating grounds

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.4	<p>Publicly insulting persons by reason of their (<i>see "Why"</i>) (a condition may apply)</p> <p><i>Prohibited or covered in 10 countries out of 10</i></p> <ul style="list-style-type: none"> <li>- Fully prohibited or covered in 8 countries out of 10, without any other condition;</li> <li>- 1 additional country does include the ground of "nationality" only if the if the insult exposes the victim to "contempt, hatred or ridicule";</li> <li>- 1 additional country requires an intent to provoke a breach of the peace or to be reckless as to whether a breach of the peace may be occasioned.</li> </ul>	Race, national ethnic origin or (if used as a pretext for any of these factors) religion.	Any way ( <i>only through a computer system, in 1 country, in relation to the grounds of nationality, colour and descent</i> ).	Intentional conduct .	<p><b>In principle:</b></p> <p>author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>- Ireland (<del>accomplices</del>)</li> <li>- France, Spain (special Press or media liability regimes)</li> <li>- Cyprus, Greece, France, Spain, Bulgaria and Ireland exclude the liability of legal persons.</li> </ul>	<p>Imprisonment up to 1 years (5 years in two countries if other conditions are met) and/or a fine up to 22 500 € (34 000 in one country if other conditions are met) - depending on the country.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 168 000 €).</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p><b>Additional protocol to the Convention on cybercrime</b> (<a href="http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no">http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no</a>):</p> <p>Article 5 – Racist and xenophobic motivated insult</p> <p>1 [...] insulting publicly, <i>through a computer system</i>, (i) persons for the reason that they belong to a group distinguished by race, <i>colour, descent</i> or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.</p> <p>2 A Party may either: (a) require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to <i>hatred, contempt or ridicule</i>; or (b) reserve the right not to apply, in whole or in part, paragraph 1 of this article.</p> <p><b>International Convention on the elimination of all forms of racial discrimination</b></p>

I.4 - Countries' particularities					
Country	Provisions, sanctions	What	Why	How	Other particularities
Belgium	<p><b>Prohibited.</b></p> <p>- <b>Art. 448 of the penal Code:</b> imprisonment between 8 days and 2 months and/or a fine between 26 € and 500 €.</p> <p>- <b>Art. 453bis of the penal Code:</b> the minimum penalty set up in art. 448 might be doubled, where one of the motives to carry out the infringement is hatred, contempt or hostility directed towards a person on the basis of one of the ground referred to in the third column.</p> <p>- <b>Might also prohibited in certain situations</b> by applying provisions referred to Sections 8.1.1 and 8.1.2.</p>	<p><b>Art. 448: (1)</b> to insult a person either with facts, or in writing, images or emblems; <b>(2)</b> to verbally insult a person in a position of public authority, by reason of his position or duties.</p>	<p><b>Any ground.</b></p> <p>Higher sanction if the motive is one of the following: <b>alleged race; skin colour; ancestry; national or ethnic origin; nationality, gender; sexual preference; civil status; birth; age; fortune; religious; political; trade-union or philosophical beliefs; language; current or future state of health; disability; physical or genetic characteristics; and social origins.</b></p>	<p>Public meetings or places; OR in the presence of several individuals in a non-public place opened to a certain number of people who are granted to access it or to meet there; OR in any place in the presence of both the offended person and witnesses; OR in writing printed or not, images or emblems displayed, distributed or sold, offered for sale or exposed to public view; OR by writing not made publics but addressed or communicated to several persons (art. 444). <b>Includes electronic contents.</b></p>	<p><b>Prosecution: art.450</b> - insult can only be prosecuted on the basis of a complaint of the victim.</p>
Bulgaria	<p><b>Covered by the general provisions relating to insult - art. 146 of the penal Code:</b> <b>(1)</b> fine between 500 € to 1500 € (BGN 1000 and 3000) and eventually public censure; <b>(2)</b> if the insulted person has responded at once with an insult, the court may exempt both of them from punishment.</p> <p><b>Art. 148 of the penal Code:</b> fine between 1 500 € and 5 000 € and public censure. §(2) of article 146 also apply here.</p>	<p><b>Art. 146:</b> to say or do something degrading to the honour and dignity of another person <b>in the presence of the latter</b> is an insult.</p> <p><b>Art. 148:</b> insult of and by an official or a representative of the public during or in connection with the fulfilment of his duties or function.</p>	<p><b>Any ground.</b></p> <p>If insulting words and / or actions are motivated by hatred, and this is proved in court, the offender the motive may be accepted as an aggravating circumstance (this is not based on a legal text but on a</p>	<p><b>Art.146:</b> any means but the insulted person must be present. This is applicable to online contents.</p> <p><b>Art.148:</b> insult must be inflicted publicly and spread through printed matter or in some other way.</p>	<p><b>Prosecution:</b> an insult can only be prosecuted on the basis of a complaint of the victim.</p>

			courts' practice).		
<b>Cyprus</b>	<p><b>Mostly covered</b></p> <ul style="list-style-type: none"> <li>- <b>Article 2A (c) of the law 12/1967:</b> up to 1 years of imprisonment or fine of 500 pounds (850 €) or both.</li> <li>- <b>Art. 6 of law 26(III)/2004:</b> up to 5 years imprisonment or a fine up to 20 000 pounds (34 000 €).</li> <li>- <b>May also be prohibited through the general provisions relating to insult - art. 99 of the penal Code:</b> imprisonment up to 1 month and/or a fine not exceeding 75 pounds (128 €).</li> </ul>	<p><b>Art. 2A (c):</b> publicly <b>express ideas</b> which insult persons by reason of their ... [see "Why"]</p> <p><b>Art. 6 of law 2004:</b> racist and xenophobic insult with an effect that the insulted person <b>is exposed to hatred, contempt or ridicule.</b></p> <p><b>Art. 99:</b> to insult another <b>in a way that may result in an attack</b> against a person who is present.</p>	<p><b>Art. 2A (c):</b> racial or ethnic origin or religion (<b>national origins are missing</b>).</p> <p><b>Art. 6 L2004:</b> the list is covered; <b>colour and descent</b> are in addition covered.</p> <p><b>Art. 99:</b> <b>Any ground.</b></p>	<p><b>Art. 2A (c):</b> same extent <b>[1]</b> (orally or in writing or by the press or by the use of images or in any other way).</p> <p><b>Art. 6 of law 2004:</b> <b>through a computer system</b></p> <p><b>Art. 99:</b> in a public place <b>or in a place that is not public in such a manner or under conditions that may be heard by any person in a public place.</b></p>	No other particularity.
<b>France</b>	<p><b>Prohibited</b></p> <ul style="list-style-type: none"> <li>- <b>art. 33§2 L 1881:</b> fine up to 12 000 €.</li> <li>- <b>art. 33 L 1881:</b> imprisonment up to 1 year and a fine up to 45000 €<sup>278</sup> In both cases, display or dissemination of the Court decision may be pronounced in addition, as well as a "citizenship class" regulated in Art. 131-5-1 of the penal code.</li> </ul>	<p><b>Art. 29 L. 1881:</b> an insult is any offensive expression, term of contempt or invective, which does not include any attribution of a fact.</p> <p><b>Art.33 §2:</b> punishes the insult committed against a citizen, if it has not been preceded by a provocation (and in its §1 the insult committed against certain institutions (for ex. courts, army, and public administration) or certain persons (for ex. the President of the Republic, a public agent or a jury).</p> <p><b>Art.33 §3, §4:</b> punishes the insult committed against a person or group of persons on illegal grounds (see "why").</p>	<p><b>Art.33 §2:</b> <b>any ground.</b></p> <p><b>Art.33 §3, §4:</b> the list is covered. Additional grounds are (because of their) <b>origin, membership or non-membership of a given</b> ethnic group, nation, race or religion, <b>gender, sexual orientation or gender identity or disability.</b></p>	<p>Same extent <b>[1]</b>. (means set forth in article 23 of the same law - see <i>Section 8.1.1</i>).</p>	<p><b>Non-public insult is also punished</b> (R624-4 penal Code - 4<sup>th</sup> class contravention - 750 € fine - common liability regime) - <b>What:</b> non-public insult directed towards a person or group of persons; <b>Why:</b> same grounds but "<b>real or supposed</b>" is added to "membership or non-membership to a given ...".</p> <p><b>Prosecution: art. 48 L 1881:</b> in case of insult committed against citizens, the victim must fill a complaint in order to enable the prosecution (excluding the case where it is committed for one of the illegal grounds described in art. 33§3 and §4, where any person feeling insulted can fill a complaint - see Cass. crim.,</p>

<sup>278</sup> These sanctions were an imprisonment up to 6 months and a fine up to 22 500 before the law n° 2017-86 of 27 January 2017 on equality and citizenship.



					<p>12 Sept. 2000, available at <a href="https://www.legifrance.gouv.fr/affichJurisJudi.do?idTexte=JURITEXT000007587343">https://www.legifrance.gouv.fr/affichJurisJudi.do?idTexte=JURITEXT000007587343</a>).</p> <p><b>Art. 48-1, 48-4 and 48-5 L 1881:</b> associations that are duly-registered for at least 5 years and that combat racism (or violence or discrimination on the grounds of sex, gender identity or sexual orientation in relation to related offences) or assist victims of discrimination can exercise the rights acknowledged to a party in civil matters with regards to these offences (where the offence has been committed toward persons taken individually, they must however justify to be granted with the agreement of these persons).</p>
Germany	<p><b>Covered by the general provisions relating to insult and, partly, by other more specific provisions.</b></p> <p><b>Section 185 of the penal Code:</b> imprisonment up to one years or a fine (up to 2 years or a fine if the insult is committed by means of an assault) [3].</p> <p><b>Section 130 of the penal Code:</b> imprisonment from 3 months to 5 years (which may be turned into a fine [3]).</p> <p><b>Section 130 (2) of the penal Code:</b> imprisonment up to 3 years or a fine [3].</p>	<p><b>S. 185:</b> insult committed against a person or a group consisting of a limited number of persons that is clearly defined (protects the personal honor). Basic rights such as the freedom of speech and the artistic freedom have to be taken into account within the interpretation of the provision.</p> <p><b>S.130:</b> <i>assaulting the human dignity of others</i> by insulting, <i>maliciously maligning</i> a group, segments of the population or individuals, <i>in a manner capable of disturbing the public peace</i>.</p> <p><b>S.130 (2):</b> making available written materials which <i>assault the human dignity</i> of such a group or segment of the population by insulting, <i>maliciously maligning</i> or <i>defaming</i> them (not punishable if meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes).</p>	<p><b>185: any ground.</b></p> <p><b>130 and 130 (2):</b> the list is covered (including the belonging to a national group).</p>	<p><b>130:</b> same extent [1].</p> <p><b>130 (2):</b> any means [see section 8.1.2 for details].</p>	<p><b>Section 199 (Mutual insults):</b> if an insult is immediately reciprocated the court may order a discharge for one or both of the offenders.</p> <p><b>Section 194 (Request to prosecute):</b> (1) an insult may only be prosecuted upon request, unless (in case of dissemination of "written materials" - see "How" in Section 8.1.2-or presentation in a meeting or by broadcast) if the victim was persecuted as a member of a group under the National Socialist or another authoritarian regime, if this group is a part of the population and the insult is connected to this persecution (in that case a request is not required). The offence may not be prosecuted ex officio if the victim objects. The objection may not be withdrawn. [...].</p> <p><b>In addition, art. 4 of the Interstate</b></p>



					<b>Treaty on the protection of minors (JMStV)</b> prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: content that (3) incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups.
Greece	<p><b>Covered by the general provisions relating to insult</b></p> <p>- <b>-art. 361 of the penal Code:</b> imprisonment up to 1 year or/and pecuniary penalty; (2) if the injury to reputation is not severe, considering the circumstances and the person injured, the offender shall be punished by jailing or fine; (3) The provision of § 3 of Article 308 apply here <i>[see "other particularities"]</i>.</p> <p>- <b>-art. 361 A of the penal Code:</b> imprisonment of at least 3 months; imprisonment of at least 6 months if committed by two or more persons.</p>	<p><b>Art. 361:</b> to injure another's reputation.</p> <p><b>Art. 361 A:</b> to commit an insult through an act if it was unprovoked by the victim.</p>	<b>Art. 361, 361A:</b> <a href="#">any ground.</a>	<b>Art. 361:</b> any means including the Internet ("by words or by deeds or by any other means").	<p><b>Art. 308 § 3 Penal Code (applicable to art. 361):</b> the perpetrator may be acquitted if he carried out the act because of his frustration that was caused by a previous act committed by the victim against him or before him and which was particularly cruel or brutal.</p> <p><b>Prosecution:</b> insult can only be prosecuted if there is no criminal complaint by the victim (unless the injured party is a public official [police officer, port officer, or fire and health officer] and the criminal act took place in the exercise of his duties).</p>
Ireland	<b>Partly covered by the general provisions relating to insult</b> - Section 6 of criminal justice (Public Order) act 1994, up to 3 months imprisonment and/or fine up to £ 500 (625 €) - summary conviction.	Public use or engagement in any <a href="#">threatening, abusive</a> or insulting words or behaviour <a href="#">with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.</a>	<a href="#">Any ground.</a>	Same extent <a href="#">[1]</a> .	No other particularity.
The Netherlands	<p><b>Prohibited</b></p> <p>- <b>Section 137 c of the penal Code:</b> imprisonment up to 1 year or a fine of the 3<sup>rd</sup> category (up to 8 200 €).</p>	<p><b>137c:</b> to make an insulting statement about a <a href="#">group</a> of persons because of their... <i>[see "why"]</i>.</p> <p><b>137e: (1)</b> to make public (for any reason other than the provision of factual information) a statement which the publisher knows or should reasonably suspect to be</p>	<b>137c and e:</b> same as Section 8.1.1 - Therefore <a href="#">national and ethnic origins are</a>	<b>137c:</b> same extent <a href="#">[1]</a> . (orally, in a scripture or drawing", which in practice includes any means).	<b>Regarding religion specifically,</b> in the spirit of 2008/913/JHA, a Court did not punish an insulting speech that addressed a religion. Since the speech addressed only the religion

	<p>- <b>Section 137 e of the penal Code</b> - imprisonment up to six months or a fine of the 3<sup>rd</sup> category (up to 8 200 €).</p> <p>- <b>Section 137 c, e:</b> sanctions are increased if the offence is committed by habit or profession or by several persons - see Section 8.1.3.</p> <p>- <b>Section 266:</b> imprisonment up to three months or a fine of the 2<sup>nd</sup> category (up to 4 200 €).</p> <p>- <b>Section 271:</b> imprisonment up to 3 months or a fine of the 2<sup>nd</sup> category.</p>	<p>insulting to a <b>group</b> of person because of their <i>[see "why"]</i>...; <b>(2)</b> to send or distribute, without request, an object which the author knows or should reasonably suspect to contain such a statement to another person, or has such object in store for public disclosure or distribution.</p> <p><b>Therefore the insult directed against a single person cannot be punished under 137 c and e.</b></p> <p><b>266:</b> (1) <b>any insult</b>, which is not of a slanderous or libellous nature <i>[see Section 8.1.5]</i>, intentionally expressed, shall constitute <b>simple defamation</b>. (2) Acts which are intended to express an opinion about the protection of public interests and which are not at the same time designed to cause any more offence or cause offence in any other way than follows from that intent, shall not be punishable as simple defamation.</p> <p><b>271: (1)</b> any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or posted, written matter or an image whose contents are insulting [...] if he knows or has serious reason to suspect that the written matter or the image contains such; (2) Any person who, with the same knowledge or reason to suspect such, publicly utters the contents of such written matter.</p> <p><b>Concerning insults, a three step test</b> was developed by courts, according to which the incriminated speech or content is considered insulting if (1) it is of an insulting nature, (2) the context does not take away the insulting character, and (3) where the context does take away the insulting character, the speech or content is not otherwise unnecessarily grievous.</p>	<p><b>missing in the text but covered in practice</b> by the term "race"; religion is included; Additional grounds are <b>beliefs, sex, hetero or homosexuality, and bodily, psychological or mental handicap.</b></p> <p><b>266:</b> Any ground.</p> <p><b>271:</b> Any ground.</p>	<p><b>266:</b> expressed either in public verbally or in writing or by means of an image, or verbally against a person in his presence or by other acts</p> <p><b>271:</b> Any means..</p>	<p>and not its followers, and the article specifically speaks of "persons" the feelings of these persons about this speech alone were not enough to fulfil the criteria for 137c (High Court, March 2009 (HR 10 march 2009 nr 01509/07, ECLI:NL:HR:2009:BF0655, See <a href="http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2009:BF0655">http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2009:BF0655</a>)</p> <p><b>Prosecution:</b> defamation (<b>Sections 269, 270 - in rel. with art. 266</b>) or the serious offence (<b>Section 271 (4)</b>) shall be prosecuted only on complaint filed by the person against whom the serious offence has been committed (or some listed relatives if the person is deceased), except where it is made in regard of (1) the public authorities, a public body or a public institution; or (2) a civil servant during or in connection with the lawful performance of his office.</p>
Romania	<p><b>Covered - Section V, Article 15 of the Government Ordinance no. 137/2002 on preventing and sanctioning all forms of discrimination</b> - contravention, fine between 1 000 to 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person and with a</p>	<p><b>Art.15 (right to dignity):</b> any publicly expressed <b>behaviour with a nationalist-chauvinist propaganda character, instigating to racial or nationalistic hatred</b> or if that behaviour has <b>the scope or aims at affecting dignity or creating a hostile, degrading, humiliating, offensive environment or an environment of intimidation</b> targeted against a person, a group of people or community and it</p>	<p><b>Art.15:</b> the list is covered (race, ethnicity, religion, nationality). Additional grounds are belonging to a</p>	<p>Same extent <b>[1]</b>.</p>	<p>To be noted that offences of Insult and defamation have been depenalised in 2006, which has been recognised in 2010 by the Supreme Court of Justice and Cassation<sup>279</sup>. They have not been reintroduced in the current penal Code which</p>

<sup>279</sup> Decision 8/2010 available in Romanian at <http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=86041>.

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	<p>fine between 2 000 to 100 000 RON (approximately 444 to 22 222 €) if it discriminates a group of people or a community.</p> <p><b>A civil action might also be based on art. 253 of the Civil Code</b>, which introduces tort remedies in case of personality rights violations such as the right to dignity, and on <b>art. 72 of the Civil Code</b> which enshrines the right to dignity.</p>	is connected to ... <i>[see "Why"]</i> .	<p>specific social or unprivileged category; conviction, sex or sexual orientation</p> <p><b>Art.253, 72:</b> any ground.</p>		<p>entered into force in 2014, despite several attempts to reintroduce them in this Code and a resistance of the Constitutional Council<sup>280</sup>.</p>
Spain	<p><b>Covered - art. 208 and 209 of the penal Code</b> - fine from 6 to 14 months (between 360 € and 168 000 € <i>[5]</i>) if perpetrated with publicity; fine from 3 to 7 months (between 180 € and 84 000 € <i>[5]</i>) otherwise.</p>	<p><b>Art. 208:</b> an insult is the action or expression that harms the dignity of another person, undermining his or her reputation or attacking his or her self-esteem.</p> <p><i>Only the insult that, due to its nature, effects and circumstances, is considered serious by the public at large, shall be deemed to constitute a felony (without prejudice to art. 173, §4, which punishes non-serious insults directed against persons bound to the author by certain emotional relation).</i></p> <p>Insults consisting of attributing acts to another shall not be deemed serious, except when this has been carried out knowingly of the falsehood thereof or with recklessly disregards of the truth.</p> <p>Exception: the accused of an insult shall be exempt from liability by proving the truth of the allegations when they are directed against public officials on facts concerning the performance of their duties or referred to the commission of administrative offences (art. 210 of the penal Code).</p>	Any ground.	Same extent <i>[1]</i> .	No other particularity.

<sup>280</sup> The Constitutional Council considered in several decisions that these criminal offences have not been repealed from the penal Code by the Parliament. It considers that only a criminal punishment can protect a person's honour and reputation. See for ex. Decision 62/2007 available in English at [https://www.ccr.ro/files/products/D0062\\_07.pdf](https://www.ccr.ro/files/products/D0062_07.pdf); Decision 206/2013 available in English at [https://www.ccr.ro/files/products/Decizie\\_206\\_2013en.pdf](https://www.ccr.ro/files/products/Decizie_206_2013en.pdf).

## 7.1.5 Public defamation

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.5	Public defamation.	Any ground ( <i>8 countries out of 10</i> ); race, nation, ethnicity, religion or other beliefs/conviction, sex or gender, sexual orientation ( <i>common to the 2 remaining countries; might be an aggravating circumstance in the other countries</i> ).	Any way.	Intentional conduct.	<b>In principle:</b> Author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.  <b>Exceptions:</b> - France, Spain (special Press or media liability regimes) - France, Cyprus, Greece and Bulgaria exclude the liability of legal persons.	Imprisonment up to 5 years and/or a fine up to 12 500 € - barring aggravating circumstances - depending on the country.  Particularities in Germany (theoretically up to 10 800 000 € [*]), Spain (up to 288 000 €), and Romania (up to 26 640 €). <i>[*] Such a high amount has never been applied up to now</i>	

## I.2 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<b>Prohibited - penal Code.</b> <b>Art. 443:</b> sanctions provided for in art. 444: Imprisonment between 8 days and 1 year and/or a fine between 26 € and 200 €. <b>Art. 453 bis:</b> the minimum penalty set up in art. 443 might be doubled.	<b>Art. 443:</b> to cruelly impute to another person a specific fact which in nature may touch upon his honour or may expose him to public scorn, and which is not legally proved. This action is a "libel" ( <i>calomnie</i> ) where law admits the proof of the veracity of the reported fact, and a "defamation" ( <i>diffamation</i> ) where law does not admit this proof.  <b>Art. 453 bis:</b> to commit a libel or a defamation where the motive to carry out the infringement is hatred, contempt or hostility directed towards a person because of his or her. (see "Why")	<b>443/444:</b> any ground. <b>453 bis:</b> supposed race, skin colour, ascendancy, national or ethnic origin, nationality, gender, sexual orientation, civil status, birth, age, wealth, religious or philosophical beliefs, current or future state of health, handicap, tongue, political or trade-union convictions,	<b>443/444:</b> public and some non-public places; Internet is covered (public meetings or places; OR in the presence of several individuals in a non-public place opened to a certain number of people who are granted to access it or to meet there; OR in any place in the presence of both the offended person and witnesses; OR in writing printed or not, images or	<b>Prosecution - art. 450:</b> defamation can only be prosecuted on the basis of a complaint of the victim.

			physical or genetic characteristics or social origin.	emblems displayed, distributed or sold, offered for sale or exposed to public view; OR by writing not made public but addressed or communicated to several persons).	
<b>Bulgaria</b>	<p><b>Prohibited.</b></p> <p><b>Art. 147 of the penal Code:</b> fine from 1 500 € to 3 500 €, and public censure.</p> <p><b>Art. 148 (2) of the penal Code:</b> fine between BGN 5 000 to 15 000 (2 500 € and 7 500 €) and public censure).</p>	<p><b>Art. 147: (1)</b> to make public a disgraceful fact about someone or ascribes to him a crime is a defamation. <b>(2)</b> The perpetrator is not punished if the truth of the divulged circumstances or of the ascribed crimes is proved.</p> <p><b>Art 148 (2):</b> defamation or slander from which serious consequences have set in, of and by an official or a representative of the public during or in connection with the fulfilment of his duties or function.</p>	<p>Any ground.</p> <p>If insulting words and / or actions are motivated by hatred, and this is proved in court, the offender the motive may be accepted as an aggravating circumstance. (this is not based on a legal text but on a courts' practice).</p>	<p><b>Art.147:</b> any means</p> <p><b>Art.148 (2):</b> defamation must be inflicted publicly and spread through printed matter or in some other way.</p>	<p><b>Prosecution:</b> defamation can only be prosecuted on the basis of a complaint of the victim.</p>
<b>Cyprus</b>	<p><b>Prohibited, but not penally sanctioned (civil tort). Art. 17 of Cap 148.</b></p> <p>Defamation and slander are not punished under criminal law in Cyprus. Nonetheless, tort law applies (civil liability on the grounds of Articles of Cap 148). Pursuant to Article 17 of Cap 148.</p>	<p>(17) - (1) defamation consists of a publication by any person, which</p> <p>(A) imputes to any other person a crime,</p> <p>(B) imputes to any other person misconduct in any public office or,</p> <p>(C) naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office,</p> <p>(D) or is likely to expose another person to general hatred, contempt or ridicule or,</p> <p>(E) is likely to cause any other person to be shunned or avoided by other persons.</p>	<p>Any ground.</p>	<p>By means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy.</p>	<p>No other particularity.</p>
<b>France</b>	<p><b>Prohibited -</b></p> <p><b>Arts. 30 and 31 L 1881:</b> fine up to 45 000 €.</p> <p><b>Art. 32§1 L 1881:</b> fine up to 12 000€.</p> <p><b>Art. 32§2 L 1881:</b> up to 1 year of imprisonment and/or 45 000 € of fine. In both cases, display or dissemination of the Court decision may be</p>	<p><b>Art. 29:</b> defamation is any allegation or attribution of a fact which touch upon the honour or the reputation (consideration) of the person or the entity (corps) to which the fact is attributed. Direct publication or reproduction of this allegation or attribution is punishable, even</p>	<p><b>Art. 29:</b> Any ground.</p> <p><b>Art. 32:</b> Because of their origin, membership or non-membership of</p>	<p><b>Art.29, art.32:</b> any means (means set forth in article 23 of the law -see Section 8.1.1 for details).</p>	<p><b>Non-public defamation is also punished</b> - - art. R624-3 penal Code, first class contravention: 750 € of fee (common liability regime) - <b>What:</b> non-public defamation of a person or group of</p>

	<p>pronounced in addition, as well as a “citizenship class” regulated in Art. 131-5-1 of the penal code.</p>	<p>where it is expressed in a way that leaves room for doubt or where it is directed at a person or entity (corps) not expressly named, but identifiable by the terms used in the concerned speeches, cries, threats, writings and prints, posters and notices.</p> <p><b>Arts. 30 and 31:</b> punishes defamation committed against certain institutions (for ex. courts, army, and public administration) or certain persons (for ex. the President of the Republic, a public agent or a jury).</p> <p><b>Art. 32§1:</b> punishes defamation towards a person.</p> <p><b>Art. 32§2:</b> punishes defamation towards a person or group of persons on the grounds of....</p> <p><b>Art.35:</b> the truth of defamatory facts may always be proven, unless where the allegations concern private life (and are not related to a rape or sexual assault committed against a minor, or to an infringement of endangering of minors). For the purposes of his defence, the accused can produce information coming from a breach of the secrecy of the investigation or of the inquiry, or from a breach of any other professional secrecy, if these elements are capable of establishing his good faith or the truth of defamatory facts. In such a situation, the accused cannot be prosecuted for handling confidential information. In addition, despite the law does not provide for it, French courts consider that the truth of the defamatory act cannot be proven in case of defamation motivated by illegal grounds (see for example Cass. crim. 11/07/1972, Bull. n° 236, and Cass. crim. 16/03/2004, appeal n° 03-82.828<sup>281</sup>).</p>	<p>a given ethnic group, nation, race or religion, gender, sexual orientation or gender identity or disability.</p>		<p>persons; <b>Why:</b> because of their origin, membership or non-membership, real or supposed, of a given ethnic group, nation, race or religion, gender, sexual orientation or disability.</p> <p><b>Prosecution - art. 48 L 1881:</b> In case of defamation committed against citizens, the victim must fill a complaint in order to enable the prosecution (excluding the case where it is committed for one of the illegal grounds described in art. 32, where any person feeling defamed can fill a complaint - see Cass. crim., 12 Sept. 2000, available at <a href="https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007587343">https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007587343</a>).</p> <p><b>Art. 48-1, 48-4 and 48-5 L 1881:</b> associations that are duly-registered for at least 5 years and that combat racism (or violence or discrimination on the grounds of sex, gender identity or sexual orientation in relation to related offences) or assist victims of discrimination can exercise the rights acknowledged to a party in civil matters with regards to these offences (where the offence has been committed toward persons taken individually, they must however justify to be granted with</p>
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<sup>281</sup> These latter court cases are referred to in Sylvie Menotti, "La preuve de la vérité du fait diffamatoire", Court of Cassation, report 2004,I, C, available at [https://www.courdecassation.fr/publications\\_26/rapport\\_annuel\\_36/rapport\\_2004\\_173/deuxieme\\_partie\\_tudes\\_documents\\_176/tudes\\_theme\\_verite\\_178/fait\\_diffamatoire\\_6395.html](https://www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2004_173/deuxieme_partie_tudes_documents_176/tudes_theme_verite_178/fait_diffamatoire_6395.html) (last accessed on 4 June 2017).

					the agreement of these persons).
Germany	<p><b>Prohibited -</b></p> <p>- <b>Section 186 of the penal Code:</b> imprisonment up to 2 years or a fine [3] where committed publicly or through the dissemination of written materials as defined in section 11(3) (see Section 8.1.2, "How"). Imprisonment up to 1 year or a fine [3] otherwise.</p> <p>- <b>Section 187 of the penal Code:</b> imprisonment up to 5 years or a fine [3] where committed publicly or through the dissemination of written materials as defined in section 11(3) (see Section 8.1.2, "How"). Imprisonment up to 2 years or a fine [3] otherwise.</p>	<p><b>Section 186 (Defamation):</b> whosoever asserts or disseminates a fact related to another person which may defame him or negatively affect public opinion about him, unless this fact can be proven to be true.</p> <p><b>Section 187 (Intentional defamation):</b> whosoever intentionally and knowingly asserts or disseminates an untrue fact related to another person, which may defame him or negatively affect public opinion about him or endanger his creditworthiness.</p>	Any ground.	<p><b>186:</b> any means. Higher sanctions are incurred where the offence is committed publicly or through the dissemination of written materials as defined in section 11(3) (see Section 8.1.2, "How").</p> <p><b>187:</b> any means. Higher sanctions are incurred where the offence is committed publicly, in a meeting or through the dissemination of written materials as defined in section 11(3) (see Section 8.1.2, "How").</p>	<p><b>In addition, art. 4 of the Interstate Treaty on the protection of minors (JMStV)</b> prohibits the following content in electronic information and communication media, 1. without prejudice to any liability under the German Criminal Code: content that (3.) incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups.</p> <p><b>Prosecution - Section 194 (Request to prosecute):</b> (1) An insult may only be prosecuted upon request, unless (in case of dissemination of "written materials" -see "How" in Section 8.1.2-or presentation in a meeting or by broadcast) if the victim was persecuted as a member of a group under the National Socialist or another authoritarian regime, if this group is a part of the population and the insult is connected to this persecution (in that case a request is not required). The offence may not be prosecuted ex officio if the victim objects. The objection may not be withdrawn. [...].</p>
Greece	<p><b>Prohibited.</b></p> <p><b>Article 362 of the penal Code (defamation):</b></p>	<b>Art. 362:</b> one who asserts or disseminates information before a third party concerning	Any ground.	<p>362: by any means.</p> <p>363: any means.</p>	<b>Article 367 of the penal Code:</b> unless it constitutes the essential

	<p>imprisonment up to 2 years or/and a pecuniary penalty.</p> <p><b>Article 363 of the penal Code (aggravated defamation [libel]):</b> imprisonment for not less than 3 months, and, in addition, a pecuniary penalty may be imposed and deprivation of civil rights under Article 63 may be decreed.</p>	<p>another which may damage his character or reputation.</p> <p><b>Article 363:</b> if in a case under Article 362, the information is false and the offender was aware of the falsity thereof.</p> <p><b>Article 366 of the penal Code:</b> if the information described under Article 362 is true, the act shall not be punished, but proof of truth shall not be admitted if the information concerns solely family or personal relationships which do not affect the public interest and if the assertion or dissemination was done malevolently.</p>			<p>elements of an offence under Art. 363 or unless an intent to insult is apparent from the circumstances, are not unjustified the disapproving criticisms of scientific, artistic or occupational developments, or such criticisms which appear in a public document issued by an authority concerning the activities of such authority, or such criticisms for the purpose of fulfilling lawful duties, the exercise of lawful authority or protecting a right or some other justified interest, or such criticisms in similar cases.</p> <p>Prosecution: defamation can only be prosecuted if there is no criminal complaint by the victim (unless the injured party is a public official [police officer, port officer, or fire and health officer] and the criminal act took place in the exercise of his duties).</p>
Ireland	<p><b>Prohibited - Civil tort, penal offence only if case of falseness - Defamation act of 2009.</b></p> <p>- <b>Section 6:</b> action for damages, as a civil tort (Sections 29, 31); (5) the tort of defamation is actionable without proof of special damage.</p> <p>- <b>Section 8:</b> imprisonment up to 6 months or/and fine up to 3 000 € on summary conviction; imprisonment up to 5 years or/and fine up to 50 000 € on summary conviction.</p>	<p><b>Section 2:</b> "defamatory statement" means a statement that tends to injure a person's reputation in the eyes of reasonable members of society; and "defamatory" shall be construed accordingly.</p> <p><b>Section 6:</b> (2) the tort of defamation consists of the publication of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person); (3) A defamatory statement concerns a person if it could reasonably be understood as referring to him or her.</p> <p><b>Section 8:</b> in case the defendant or the plaintiff serves on the other one any pleading containing assertions or allegations of facts, he or she must swear an affidavit verifying those assertions or allegations. If a person makes a statement in an affidavit that is false or misleading in any</p>	Any ground.	<p><b>Section 2:</b> "statement" includes (a) a statement made orally or in writing; (b) visual images, sounds, gestures and any other method of signifying meaning; (c) a statement—(i) broadcast on the radio or television, or (ii) published on the internet, and (d) an electronic communication.</p> <p><b>Section 6 (2):</b> the defamatory statement may be</p>	No other particularity.



		<p>material respect, and if this person knows it is false or misleading, he or she is guilty of an offence.</p> <p><b>Section 16: (1)</b> it is a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought is true in all material respects; (2) In respect of a statement containing 2 or more distinct allegations against the plaintiff, the defence of truth shall not fail by reason only of the truth of every allegation not being proved, if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining allegations.</p>		<p>published "by any means".</p> <p><b>Section 6 (4):</b> there is no "publication" if the defamatory statement is published to the person to whom it relates and to another person where—(a) it was not intended or (b) it was not reasonably foreseeable, that the statement would be published to the second-mentioned person.</p>	
<b>The Netherlands</b>	<p><b>Prohibited.</b></p> <p><b>Section 261 (1) of the penal Code (slander):</b> imprisonment up to 6 months or a fine of the 3<sup>rd</sup> category (8 200 €).</p> <p><b>Section 261 (2) of the penal Code (slander):</b> imprisonment up to 1 year or a fine of the 3<sup>rd</sup> category (8 200 €).</p> <p><b>Section 262 of the penal Code (aggravated defamation):</b> imprisonment up to 2 years or a fine of the 4<sup>th</sup> category (20 500 €). . Disqualification from some rights might be additionally imposed.</p> <p><b>Section 267 of the penal Code:</b> terms of imprisonment may be increased by one third, if the defamation is made in regard of (1) the public authorities, a public body or a public institution; (2) a civil servant during or in connection with the lawful performance of his office; (3) the head or a member of the government of a friendly nation.</p> <p>- <b>Section 271:</b> imprisonment up to 3 months or a fine of the 2<sup>nd</sup> category (4 200 €).</p>	<p><b>261 (1):</b> any person who, by alleging a particular fact, intentionally injures the honour or reputation of another person, with the evident intention of giving publicity to the allegation (slander).</p> <p><b>261 (2):</b> a libel is a slander committed by particular means (see "How").</p> <p><b>261 (3):</b> neither slander nor libel shall exist if the offender's act was necessary in defence of his own or another person's interests or if he could have believed in good faith that the allegation was true and was required in the public interest.</p> <p><b>262:</b> to commit the serious offence of slander or of libel, knowing that the allegation is untrue, is an aggravated defamation.</p> <p><b>271: (1)</b> any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or posted, written matter or an image whose contents are [...], with regard to a deceased person, slanderous or libellous, if he knows or has serious reason to suspect that the written matter or the image contains such; <b>(2)</b> Any person who, with the</p>	Any ground	<p><b>261 (1)</b> slander: any means.</p> <p><b>261 (2):</b> if a slander is committed by means of written material, or images, which are either distributed, publicly displayed or posted, or by means of written material the contents of which are publicly uttered, the offender shall be guilty of libel.</p> <p><b>271 (1)</b> slander: any means.</p>	<p><b>Prosecution - Defamation (Sections 269, 270 - in rel. with art. 261 &amp; 262) or the serious offence (Section 271 (4))</b> shall be prosecuted only on complaint filed by the person against whom the offence has been committed (or some listed relatives if the person is deceased), except where it is made in regard of (1) the public authorities, a public body or a public institution; or (2) a civil servant during or in connection with the lawful performance of his office.</p>

		same knowledge or reason to suspect such, publicly utters the contents of such written matter.			
Romania	<p><b>No specific provision but might be punished</b></p> <p>- <b>By the National Council Combating Discrimination</b>, which decides on public defamation cases based on specific legislation, such as, for example, <b>article 15 of Government Ordinance no. 137/2000</b> providing for the right to dignity - contravention - fine between 1 000 and 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person; fine between 2 000 and 100 000 RON (approximately 444 and 22 222 euro) if it discriminates a group of people or a community.</p> <p>- <b>Under article 371 on disturbance of public order and peace:</b> imprisonment between 3 months and 2 years or a fine [4]."</p> <p>- <b>Art.72 of the Civil Code</b> (on the right to dignity): civil sanctions.</p>	<p><b>Article 15 of Government Ordinance no. 137/2000:</b> any publicly expressed behaviour with a nationalist-chauvinist propaganda character, instigating to racial or nationalistic hatred or if that behaviour has the scope or aims at affecting dignity or creating a hostile, degrading, humiliating, offensive or an environment of intimidation targeted against a person, a group of people or community and it is connected to their...</p> <p>- <b>Article 371 on disturbance of public order and peace:</b> The act of the individual who, in public, by violent acts committed against persons or property or by threats or serious violations of human dignity, disturbs public order and peace.</p> <p>- <b>Article 72 on the right to dignity:</b> (1) Any person has the right to respect of his/her dignity; (2) Any prejudice to the honour and reputation of a person without his/her consent or without the compliance with the limitations specified in Article 75 is forbidden.</p>	<p><b>Art.15:</b> racial, national, ethnic, religious, to a specific social or unprivileged category or to their conviction, sex or sexual orientation.</p> <p>Art. 371: any grounds.</p>	Any means.	<p>Article 30 (6) of the Constitution provides that freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image. For recent cases against Romania, see <i>Morar v. Romania</i> (*) where ECHR delivered a ruling on the relation between defamation and freedom of expression<sup>282</sup>.</p> <p>(*)[2015, ECHR 668] <a href="http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&amp;query=%28[2015]%29+AND+%28ECHR%29+AND+%28668%29">http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&amp;query=%28[2015]%29+AND+%28ECHR%29+AND+%28668%29</a></p>
Spain	<p><b>Prohibited.</b></p> <p><b>Art. 510.2 of the Spanish penal Code:</b> imprisonment between 6 months and 2 years and a fine between 6 to 12 months (360 € and 144 000 €) [5].</p> <p><b>Art. 510.2, §3 of the Spanish penal Code:</b> the offence is punished with a sentence of one to four years in prison and a fine of six to twelve months when it thereby promote or encourage a climate of violence, hostility, hatred or discrimination against these groups.</p> <p><b>Art. 510.3:</b> these penalties are imposed in the upper half when the facts have been carried out</p>	<p><b>510.2 (a):</b></p> <p>- to infringe the dignity of people through actions involving humiliation, contempt or discredit a group, a <b>part of it</b>, or any particular person by reason of their membership to (see "why"), for racist, anti-Semitic or other related ideology;</p> <p>- to produce, create, possess in order to distribute, provide third parties access, distribute, disseminate or sell written or any other material or supports which content is appropriate in order to injure the dignity to represent a serious humiliation, contempt or discredit any of the above groups, a part thereof,</p>	<p><b>510.2:</b> religion or beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, for reasons of gender, illness or disability.</p>	<p>Art.510: any means, but the use of electronic communications is an aggravating circumstance.</p> <p>Art. 206: any means, but the public commission is higher punished.</p>	<p><b>Art.215:</b> (1) Nobody shall be convicted of slander or defamation other than by means of a suit filed by the person offended by the felony or his legal representative. Prosecution shall be effected on the Court's own motion when the offence is against a civil servant, authority or agent thereof, over events related to exercise of his duties of office.</p> <p>(2) Nobody may bring action for slander or defamation arising during a trial, without prior leave</p>

<sup>282</sup> [2015, ECHR 668] [http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&query=%28\[2015\]%29+AND+%28ECHR%29+AND+%28668%29](http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&query=%28[2015]%29+AND+%28ECHR%29+AND+%28668%29)

	<p>through a means of social communication, via the Internet or by using information technology, so that, that is made accessible to a large number of people.</p> <p><b>Art. 510 bis:</b> fine between 2 to 5 years (21 600 € to 9 000 000 €) if the author is a legal person.</p> <p><b>Art. 510.5:</b> in all cases above shall also be imposed the penalty of disqualification from profession or educational profession, in teaching, sports and leisure area, for a 3 to 10 years more than the duration of the deprivation of liberty imposed in the judgement where appropriate, in proportionate response to the seriousness of the offence, the number of tasks and the circumstances surrounding the offender.</p> <p><b>Art. 206 (in rel. with art. 205):</b> imprisonment between 6 months and 2 years or a fine between 12 and 24 months (720 € and 288 000 €) [5] if propagated with publicity; in other cases, fine between 6 and 12 months (360 € and 144 000 €) [5].</p>	<p>or any particular person because of their belonging to them.</p> <p><b>Art. 205:</b> slander involves accusing another person of a felony while knowing it is false or recklessly disregarding the truth.</p> <p><b>Art. 207:</b> whoever is accused of the offence of slander shall be exempt from all punishment by proving the criminal act of which he has accused the other person.</p>			<p>from the Judge or Court of Law in which the proceedings are heard or have been heard.</p> <p>(3) Forgiveness of the victim or his legal representative, as appropriate, extinguishes the penal action without prejudice to what is set forth in Art. 130, 1 (5) §2 (which states that in felonies or misdemeanours against minors or the incapacitated, Judges or Courts of Law, having heard the Public Prosecutor, may reject the effectiveness of the forgiveness granted by their representatives, ordering proceedings to continue, with intervention by the Public Prosecutor, or the serving of the sentence).</p> <p><b>Prosecution - Art. 215:</b> a suit filed by the offended person is necessary and forgiveness extinguishes the action (<i>see "other particularities" for the extended provision</i>).</p>
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## 7.1.6 Threatening a natural person, motivated by racism or xenophobia

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.6	<p>Threatening a natural person with the commission of a serious offence, under certain additional conditions (depending on the country: threat likely to evoke fear or cause anxiety or intended to intimidate or repeated or materialised), eventually motivated by racism or xenophobia (for the reason he or she belongs to a group distinguished by...)</p> <p><u>Regarding the subject of the threat:</u></p> <p><i>-Only two countries require that the offence subject of the threat is a serious one: France (attempt must be punishable + the threat must be repeated or materialised), The Netherlands (must be public violence jointly committed or some serious offence);</i></p> <p><i>- A third country (Ireland) requires a threat of serious harm too but alternatively punishes all forms of threat if an additional condition is met (the public commission with the intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned).</i></p> <p><i>-2 countries do punish simple threats (which subject is not necessarily the commission of a penal offence) where committed on illegal ground through computer systems: Cyprus (alt); Romania (alt).</i></p> <p><u>Regarding additional conditions:</u></p> <p><i>-The threat to commit a misdemeanour or a crime, without any other condition, is punished in 3 countries out of 10: Belgium, Germany, Spain.</i></p> <p><i>-The threat to commit a serious crime without any other condition is punished in one country (The Netherlands)</i></p> <p><i>-In the 6 other countries (in addition to Spain where the condition is an aggravating circumstance), an additional condition must be established: the threat must be likely to evoke fear of implementation (Bulgaria), or of nature to cause a state of fear (Romania, alt.) or must have for purpose to intimidate (Cyprus, alt.) or terrorise (Spain, alt. - aggravated sanctions); or must cause to a person fright or anxiety (Greece); or must be committed with the intent that the other believe it will be carried out + must cause serious harm OR might be not serious but committed publicly with intent to</i></p>	<p>Any ground</p> <p>In 2 countries illegal grounds enable to punish simple threats (not consisting in the commission of a penal offence) where committed through a computer system because of the following (common) characteristics of the victim: racial, national or ethnic origin or (if used as a pretext for any of these factors), religion, colour, descent. In other countries the above-mentioned grounds (and/or other ones)</p>	<p><b>Any means</b></p> <p><i>(all countries but some additional conditions might be necessary to establish the offence);</i> in two of the latter countries no other condition is necessary if committed through a computer system.</p>	<p>Intentional conduct</p>	<p><b>In Principle</b> <i>(10 countries - simple threats with or without conditions and threats to commit a violent act):</i></p> <p>author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons in only one country.</p> <p><b>Exceptions:</b></p> <p><i>- In the 2 countries prohibiting threats without other conditions but illegal grounds, 1 country (Cyprus) excludes the liability of legal persons.</i></p> <p><i>- In the 8 countries prohibiting threats to commit a damage or a penal infringement (or simple threats with an additional condition):</i></p> <p>-- Spain (special media liability regime);</p> <p>- Ireland: accomplices are not liable in relation to threats with intent to provoke a breach of the peace;</p> <p>-- Greece, Spain (reg. general provisions on threats), Ireland and Bulgaria exclude the</p>	<p><b>In the two countries prohibiting threats without other conditions but illegal grounds:</b></p> <p>imprisonment up to 3 and 5 years; in one country: fine up to 34 000 €.</p> <p><b>Threats to commit a damage or a penal infringement:</b></p> <p>depending on the country, imprisonment up to 5 years and fine up to 75 000 € (outside aggravating circumstances).</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 288 000 €).</p> <p><i>[*] Such a high amount has never</i></p>	<p>Additional protocol to the Convention on cybercrime (Threatening a natural person with the commission of a serious criminal offence, motivated by racism or xenophobia, through a computer system - for ground of race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors) (<a href="https://www.coe.int/en/web/conventions/full-list/-/conventions/tr-eaty/189">https://www.coe.int/en/web/conventions/full-list/-/conventions/tr-eaty/189</a>).</p>

## MANDOLA D2.1b (final report) - Definition of illegal hatred and implications

<p><i>provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned (Ireland, alt.); or the threat must be repeated or materialised (France)</i></p> <p><b>Alternatively to the above</b>, 3 countries punish threats to compel someone to do or to omit something: Bulgaria (alt); Cyprus (alt); Germany (alt); France (threat with the order to fulfil a condition).</p> <p><b>Legend:</b> alt= alternatively punished, other kinds of threats are also punished and mentioned in these statistics.</p>	might be taken into account as aggravating circumstance.			liability of legal persons.	been applied up to now
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I.5 - Countries' particularities					
Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p><b>Prohibited -</b></p> <p><b>The penal Code punishes threats to commit attacks:</b></p> <p><b>Art. 327§1:</b> imprisonment between 6 months and 5 years and a fine between 100 and 500 €.</p> <p><b>Art. 327§2:</b> imprisonment between 3 months and 2 years and a fine between 50 and 300 €.</p> <p><b>Art. 329:</b> imprisonment between 8 days and 3 months and a fine between 26 and 100 €.</p> <p><b>Simple threats might be in some situations punished by courts applying art. 442 ter</b> of the penal Code: imprisonment from 30 days to 4 years and/or a fine from 100 € to 600 €.</p>	<p><b>Art. 327§1:</b> the threat of attack against persons or properties, <b>accompanied by an order or a condition</b>, if the attack is punished by a criminal sentence.</p> <p><b>Art. 327§2:</b> the threat of attack against persons or properties, <b>not</b> accompanied by an order or a condition, if the attack is punished by a criminal sentence.</p> <p><b>Art. 329:</b> the threat of attack against persons, if the attack is punished by a criminal sentence.</p> <p><b>Art. 330:</b> the threat of attack against persons or properties, if the attack is punished by an imprisonment of at least 3 months.</p> <p><b>Art. 442 ter:</b> <b>harassment</b> with a special motivation (see "why").</p>	<p><b>Art. 327, 329, 330:</b> any ground.</p> <p><b>Art. 442 ter:</b> The list is covered. <b>Additional grounds are:</b> skin colour, ascendancy, nationality, sex, sexual orientation, civil status, birth, age, sex, age, fortune, religious or philosophical or political beliefs, current or future state of health, disability, language, trade-union convictions, physical or genetic characteristics, and social origins.</p>	<p><b>Art. 327§1:</b> verbally, or in writing (anonymously or not).</p> <p><b>Art. 327§2:</b> in writing (anonymously or not).</p> <p><b>Art. 329:</b> through gestures or emblems.</p> <p><b>Art. 330:</b> verbally, or in writing (anonymously or not).</p> <p><b>Art. 442 ter:</b> committed using a computer system.</p>	No other particularity.
Bulgaria	<p><b>Prohibited</b> (under an additional condition - especially that the threat can evoke justified fear of implementation or that the threat has for purpose to force someone to do or omit something contrary to</p>	<p><b>144: (1)</b> to threaten someone to commit a crime against his person or property or against the person or property of his next-of-kin, <b>and where this threat could evoke justified fear of</b></p>	Any ground.	Any means	<p><b>To hinder a person from practising his or her faith is also punished:</b> art. 165 of the penal Code (imprisonment up</p>

	<p>his/her will)</p> <p><b>The penal Code punishes threats to commit penal infringements against persons or their property, and threats aiming at compelling someone to do or suffer something contrary to his will.</b></p> <p><b>Art. 144:</b> (1) imprisonment up to 3 years; (2) imprisonment up to 5 years; (3) imprisonment up to 6 years.</p> <p><b>Art. 143:</b> (1)imprisonment for up to 6 years; (2) imprisonment between 3 to 10 years; (3) imprisonment from two to eight years, in cases within the scope of Paragraph 1; (4) imprisonment from 5 to 15 years.</p> <p><b>Art. 213a:</b> (1) imprisonment between 1 and 6 years and a fine between 500 and 1500€; (2) imprisonment between 2 and 8 years and a fine between 1 500 to 2 500 €; (3) imprisonment between 5 to 15 years and a fine between 2 500 to 5 000 €, whereas the court may rule confiscation of up to 1/2 of the property of the perpetrator; (4) imprisonment between 15 to 20 years, or life imprisonment, or life imprisonment without a chance of commuting, whereas the court may rule confiscation of part or of the entire property of the perpetrator.</p> <p><b>Art. 214 (2): 213a (2) becomes</b> imprisonment between 2 and 10 years and a fine between 2 000 to 3 000 € and possible confiscation of up to 1/2 of the property of the perpetrator; <b>213a (3) becomes</b> imprisonment between 5 and 15 years and a fine between 2 500 to 5 000 € and confiscation of up to 1/2 of the property of the perpetrator; <b>213a (4) becomes</b> imprisonment between 15 and 20 years, life imprisonment or life imprisonment without a chance of commuting and confiscation of no less than 1/2 of the perpetrator's property.</p> <p><b>Art. 214: (1 - sanctioned as blackmail) -</b> imprisonment between 1 and 6 years and a fine between 500 and 1 500 €; the court may impose confiscation of up to 1/2 of the property of the perpetrator; <b>(3)</b> imprisonment between 5 to 15 years</p>	<p><b>implementation; Sanctions are higher in case (2)</b> the act is committed towards an official or representative of the public during or in connection with carrying out their duties or functions, or to a person enjoying international protection; <b>OR in case (3)</b> the act is committed by certain categories of persons (listed art. 142§2, 6 and 8, such as employees of an organisation carrying out security).</p> <p><b>143: (1) to compel another person to do, to omit or to suffer something contrary to his will,</b> using for that purpose force, threats or abuse of his authority; <b>Sanctions are higher in case (2)</b> the act is committed by certain categories of persons (listed art. 142§2, 6 and 8) <b>OR (3) / AND in case (4)</b> the act is committed against certain listed persons (judge, prosecutor, examining magistrate, a police body or investigating officer, private enforcement agent, etc.).</p> <p><b>213a: (1)</b> to threaten a person with violence, with making public some disgraceful circumstances, with inflicting damages on property or some other unlawful actions of grave consequences for that person or his/her relatives, <b>for the purpose of forcing this person</b> to dispose of an article or a right or to undertake a property obligation; <b>Sanctions are higher in some circumstances described in § (2)</b> (for example: threat of murder or severe bodily injury, or act committed by two or more persons) <b>and § (3)</b> (for example: medium or severe bodily injury inflicted, provided the crime committed is not subject to more severe punishment, or act committed by an organisation or a group) <b>and § (4)</b> (2 cases: act accompanied by severe or medium bodily injury, which has resulted in death; OR by murder or an attempt for murder). Sanctions are also increased in case of blackmail (<b>art. 214 (2)</b>).</p> <p><b>214: (1) to compel somebody to do, to fail to do or to suffer something contrary to his will,</b> and</p>			<p>to 1 year) -1) A person who, by force or threat hinders the citizens from freely practising their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morality;</p> <p>(2) The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services.</p> <p>Art. 320A refers to the following actions: commission of certain crimes including false calls (art. 108a §1); to set on fire properties (art. 330 and art. 333); to cause an inundation (art. 334); to damage certain vehicles (art. 340); to create a danger in flights through device or substance (art. 341a); to unlawfully seize an aircraft, (art. 341b); to pollute water sources (art. 352 §1).</p>
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	<p>and a fine up to 250 €; the court may rule confiscation of up to one half of the property of the culprit.</p> <p><b>Art. 320A:</b> deprivation of liberty for up to two years</p>	<p>thereby inflicts material damage to that person or to another, by force or threat, for the purpose of procuring material benefit for himself or for another; <b>(3)</b> the sanction is higher in certain listed cases (severe or medium bodily injury; recidivism).</p> <p><b>Art. 320A</b> - to threaten to commit a crime under Articles 108a, par. 1, 330, 333, 334, 340, 341a, 341b, 352, paragraph (1), <i>and where such threat might give rise to justified fear of its implementation (see the "other particularities" column)</i>..</p>			
Cyprus	<p><b>Prohibited (under additional conditions if not committed through a computer system)</b></p> <p>The penal Code punishes threats to cause damages to a person, his or her property or reputation (under additional conditions).</p> <p><b>Art. 91 of Cap. 154:</b> imprisonment for 3 years</p> <p><b>Threats motivated by illegal grounds</b> are punished without other condition <i>where committed through computer systems</i> by <b>Art. 5 of Law 26 (III) 2004</b>- 5 years imprisonment and/or a fine up to 20 000 pounds (34 000 €).</p>	<p><b>Art. 91:</b> any person who with (A) the purpose of intimidation or other harassment, threatens to break or cause damage to house or (B) with horror challenge aimed at another person who is in a house fires full gun or commits any other disturbance of peace or(C) with the purpose to incite any person to carry out an act which he or she has no legal obligation to perform or with the purpose to omit an act which he or she has the legal right to conduct, threatens another person that he may cause damage to the person, reputation, or property of that person or to the or reputation of any person for which the person who is targeted with those threats cares.</p> <p><b>Art. 5 L 2004:</b> to threaten a natural person motivated by racism or xenophobia</p>	<p><b>Art. 91:</b> any ground.</p> <p><b>Art. 5 L 2004:</b> the list is covered by reference to the additional protocol to the Convention on cybercrime.</p>	<p><b>Art. 91:</b> any means.</p> <p><b>Art. 5 L 2004:</b> through a computer system.</p>	No other particularity.
France	<p><b>Prohibited (under additional conditions).</b></p> <p>The penal code punishes threats to commit some infringements (under additional conditions).</p> <p><b>222-17 penal Code (§1)</b> imprisonment up to 6 months and/or a fine up to 7 500 € (2 years and/or 30 000 € in case of illegal motivations); <b>(§2)</b> imprisonment up to 3 years and/or 45 000 € fine (5 years and/or 75 000 € in case of illegal motivations - art. 222-18-1);</p> <p><b>222-18 penal Code (§1):</b> imprisonment up to 3 years and/or a fine up to 45 000 € (5 years and/or 75 000 € in case of illegal motivations); <b>(§2)</b> imprisonment up to 5 years and/or a fine up to 75 000 € (7 years</p>	<p><b>222-17 (§1)</b> threats to commit a crime or a misdemeanour against persons whose attempt is punishable when they are, either repeated or materialised in writing, picture or any other object; <b>(§2)</b> the penalty is increased if it is a threat of death.</p> <p><b>222-18 penal Code (§1)</b> threatening by any means to commit a crime or a misdemeanour against people, when done with the order to fulfil a condition; <b>(§2)</b> the penalty is increased if it is a threat of death.</p>	<p>Any reason.</p> <p>Illegal motivations (the list is covered and additional grounds are listed) lead to an aggravation of the incurred sanction based on a general provision of the penal code (see section 8.1.7).</p>	Any means.	No other particularity.

	and/or 100 000 € in case of illegal motivations - art. 222-18-1).				
Germany	<p><b>Prohibited</b></p> <p>The penal Code punishes threats to commit penal infringements against persons, and threats aiming at compelling someone to do or suffer something contrary to his will:</p> <p><b>Section 241 of the penal Code</b> (threat to commit a felony): imprisonment up to 1 year or a fine.</p> <p><b>Section 240 of the penal Code (where the threat is not public):</b> imprisonment up to 3 years or a fine.</p> <p>Simple threats might be partly covered by Section 130, subsection 2 no. 2, of the penal Code (if the threatening through the computer system is publicly available (e.g. on a public webpage) - imprisonment up to 3 years or a fine between (theoretically) 5 and 10 800 000 € [3].</p>	<p><b>S.241:</b> (1) to threaten a person with the commission of a felony against him or a person close to him, or (2) to intentionally and knowingly pretend to another person that the commission of a felony against him or a person close to him is imminent.</p> <p><b>S.240:</b> unlawfully with force or threat of serious harm to cause a person to commit, suffer or omit an act.</p> <p><b>S.130 (2):</b> publicly making available (or public dissemination) written materials which (c) assault the human dignity of a group, segments of the population or individuals, by insulting, maliciously maligning or defaming them.</p>	<p><b>240, 241:</b> any ground</p> <p><b>130 (2):</b> the list is covered (national, racial, religious group or a group defined by their ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population).</p>	<p>Any means, including through a computer system (<b>130 (2):</b> "Written materials" include any kind of audio-visual media, data storage media, illustrations and other depictions - see section 11(3) of the penal Code). The making available through electronic communication services to persons under 18 is additionally expressly punished. Offering, supplying or making such materials accessible to a person under eighteen years is also punished.</p>	No other particularity.
Greece	<p><b>Prohibited (under an additional condition but the violence subject to the threat does not need to be penally punished).</b></p> <p>Threats are punished by art. 333 of the penal code: imprisonment up to 1 year or a fine up to 15 000 €.</p>	<p>To cause to a person fright or anxiety by threatening him or her with violence or other wrongful act or omission.</p>	Any ground.	Any means.	No other particularity.
Ireland	<p><b>Prohibited (under additional conditions).</b></p> <p>- Criminal justice (Public Order) act 1994, Section 6: up to 3 months imprisonment and/or fine up to £ 500 (625 €) - summary conviction only.</p> <p>- Non-fatal offences against the person Act, 1997, Section 5: imprisonment up to 12 months and/or fine up to £ 1 500 (1 875 €) on summary conviction; imprisonment up to 10 years and/or fine up to £</p>	<p><b>CJA, Sect.6:</b> Public use or engagement in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.</p> <p><b>NFOAPA, Sect. 5:</b> To, without lawful excuse, make to another a threat, by any means intending the other to believe it will be carried out, to kill or cause serious harm to that other or</p>	Any ground.	Any means.	No other particularity.



	1 500 (1 875 €) on conviction on indictment.	a third person.			
<b>The Netherlands</b>	<p><b>Prohibited (limited to public violence jointly committed or to some serious offence)</b></p> <p>Several forms of threat are punished by Section 285 of the penal Code: imprisonment up to 2 years or a fine of the 4<sup>th</sup> category (up to 20 500 €); Imprisonment up to 4 years or a fine of the 4<sup>th</sup> category (up to 20 500 €) in case of writing stating a specific condition.</p>	<p><b>285: (1) the threat of public violence</b> jointly committed against persons or property, the threat of violence against an internationally protected person or his protected property or the <b>threat of any serious offence endangering the general safety of persons or property or resulting in general danger for the provision of services</b>, of rape, of indecent assault, of any <b>serious offence against</b> the life of a person, of hostage-taking, of aggravated assault or of arson.</p>	<p><b>285:</b> any ground.</p>	<p><b>285:</b> any means but sanctions are higher in case of writing stating a specific condition.</p> <p><b>137e (1): Any means.</b></p>	No other particularity.
<b>Romania</b>	<p><b>Prohibited (under an additional condition if not committed through a computer system).</b></p> <p>Threats to commit penal infringements against persons are punished by Article 206 of the penal Code: imprisonment between 3 months and 1 year or fine [4]; however, the applied penalty may not exceed the penalty established by law for the offence that was the subject matter of the threat.</p> <p>Simple threat committed on illegal grounds through a computer system are punished by Article 6<sup>1</sup> of Government Emergency Ordinance no. 31/2002: imprisonment between 1 and 3 years.</p>	<p><b>Art. 206:</b> threatening an individual with the commission of an offence or of a prejudicial act against them or other individual, if this is of nature to cause a state of fear.</p> <p><b>Art. 6<sup>1</sup>:</b> threatening a person or a group of people because of their...</p>	<p><b>Art. 206:</b> any ground.</p> <p><b>Art. 6<sup>1</sup>:</b> racial and ethnic origins are covered by the terms of "race" and "ethnicity". Religion and national origin are mentioned. Additional grounds are: colour, ascendancy.</p>	<p><b>Art. 206:</b> any means.</p> <p><b>Art. 6<sup>1</sup>:</b> through a computer system.</p>	<p><b>Art. 381 of the penal Code</b> does also punish the act of preventing the freedom to practice religion: <i>see Section 4.4.5. above.</i></p> <p><b>Prosecution - art. 206:</b> the criminal action shall be initiated based on a prior complaint filed by the victim.</p>
<b>Spain</b>	<p><b>Prohibited.</b></p> <p>Several forms of threats are punished by the penal Code including threats of a harm that does not constitute a misdemeanour (Article 171 (1)) and threats to commit a misdemeanour which is intended to terrorise people (Art. 170 (1)).</p> <p><b>Article 169:</b> (1) imprisonment between 1 and 5 years if the perpetrator has imposed a condition and has achieved what he intended; (2) imprisonment between 6 months and 3 years if not achieved; (3) Penalties imposed in the upper half if the intimidation is made in writing, by telephone or by any means of communication or reproduction, or on behalf of real or supposed entities or groups; (4) imprisonment between 6 months and 2 years, where the intimidation has not been conditional.</p>	<p><b>Art. 169:</b> to threaten another with causing him, his family or other persons with whom he is intimately related harm consisting of felonies of unlawful killing, bodily harm, abortion, against liberty, torture and against moral integrity, sexual freedom, privacy, honour, property and the social-economic order.</p> <p><b>Art. 170 (1)</b> threats of a harm which constitutes a misdemeanour and which is intended to terrorise the inhabitants belonging to a population, ethnic, cultural or religious group, or a social or professional group, or any other group of persons, and if serious enough for such harm to be inflicted; (2) With the same purpose and severity, to publicly call for violent actions to be committed by organisations or terrorist groups.</p>	<p><b>Art. 169:</b> any ground.</p> <p><b>Art. 170:</b> any ground (particular population, ethnic, cultural or religious group, or social or professional group, or any other group of persons).</p>	<p><b>169 - 171:</b> any means, but some of them lead to a higher sanction.</p>	No other particularity.

	<p><b>Article 170:</b> (1) respective higher degree of penalties than those foreseen in the preceding Article; (2) imprisonment between 6 months and 2 years.</p> <p><b>Article 171: (1)</b> imprisonment between 3 months and 1 year or a fine between 6 and 24 months [5], in view of the severity and circumstances of the facts, when the intimidation is conditional and the condition does not consist in a conduct that is due. Upper half of the punishment if the offender have achieved his purpose; <b>(2)</b> imprisonment between 2 and 4 years, if the perpetrator has obtained delivery of all or part of what has been demanded, and between 4 months and 2 years, if this has not been achieved; <b>(3)</b> the Public Prosecutor may [...] abstain from accusing the person threatened with disclosure of the latter offence, except if punishable with a prison sentence exceeding two years. In the latter case, the Judge or Court of Law may lower the punishment by one or two degrees; <b>(4)</b> imprisonment between 6 months and 1 year or community service from 31 to 80 days and, in all cases, additional listed penalties (such as the possibility to pronounce special barring from exercise of parental rights for up to five years); <b>(5)</b> except if previous sanctions of this article apply, imprisonment between 3 months to 1 year or community service of 31 to 80 days and, in all cases, additional listed penalties; <b>(4) and (5)</b> penalties applied in the upper half in certain situations (for instance where the offence is committed in the presence of minors, or when it takes place in the common dwelling or dwelling of the victim); (6) Notwithstanding what is set forth in Sections 4 and 5, the Judge may, giving the reasons in the judgement, in view of the offender's personal circumstances and those arising in the perpetration of the act, handing down a punishment one degree lower.</p>	<p><b>Article 171 (1)</b> threats of a harm that does not constitute a misdemeanour; <b>(2)</b> demand of any sum or compensation under the threat of disclosing or broadcasting facts concerning the person's private life or family relations that are not publicly known and that may affect his/her reputation, credit or interest; <b>(3)</b> threat referred to above and that consist of a threat to reveal or report that a felony has been committed; <b>(4)</b> to lightly intimidate his wife or former wife, or woman with whom he has been bound by a similar emotional relation even without cohabitation, or an especially vulnerable person who lives with the offender; <b>(5)</b> to lightly intimidate any of the persons referred to in Article 173.2 (which includes ascendant, descendant, cohabitating partner, and other persons particularly protected) with weapons or other dangerous instruments.</p>			
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## 7.1.7 Illegal hatred as an aggravating circumstance

N°	Prohibited conduct				Responsib le persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
I.7	Motivation ( <i>see "Why"</i> ) is an aggravating circumstance of certain infringements <i>In 6 countries out of 10, aggravating circumstance in any misdemeanour or crime, and motivations taken into account are wider.</i> <i>In 2 countries out of 10, aggravating circumstance in some infringements only.</i> <i>In 2 countries out of 10, there are no provisions.</i>	Race national origin / nationality; ethnic origin ( <i>covered in 8 countries out of 8</i> ); religion ( <i>7 countries</i> ); Gender and sexual orientation ( <i>6 countries</i> ); political beliefs ( <i>5 countries</i> ); handicap ( <i>4 countries</i> ); age, philosophical beliefs ( <i>3 countries each</i> ).	Same as the baseline infringement.	Same as the baseline infringement.	Same as the baseline infringement.	Highly variable depending on the country.	<b>Council Framework Decision 2008/913/JHA, art. 4:</b> "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".

I.2 - Countries' particularities			
Country	Provision, sanction	What	Why
Belgium	<b>Aggravating circumstance in some infringements only (where specific penal provisions provide for it).</b> <b>In all cases but one the rule is that</b> the minimum penalty set up in the provision that punishes the behaviour might be doubled (or raised by two years in case of most serious crimes punished by "confinement") where the motive to carry out the infringement is hatred, contempt or hostility directed towards a person because of his or her... ( <i>see "Why"</i> ). In one case the penalty is higher and provided by the aggravating provision (art. 405 <i>quater</i> ).	- <b>Voyeurism, indecent assault and rape</b> (chap. V of the penal Code - art. 371 to 377; aggravation art. 377 <i>bis</i> ). - <b>Deliberate violence or murder</b> (art. 393 to 405 <i>bis</i> , aggravation art. 405 <i>quater</i> ); - <b>endangering others or failure to assist a person in danger</b> (art. 422 <i>bis</i> and <i>ter</i> ; aggravation art. 422 <i>quater</i> ); - <b>Attacks on (physical) freedom and on the inviolability of the home</b> (art. 434 to 437; aggravation art. 438 <i>bis</i> ); - <b>Harassment</b> (art. 442 <i>bis</i> ; aggravation art. 442 <i>ter</i> ); - <b>Attacks upon one's honour and esteem - including insult and defamation</b> (art. 443 to 453; aggravation art. 453 <i>bis</i> ). - <b>Fire</b> (art. 510 to 514; aggravation art. 514 <i>bis</i> ); - <b>Destruction of constructions, motorised vehicle, steam engines and</b>	<b>453 bis:</b> supposed race, skin colour, ascendancy, national or ethnic origin, nationality, gender, sexual orientation, civil status, birth, age, wealth, religious or philosophical beliefs, current or future state of health, handicap, tongue, political or trade-union convictions, physical or genetic characteristics or social origin.

		<p><b>telegraphic material</b> (art. 521 to 525; aggravation art. 525 <i>bis</i>);</p> <p><b>Destruction or deterioration of food, goods or other movable property</b> (art. 528 to 532; aggravation art. 532 <i>bis</i>);</p> <p><b>Graffiti or deterioration of immovable property</b> (art. 534 <i>bis</i> and <i>ter</i>; aggravation art. 534 <i>quater</i>);</p>	
Bulgaria	<p><b>Aggravating circumstance in some infringements only (where specific penal provisions provide for it).</b></p> <p><b>Art. 162 (2) penal Code:</b> imprisonment from 1 to 4 years and a fine from BGN 5,000 to 10,000 (2 500 € to 5 000 €), as well as public censure;</p> <p><b>Art 131 (1) penal Code:</b> imprisonment: for 3 to 15 years for severe bodily injury; from 2 to 10 years for medium bodily injury; for up to 3 years for trivial bodily injury under Article 130, § (1), and for up to 1 year or corrective labour under Article 130, § (2);</p> <p><b>Art. 163 penal Code: (I)</b> (1) imprisonment for up to 5 years for leaders and abettors; (2) imprisonment for up to 1 year or by probation for all the others; (II) sanctions are increased if the crowd or some participants are armed; (III) sanctions are increased if an assault has been made which has resulted in severe bodily injury or death.</p> <p><b>Art. 165 (3) penal Code:</b> same punishment as the one provided in art. 165 (1) and (2) (<i>see Section 8.1.6 in "other particularities"</i>); imprisonment up to 1 year.</p>	<p><b>Art. 162:</b> to use violence against another person or damages his/her property because of the person's ... (<i>see "why"</i>)</p> <p><b>Art 131 (1): to inflict bodily injury</b></p> <p><b>Art. 163: (I) to take part in a crowd rallied to attack</b> groups of the population, individual citizens or their property in connection with their... (<i>see "why"</i>)</p> <p><b>Art. 165 (3): acts under art. 163 committed against groups</b> of the population, individual citizens or their property, in connection with their... (<i>see "why"</i>)</p>	<p><b>Art. 162:</b> race, nationality, ethnic origin, religion or political convictions</p> <p><b>Art 131 (1):</b> (12) out of hooligan, racist or xenophobic motives</p> <p><b>Art. 163:</b> national, ethnic or racial affiliation</p> <p><b>Art. 165 (3):</b> religious affiliation</p>
Cyprus	<p><b>Aggravating circumstance in all crimes and misdemeanours:</b> Art. 8 L 134(I)2011.</p> <p>Courts, when calculating the penalties of any penal infringement, shall take into consideration as an aggravating circumstance racist motivation and illegal hatred motivation.</p>	<p>Notably in relation to behaviours which threaten the life or health of persons (punished art. 226 to 235 A and 242-244 of the penal Code).</p>	<p>Every case related to special features of the victim, namely: race, community, language, colour, religion, political or other beliefs, national or ethnic origin, origin, sexual orientation, gender, gender identity, handicap, age.</p>
France	<p><b>Aggravating circumstance in all crimes and misdemeanours from 2017<sup>283</sup> - Arts. 132-76 and 132-77 of the penal Code: the maximum penalty of deprivation of liberty is raised as follows:</b></p> <p>-It is raised to life imprisonment where the offence is</p>	<p>The aggravating circumstance so defined is constituted where the offence is preceded, accompanied or followed by words, writings, images, objects or acts of any kind,</p> <ul style="list-style-type: none"> <li>- either affecting the honour or esteem of the victim or of a group of people which includes the victim because of their [...]</li> <li>- or establishing that the fact have been committed against the</li> </ul>	<p>...membership or non-membership, real or supposed, to an alleged given race, ethnic group, nation or religion; or because of their gender, sexual orientation or gender identity, real or supposed.</p>

<sup>283</sup> Before the Law n°2017-86 of 27 January 2017, illegal motivations where an aggravating circumstance in some offences only (where specific penal provisions where providing for it), mainly in case of - destruction, degradation or deterioration of property belonging to others; extortion; torture and acts of barbarism; violence; threats; Infringements to the memory of dead peoples; injury and defamation.

	<p>punished by 30 years of criminal detention;</p> <p>-It is raised to 30 years of criminal detention where the offence is punished by 20 years of criminal detention;</p> <p>-It is raised to 20 years of criminal detention where the offence is punished by 15 years of criminal detention;</p> <p>-It is raised to 15 years of criminal detention where the offence is punished by 10 years of imprisonment;</p> <p>-It is raised to 10 years of imprisonment where the offence is punished by 7 years of imprisonment;</p> <p>-It is raised to 7 years of imprisonment where the offence is punished by 5 years of imprisonment;</p> <p>-It is doubled where the offence is punished by a maximum of 3 years of imprisonment;</p> <p>These provisions are not applicable to offences for which the sanction is already aggravated in the same circumstances and in case of sexual harassment.</p>	victim for one of these reasons	
Germany	<p><b>Aggravating circumstance in all crimes and misdemeanours:</b> Section 46 (Principles of sentencing) of the penal Code.</p>	Section 46 stipulates that consideration shall in particular be given to the motives and aims of the offender.	Especially when the motives are racist, xenophobic or other inhuman. Although they are not explicitly mentioned, other factors mentioned in this report for Germany can be taken into consideration as aggravating circumstances.
Greece	<p><b>Aggravating circumstance in all crimes and misdemeanours.</b></p> <p>Art. 79§3 Penal Code: perpetrators are given a harsher sentence and the <b>sentence shall not be suspended</b>.</p>	Art. 79§3 Penal Code determines the criteria to be taken into account when determining a sentence.	Race, colour, religion, descent, national or racial origin, sexual orientation or gender of the victim.
Ireland	<b>No provision.</b>	Left for the judge at sentencing.	-
The Netherlands	<b>No provision.</b>	Left for the judge at sentencing.	-
Romania	<p><b>Aggravating circumstance in all crimes and misdemeanours.</b></p> <p>- <b>Art. 78 of the penal Code (in relation to Art.77):</b> (1) in case the aggravating circumstances exist, sentencing can go up to the special maximum. If the special maximum is not sufficient, in the case of a prison sentence an addition of up to 2 years can be added without exceeding one-third of the maximum, and in the case of a fine one-third of the special maximum can be added at most. (2) Increasing the threshold</p>	<p>- <b>Art. 74 (general criteria for customisation of a sentence):</b> (1) establishing the length or amount of a penalty shall be made on the basis of the seriousness of the offence and the threat posed by the convict, all of which shall be assessed based on the following criteria: [...] "d) the reason for committing the offence and intended goal".</p> <p>- <b>Art. 77 (aggravating circumstances):</b> [...] h) the offence was committed for reasons related to (see "why")</p> <p><b>In addition, aggravating circumstance where specific penal provisions provide for it. Examples:</b></p>	<p>- <b>Art. 77:</b> race, nationality, ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals.</p> <p>- <b>Harassment (GO n° 137/2000, art. 2 (6)):</b> race, nationality, ethnic group, language, religion, social</p>

	<p>of the maximum penalty can only be done once, irrespective of the number of aggravating circumstances found.</p> <p><b>-Harassment, GO n° 137/2000, art. 2 (6):</b> if the action is not a crime, administrative fine between 1 000 to 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person, and administrative fine between 2 000 to 100 000 RON (approximately 444 to 22 222 €) if it discriminates a group of people or a community.</p> <p><b>Art. 282 (1) d); art. 297 (2):</b> between 2 and 7 years of imprisonment and a ban on the exercise of certain rights.</p>	<p><b>- Harassment (GO n° 137/2000, art. 2 (6)):</b> any difference, exclusion, restriction or preference, on grounds of a criteria (<i>see "Why"</i>) that would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by the law, in the politic, economic, social and cultural field or in any other field of the public life.</p> <p><b>- maladministration</b> (abuse of public office), Article 297 (2);</p> <p><b>- torture</b> from a civil servant based on any form of discrimination Article 282 (1) d).</p>	<p>category, convictions, gender, sexual preferences, age, handicap, non-contagious chronic disease, HIV infection, inclusion in a unflavoured category, or any other criterion.</p> <p>- 297 (2): race, nationality, ethnic origin, language, religion, gender, sexual orientation, political membership, wealth, age, disability, chronic non-transmissible disease or HIV/AIDS infection.</p> <p>- 282, 1 d: any form of discrimination</p>
Spain	<p><b>Aggravating circumstance in all crimes and misdemeanours:</b> Art. 22 of the penal Code.</p>	<p>Art. 22: "The following are aggravating circumstances: [...] 4. Committing the offence for" ... <i>see "why"</i> (discriminatory reasons).</p>	<p>Racist or anti-Semitic reasons or another kind of <b>discrimination</b> related to ideology, religion or belief of the victim, ethnicity, race or nation to which he belongs, his gender, sexual orientation or identity, illness suffered or disability.</p>

### 7.1.8 Public denial, condoning or trivialising war crimes, crimes against humanity, genocide and crimes against peace

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
I.8	<p><b>Publicly condoning, denying or grossly trivialising</b></p> <p><b>(a) crimes of genocide, crimes against humanity and war crimes</b> as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court,</p> <p><b>(b) the crimes defined in Article 6 of the Charter of the International Military Tribunal</b> appended to the London Agreement of 8 August 1945 [<b>Crimes against peace, War crimes, Crimes against humanity</b>],</p> <p>directed against a group of persons or a member of such a group defined by reference to ... (<i>see "Why"</i>), and</p> <p><b>when the conduct is carried out in a manner likely to incite to violence or hatred</b> against such a group or a member of such a group.</p> <p><i>Totally prohibited or covered: 1 country out of 10.</i></p> <p><i>Mainly or partly prohibited/covered: 5 countries out of 10.</i></p> <p><i>Very partly prohibited (restricted to holocaust / National Socialism): 3 countries out of 10.</i></p> <p><i>Not prohibited: 1 country out of 10.</i></p>	<p>Race, colour, religion, descent or national or ethnic origin (colour and descent are missing in 1 country out of the 9 that cover at least partially the infringement - if we consider that "origin" and "genealogical origin"</p>	<p>Any means.</p>	<p>Intentional conduct.</p>	<p>(9 countries out of 10)</p> <p><b>In principle:</b></p> <p>author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b></p> <p>- France, Spain (special Press or media liability regimes) - France, Cyprus, and Greece exclude the penal liability of legal persons (Greece provides however for an administrative liability of legal persons).</p>	<p>Depending on the country, imprisonment up to 5 years and fine up to 45 000 €.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 144 000 €).</p> <p>[*] Such a high amount has never been applied up to now.</p>	<p><b>2008/913/JHA, art. 1, 1.:</b> "Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: [...]"</p> <p>(c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;</p> <p>(d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.</p> <p>2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.</p> <p>3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.</p> <p>4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only."</p> <p><b>Additional protocol to the Convention on cybercrime, art. 6:</b> "(1). Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly</p>



		cover "descent").					<p><i>minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party; (2) A Party may either (a) require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise; (b) reserve the right not to apply, in whole or in part, paragraph 1 of this article".</i></p>
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## I.2 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p><b>Very partly prohibited.</b></p> <p><b>Article 1 of The Holocaust Denial Act:</b> Imprisonment between 8 days and 1 year and fine between 26 and 5 000 Belgian francs (0,65 € and 125 €).</p>	<p><b>Art. 1 of The Holocaust Denial Act: to minimise or approve genocide committed by the Nazi Regime</b> during Second World War, under all circumstances.</p> <p>'Genocide' is defined by reference to Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.</p>	Any ground.	Any means.	No other particularity.
Bulgaria	<p><b>Partly prohibited. Art. 419a Penal Code:</b> (1) imprisonment from one to five years; (2) Abettors incur imprisonment of up to one year.</p>	<p>(1) To <b>justify</b>, deny or <b>grossly palliate</b> a <b>crime committed against peace and humanity</b> and thereby poses a risk of violence or instigates hatred among individuals or groups of people united on the grounds of (<i>see "why"</i>).</p>	Same extent (race, colour, religion, origin, national or ethnic origin).	Any means.	No other particularity.
Cyprus	<p><b>Prohibited.</b></p> <p>- <b>Art.2 L134(I)/2011:</b> imprisonment up to 5 years and/or a fine up to 10 000 pounds (17 000 €).</p> <p>- <b>Art. 7 L 2004:</b> imprisonment up to 5 years and/or a fine up to 20 000 pounds (34 000 €).</p>	<p>- <b>Art.2 L134(I)/2011:</b> same extent [1].</p> <p>Covers crimes that have been recognised as such by an irrevocable decision of an international court, but also crimes that have been recognised as such by a unanimous resolution or decision of the Parliament of Cyprus (Law 45 (I) 2015 amending the law134(I)/2011).</p> <p>- <b>Art. 7 L 2004:</b> the denial, gross minimisation, approval or justification of genocides or crimes against humanity by a person motivated by racism and xenophobia, deliberately without a right.</p>	<p><b>Art.2:</b> same extent (race, colour, religion, genealogical origin, national or ethnic origin).</p> <p><b>Art. 7:</b> motivated by racism and xenophobia refers, according to art. 2 of the Additional Protocol to the Convention on Cybercrime, to "race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors".</p>	<p><b>Art.2:</b> any means.</p> <p><b>Art. 7:</b> through a computer system.</p>	No other particularity.



France	<p><b>Mostly prohibited</b></p> <ul style="list-style-type: none"> <li>- <b>Art. 24L1881:</b> imprisonment up to 5 years and/or fine up to 45 000 €.</li> <li>- <b>Art. 24bis L1881:</b> imprisonment up to 1 years and/or fine up to 45 000 €.</li> </ul>	<p><b>Art. 24:</b> public apology<sup>284</sup> (denying and trivialising are missing) of a list of crimes (which includes wilful attacks on life, wilful attacks on the physical integrity of the person and sexual assaults; thefts, extortions and destructions, and intentional damages and spoils that are dangerous to persons), of war crimes, of crimes against humanity (genocide is missing as such), of crimes of enslavement or of exploitation of an enslaved person or of misdemeanours and crimes of collaboration with the enemy, including where these crimes did not lead to the condemnation of their perpetrators. However there are no condition for the action to be carried out in a manner likely to incite to violence or hatred against such a group for particular grounds;</p> <p><b>Art. 24bis:</b> publicly contesting (condoning and trivialising are missing - but the latter is covered by jurisprudence, see below) the existence of one or more crimes against humanity as are defined by Article 6 of the Charter of the International military tribunal annexed to the London agreement of 8 August 1945 and have been committed either by members of an organisation declared criminal under Article 9 of the Statute, either by a person convicted of such crimes by a French or international court. However there is no condition for the action to be carried out in a manner likely to incite to violence or hatred against such a group for particular grounds (examples of court cases sanctioning the denying of crimes against humanity: CA Paris, 27 May 1992, Gaz. Pal. 1992. 2. Somm. 321; Crim. 12 sept. 2000 n°98-88.200, Dr. pénal 2001. 4 - 2<sup>nd</sup> decision).</p> <p><b>On the basis of art. 24bis (and despite the principle that criminal law has to be interpreted by the letter), French courts also sanction the gross trivialisation of crimes against humanity</b> (such as “the excessive understatement of the number of victims of the policy of extermination in concentration camps”: Crim. 29 January 1998 n°96-82.731, Gaz. Pal. 1, chron. crim. 87; Crim. 17 June 1997 n° 94-85.126, Bull. Crim. n°236), and the denying of crimes of genocide (Paris, 31 October 1990, Gaz. Pal. 30 May 1991, 149-150, Jurisprudence, 28/ JurisData number: 1990-603896).</p>	Any ground.	Any means (the exact list is the same as in Section 8.1.1).	<p><b>Art. 421-2-5 of the penal Code</b> punishes the direct provocation to commit terrorism acts or to publicly make the apology of such acts (Imprisonment up to 5 years and 75 000 € fine; imprisonment up to 7 years and 100 000 € fine if committed using an online public communications service).</p>
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<sup>284</sup> According to the French Court de cassation, the misdemeanour of public apology of voluntary attempt to life listed in article 24 of Law of 29 July 1881 require that the condoned offence appears as capable of being justified or that persons are incited to judge this offence positively, the apology of the perpetrator being regarded as the apology of the offence itself. It must be an indirect or insidious provocation: see Cour de cassation, chambre criminelle, 17 March 2015, n° de pourvoi: 13-87358, <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000030381198> (last accessed on 21 August 2017).

Germany	<p><b>Very partly prohibited.</b></p> <p>- Subsections 3 and 4 of section 130 (incitement to hatred: (3) imprisonment up to 5 years or a fine; (4) imprisonment up to 3 years or a fine [3].</p>	<p><b>Section 130 (3)</b> To publicly approve of, deny or downplay an <b>act committed under the rule of National Socialism</b> of the kind indicated in section 6 (1) of the Code of International Criminal Law, in a manner capable of disturbing the public peace; (4) To disturb the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or <b>justifying National Socialist rule of arbitrary force</b>.</p> <p>- In addition, the condoning, denying or grossly trivialising crimes against humanity and war crimes might be punished under the general rule of section 185 (Insult) of the German penal Code (see Section 8.1.4).</p> <p>- Furthermore, the threatening to commit war crimes is punishable under section 126, Subsection 1 no. 2 of the German Criminal Code.</p> <p>- Finally, <b>the Interstate Treaty on the protection of minors (JMStV)</b> prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: public content that:</p> <p>(4) denies or plays down acts committed under the National Socialist regime as specified in Article 6 (1) and Article 7 (1) of the International Criminal Code in a manner suited to disturb public peace;</p> <p>(5) presents cruel or otherwise inhuman acts of violence against a person in a manner devised to glorify or trivialise such acts of violence or devised to present the cruel or inhuman nature of the act in a manner which violates human dignity; this also applies to virtual presentations;</p> <p>(7.) glorifies war.</p> <p>(8) violates human dignity, especially by presenting persons who are or were dying or exposed to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given; any agreement granted in this respect shall be irrelevant,</p> <p>9. presents children or adolescents in unnatural poses; this also applies to virtual presentations.</p>	Any ground.	130 (3) and (4): publicly or in a meeting	<p><b>In addition, art. 4 of the Interstate Treaty on the protection of minors (JMStV)</b> also prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: content that:</p> <p>1. represents propaganda instruments as defined in Article 86 of the penal Code the content of which is directed against the free and democratic order or the spirit of understanding among the nations,</p> <p>2. uses insignia of organisations which are prohibited under the German Constitution<sup>5</sup> as de- fined in Article 86a of the German Criminal Code,</p> <p>6. serves as an instruction to any of the acts specified as illegal under Article 126 (1) of the German Criminal Code,</p> <p>9. presents children or adolescents in unnatural poses; this also applies to virtual presentations.</p>
Greece	<p><b>Mostly prohibited. Art. 2 Law 929/1979 amended:</b> imprisonment between 3 months and 3 years and a fine between 5 000 € and 20 000 €; if committed by a public officer or</p>	<p>To publicly and intentionally, condone, trivialise or <b>maliciously</b> deny the existence or severity of crimes of genocide, war crimes, crimes against humanity, the <b>Holocaust and Nazism crimes</b> identified by decisions of international courts or the Greek Parliament (<b>crimes against peace are missing</b>), where the</p>	The list is included. Additional motivations are <b>sexual orientation, gender identity and disability</b>	Orally or through the press, through the Internet or	No other particularity.

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	employee in the exercise of the powers entrusted to him, imprisonment between 6 months and 3 years and a fine between 10 000 € and 25 000 €.	behaviour is directed against a group of persons or a member of which is determined based on ( <i>see "Why"</i> ), when such conduct is such that it can incite violence or hatred or involves threatening or abusive character of such a group or its members.		by any other means or manner	
Ireland	<b>Not specifically prohibited.</b>	-	-	-	-
The Netherlands	<b>Not specifically prohibited but Courts punish the denial of holocaust</b> on the basis of art. 137d of the penal Code ( <i>see Section 8.1.1</i> ). (HR 27 March 2017)	-	-	-	-
Romania	<b>Mostly prohibited. Article 6 of Government Emergency Ordinance no. 31/2002:</b> (1) imprisonment between 6 months to 3 years or a fine (between 399 € and 33 300 €) [2]. (2) imprisonment between 6 months to 3 years or a fine (between 399 € and 33 300 €) [2]. (3) Imprisonment between 6 months to 5 years if the activities in paragraphs (1) and (2) are made through a computer system.	(1) Publicly denying, contesting, approving, justifying or grossly trivialising, by any means, the holocaust or its effects. (2) Publicly denying, <i>contesting</i> , approving, <i>justifying</i> or grossly trivialising crimes of genocide, crimes against humanity and war crimes ( <i>crimes against peace are missing</i> ), as defined in international law, in the Statute of the International Criminal Court and in the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 and recognised as such by a final decision of the International Criminal Court, International Military Tribunal appended to the London Agreement of 8 August 1945, of the International Criminal Tribunal for Ex-Yugoslavia, of the International Criminal Tribunal for Rwanda or any other international criminal tribunal established by relevant international instruments, and whose competence or effects are recognised by the Romanian state.	Any ground.	Any means. Higher sanction in case it is committed through a computer system.	No other particularity.
Spain	<b>Not prohibited but partly covered by art. 510.2 (b) of the penal Code:</b> - Imprisonment between 6 months and 2 years and fine between 6 months to 12 months (360 € and 144 000 €) [4]. - Imprisonment between 1 and 4 years and fine between 6 months to 12 months when the offence has promoted or encourage a climate of violence, hostility, hatred or discrimination against these groups.	To extol or justify crimes that have been committed against a group, a part thereof, or against a person because of their membership - in a racially motivated, anti-Semitic or other related ideology, to a ( <i>see "Why"</i> ), or who have participated in execution.	The list is imperfectly covered (membership of an ethnic group, race or nation, national origin, religion - <i>colour and descent are missing, ethnic origins are not mentioned</i> but seems to be covered). Additional grounds are <i>beliefs, family situation, gender, sexual orientation or gender identity, gender, illness or disability</i> .	Any means of public expression or dissemination	No other particularity.

## 7.2 Texts that might enable to combat online discrimination even though their main objective is to combat discrimination offline

### 7.2.1 Direct or indirect discrimination (incl. harassment) in some specific areas

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
II.1	<p><b>Direct or indirect discrimination</b> (practice that directly, or indirectly --neutral practice that would create discrimination--, breaches the principle of equal treatment between persons irrespective of racial or ethnic origins)</p> <p><b>Harassment is a form of discrimination</b> when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment</p> <p><b>An instruction to discriminate against persons</b> on grounds mentioned in column B shall be deemed to be discrimination.</p>	Racial or ethnic origins	<p>Any way; In some countries, legal authors think that some electronic contents (incitement to violence, statement of discrimination, instructions to discriminate...) could be punished under these provisions - even if not adopted in order to punish online content.</p> <p><b>However discrimination or harassment must be committed in one of the following area:</b> (1) conditions for access to employment, to self-employment and to occupation; (2) access to vocational guidance and training; (3) employment and working conditions; (4) involvement in a professional organisation; (5) social protection and advantages; (6) education; (7) access to and supply of goods and services which are available to the public, including housing.</p>	Intentional where penally punished (8 countries out or 10); <i>Only prohibited by civil law in 1 country; only prohibited by administrative law in 1 country.</i>	<p><i>(In 8 countries out of 10 where the behaviour is penally punished:)</i></p> <p><b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b> - Spain (special media liability regime) - Cyprus, Greece and Bulgaria exclude the liability of legal persons, as well as Ireland in relation (only) with the Non-Fatal Offences Against the Person Act, 1997.</p>	<p>Depending on the country, where penally sanctioned, imprisonment up to 3 years and fine up to 45 000 €.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 288 000 €). Administrative fines may reach 50 000 €.</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p>Council Directive 2000/43/EC (<b>possible exceptions:</b> difference of treatment due to the nature or context of an occupational activity, if the objective is legitimate and the requirement proportionate; + positive discrimination).</p> <p><b>Note:</b> Proposal (2008) for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation intends to extend the protection to other grounds (age, disability, religion or belief and sexual orientation) - not in rel. with employment since equal treatment is organised by Council Directive of 27 November 2000 (2000/78/EC) establishing a general framework for equal treatment in employment and occupation<sup>285</sup>.</p> <p>International Convention on the elimination of all forms of racial discrimination, art. 5.</p>

<sup>285</sup> In a 1990 court case (ECJ, 8 November 1990, case 177/88, Dekker) the European court of justice ruled that there is no room for national exonerations: discrimination cannot be legalised due to local opinions, or exceptions in national legislation. Once discriminatory behaviour is established according to European law, no national grounds can excuse this discriminatory behaviour (contribution from M. Hein Dries - see the Annex below).

## I.2 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p><b>Prohibited - Moureaux Act</b> <sup>286</sup>, <b>Art. 24 and 25</b>: imprisonment between 1 month to 1 year and/or fine between 50 € and 1 000 €).</p> <p><b>Article 442 Ter BPC</b>: applicable to offences committed using a computer system.</p> <p><b>Article 442 Bis</b>: imprisonment between 15 days and 2 years and/or fine between 50 € and 300 €.</p> <p><b>Article 442 Bis, §2</b>: the minimum sanction is doubled in case the victim was vulnerable for certain reasons (<i>see "Why"</i>) and where this was obvious or known by the perpetrator.</p> <p><b>Article 442 Ter</b>: the minimum sanction may be doubled in case of illegal motivations (<i>see "Why"</i>).</p>	<p>Two criminal provisions inserted in the Moureaux Act are applicable to direct and indirect discrimination (including instruction to discrimination).</p> <p><b>Article 24</b>: discrimination against a person or between communities.</p> <p><b>Article 25</b>: discrimination against a person or between communities, in the specific field of labour relations (even if this topic is already covered by Article 24).</p> <p><b>Art. 442 bis</b>: to harass a person knowing that the harassment would seriously affect the quietude of the victim.</p>	<p><b>Art. 24 and 25</b>: racial or ethnic origins are missing but covered by other notions ("nationality", "the national or the ethnical ancestry"; race). <b>Additional grounds are</b>: supposed race, skin colour, and (following the Constitution, two Acts of 10<sup>th</sup> May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.</p> <p><b>Art.442 bis</b>: any ground but the sanction is higher in case of illegal motivation (442 bis §2 or 442 ter).</p> <p><b>Art.442 bis §2</b>: age, pregnancy, illness, infirmity or physical or mental disability.</p> <p><b>Art. 442 ter</b>: same grounds as Art. 20.1 to 20.4 mentioned above.</p>	<p>Areas of prohibition are defined in the Moureaux Act: access to and supply of goods and services which are available to the public; social insurance; social advantages; complementary social protection; working relationships; mention in an official document or an authentic minute; commitment in an employee or a professional association.</p>	<p>No other particularities.</p>
Bulgaria	<p><b>Partly prohibited - Art. 172 penal Code</b>: imprisonment for up to 3 years or a fine of up to BGN 5 000 (2 500 €).</p> <p><b>Administrative sanctions</b>: fine from 50 € to 50 000 € depending on the specific</p>	<p>To intentionally impede a person to take a job, or compel him to leave a job because of his/her (<i>see "Why"</i>).</p>	<p>Nationality, race, religion, social origin, membership in a trade union or another type of organisation, political party, organisation, movement or coalition with political objective, or because of his or of his next-of-kin political convictions</p>	<p>Any means.</p>	<p>No other particularities.</p>

<sup>286</sup> Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie, 30 July 1981.

	situation.				
<b>Cyprus</b>	<p><b>Prohibited - Law 59(I)/2004 and Law 42(I)/2004.</b></p> <p><b>Law 42(I)/2004:</b> fine up to 350 pounds (595 €) pronounced by the Commissioner for the promotion of equal treatment (Ombudsman in Cyprus) if no criminal provision punishes the conduct.</p>	<p><b>Law 59(I)/2004</b> defines (direct and indirect) discrimination and harassment. It applies (art. 4(1) to all persons, as regards both the public and private sectors, including public bodies, in relation to (<i>see "how"</i>).</p> <p><b>Exceptions:</b> same as the Directive.</p> <p><b>Law 42(1)/2004</b>, art.6: defines the concept of illegal discrimination as any behaviour, conduct, term, provision or practice which is prohibited or regulated by any law for the reason that it constitutes direct or indirect discrimination on the basis of (<i>see "Why"</i>).</p>	<p>Art. 6 L 42(1)/2004: racial or ethnic origin, religion, convictions, colour, language, community, special needs, age and sexual orientation.</p>	<p>Areas of prohibition are defined in art. 4(1) of the Law 59(I)/2004: social protection, social security and healthcare, social advantages; education and access to and supply of goods and services which are available to the public, including housing.</p>	<p>No other particularities.</p>
<b>France</b>	<p><b>Prohibited.</b></p> <p>- <b>Law 2008-496</b> amended (civil sanctions): termination of the damage and compensation/damages.</p> <p>- <b>Art. 225-1 to 225-4 of the penal Code:</b> up to 3 years of imprisonment and/or a fine up to 45 000 €.</p> <p>- <b>Art. 432-7 of the penal Code:</b> up to 5 years of imprisonment and/or a fine up to 75 000 € where the offender is a representative of the public authority and where the discrimination consists: (1) in refusing the benefit of a right granted by law; or (2) in obstructing the normal exercise of any economic activity.</p> <p><b>Art. 222-33-2-2 penal Code</b> - up to 1 year imprisonment and fine up to 15 000 € - aggravating circumstances do exist, among which the performance of the action through online public</p>	<p><b>Law 2008 (civil):</b> the list is covered. <i>Is also especially punished the fact of enjoining any person to engage</i> in this prohibited behaviour.</p> <p><b>Exception:</b> same as the Directive, but exceptions must in addition satisfy an essential and critical professional requirement.</p> <p><b>Liability: where facts are presumed</b>, there is a <i>reversal of the burden of proof</i>.</p> <p><b>225-1 to -4: direct discrimination</b> is punished in six areas. <b>Some exceptions are listed</b> art. 225-3 penal Code.</p> <p><b>225-1:</b> discrimination is defined as any distinction applied between natural or legal persons by reason of their (<i>see "Why"</i>).</p> <p><b>Art. 222-33-2-2: harassment</b> of a person through repetitive words or behaviours having the object or the effect to <i>harm his or her living conditions leading to a mental or physical injury</i>.</p>	<p><b>Law 2008: the list is covered. Additional grounds are gender, religion or beliefs, disability, age, sexual orientation or identity, home place</b> in relation to involvement in a professional organisation, access to employment and to occupation, access to vocational guidance and training, employment and working conditions (including in case of self-employment). <b>In addition, direct and indirect discrimination is prohibited on grounds of pregnancy and motherhood</b> (measures taken to the benefit of women for the same reasons are however allowed); <b>Moreover, direct and indirect discrimination based on gender is prohibited in relation to the access to and the delivery of goods and services</b>, with three exceptions ((1) good/ service addressed to a gender with legitimate aim and necessary/proportionate means to reach it; (2) calculation of insurance premium/payment of insurance benefits within the conditions set out in the Insurance Code; (3) training grouping students according to their gender).</p> <p><b>225-1 to -4: reg. natural persons</b>, based on their <i>origin, gender, family situation, pregnancy, physical appearance, particular</i></p>	<p>Any means.</p> <p><b>225-1 to 4:</b> direct discrimination is punished in six areas: (1) in refusing the provision of a good or service, (2) in obstructing the normal exercise of any economic activity, (3) in refusing to hire, or in punishing or dismissing a person, (4) in subjecting the supply of goods or services to a condition based on one of the grounds listed above, (5) in subjecting an offer of employment, internship demand or job training period to a condition based on one of the grounds listed above, (6) in refusing to accept a person at one of the internships referred to under 2 ° of Article L. 412-8 of the Code of Social Security.</p> <p><b>Art. 222-33-2-2:</b> any means but sanction is higher in case of use of an online public communication means.</p>	<p><b>Other specific penal provisions prohibiting discrimination do exist</b> in the field of employment (L1155-2, L. 2146-2, R2146-5 of the labour Code), sport Code (art. L.332-6 - incitement to hatred or violence against a person or group in a public broadcast of a sport event) and non-penal provisions in other codes (insurance, sport, labour).</p>

	communication (up to 2 years / 30 000 €).		vulnerability due to their economic situation (apparent or known by the perpetrator), surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, way of living/moral, sexual orientation, gender identity, age, political opinions, union activities, ability to speak another language than French, or their membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion; or based on the fact that they suffered or refused to suffer sexual harassment (as defined by the penal Code) or that they testified about such facts; or based on the fact that they suffered or refused to suffer hazing (as defined by the penal Code) or that they testified about such facts; <b>reg. legal persons:</b> same grounds, in relation to a member or some members of the legal person. <b>Art. 222-33-2-2:</b> any ground.		
Germany	<b>Prohibited - General Anti-Discrimination Act.</b> Civil sanction.	<b>Art. 2:</b> discrimination is deemed inadmissible in relation to 8 areas. <b>Part 2 of the law (section 6 to 18)</b> – which is part of the labour law – comprehensively regulates the protection of employees against discrimination.	Race or ethnic origin, gender, religion or belief, disability, age or sexual orientation:	Any means. <b>Areas of prohibition are:</b> (1) conditions for access to dependent employment and self-employment, (2) employment conditions and working conditions; (3) access to all types and to all levels of vocational guidance, training, retraining, including practical work experience; (4) membership of and involvement in an organisation of workers or employers or any organisation whose members carry on a particular profession; (5) social protection, including social security and health care; (6) social advantages; (7) education ; (8) access to and supply of goods and services which are available to the	No other particularities.



				public, including housing.	
Greece	<p><b>Prohibited - Act N° 3304/ 2005 (art. 16):</b> imprisonment up to 6 months and fine between 1 000 and 5 000 €).</p> <p>In addition, in case of infringement, art. 57 of the civil Code (protection of personality) enables to file a claim for cessation and omission of the infringement, and art. 932 of the civil Code enables to ask for compensation for moral damage.</p>	<p>Same extent as the directive.</p> <p><b>Possible exceptions:</b> discrimination allowed to bona fide promote equality of opportunity or accommodate people with different needs (positive discrimination).</p>	<p>Additional grounds are <a href="#">gender</a>, <a href="#">civil status</a>, <a href="#">family status</a>, <a href="#">sexual orientation</a>, <a href="#">religion</a>, <a href="#">age</a>, <a href="#">disability</a>, <a href="#">membership of the traveller community</a>.</p>	<p>Any means. Areas of prohibition are the same as the Directive.</p>	<p>In addition, law punishes specifically the publication or display of an advertisement which relates to employment and which indicates an intention to discriminate or might reasonably be understood as indicating such an intention.</p>
Ireland	<p><b>Partly prohibited. - Equal Status Acts 2000-2012</b> - fine up to £1,500 (1 900 €) and/or imprisonment up to 1 year on summary conviction; fine up to £25,000 (31 250 €) and/or imprisonment up to 2 years on conviction on indictment.</p> <p><b>Section 13</b> prohibits the procurement or the attempt to procure another person to engage in prohibited conduct.</p> <p><b>Non-Fatal Offences Against the Person Act, 1997, Section 10:</b> fine up to £1,500 (1 900 €) and/or imprisonment up to 12 months on summary conviction; fine and/or imprisonment up to 7 years on conviction on indictment.</p>	<p><b>Equal Status Acts:</b> Differences of treatment and harassment (including sexual) are punished in different situations.</p> <p><b>Possible exceptions:</b> The act lists many reasons why an act may well be non-discriminatory, as well as allows discrimination to take place in a limited set of circumstances (for instance at in an educational setting – where an institution training religious leaders only accepts certain religions or a certain gender). Positive discrimination is also allowed. (Section 14).</p> <p><b>Non-Fatal Offences Against the Person Act:</b> (1) any person who, without lawful authority or reasonable excuse, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence.</p> <p>(2) for the purposes of this section a person harasses another where—(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and (b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's</p>	<p><b>Equal Status Acts:</b> gender, marital status, family status, sexual orientation, religion, age, disability, race (including colour, nationality or ethnic or national origins), traveller community</p> <p><b>Non-Fatal Offences Against the Person Act:</b> any ground.</p>	<p><b>Equal Status Acts:</b> any means. Areas of prohibition are mainly (1) the disposal of goods and provision of services; (2) the disposal of premises and provision of accommodation; (3) Educational establishments; (4) Clubs.</p> <p><b>Non-Fatal Offences Against the Person Act:</b> by any means including by use of the telephone.</p>	<p>Section 12 of the Equal Status Acts prohibits the publication or display, or the causing to be published or displayed an advertisement which indicates an intention to engage in prohibited conduct or might reasonably be understood as indicating such an intention (“advertisement” includes every form of advertisement, whether to the public or not).</p>



		peace and privacy or cause alarm, distress or harm to the other.			
<b>The Netherlands</b>	<p><b>Prohibited - Act on equal treatment (discrimination) - AWGB, civil law actions</b> (the courts' practice is to grant material damages up to 20000 €); Civil action can be taken on the basis of 6:162 BW or any other material law that could be used to address the unequal treatment.</p> <p><b>Administrative proceedings are also possible:</b> a special committee on human rights may give an opinion on the violation, on the basis of a complaint or on its own initiative; The committee has the power to start civil proceedings, leading to a prohibition.</p> <p><b>- Section 285b of the penal Code (stalking):</b> imprisonment up to 3 years or a fine of the 4<sup>th</sup> category (20 500 €). Prosecution shall take place only on complaint of the person against whom the serious offence has been committed.</p>	<p><b>- Act on equal treatment: direct and indirect discrimination</b> in the same terms of the Directive. Harassment is also covered in the act under article 1a.</p> <p><b>Possible exceptions:</b> positive discrimination mainly.</p> <p><b>Liability:</b> where facts are presumed, there is a reversal of the burden of proof.</p> <p><b>- Section 285b of the penal Code (stalking):</b> any person who unlawfully, systematically, intentionally violates another person's personal privacy with the intention of compelling that other person to act or to refrain from certain acts or to tolerate certain acts or of instilling fear in that person, shall be guilty of stalking.</p>	<p><b>- Act on equal treatment: religion, beliefs, political views, race, sex, nationality, hetero or homo-sexual orientation, civil (family/marital) status; additional particular provisions relating to pregnancy, labour and motherhood; ethnic origins are missing.</b></p> <p>Partly punished in the case of denial of service or delivery because of race:</p> <p><b>- Section 285b of the penal Code:</b> any ground.</p>	<p><b>Act on equal treatment:</b> Same extent. Areas of prohibition are the same as the Directive.</p> <p><b>Section 285b of the penal Code:</b> Any means.</p>	<p>Intentional racial discrimination in a professional setting (a profession, office or commercial company) is especially prohibited by art. 137g of the penal Code (imprisonment up to 6 months or a fine of the 3rd category (8 200 €)).</p>
<b>Romania</b>	<p><b>Partly prohibited - Government Ordinance no. 137/2000, Section on equality in economic activities, employment and occupation, Arts. 6-9:</b> fine between 1 000 to 3 000 RON (approx. 222 to 666 €) if it discriminates a natural person and fine</p>	<p><b>137/2000, art. 6:</b> conditioning someone's participation, access or free exercise to a certain economic activity to being a member of a certain... (see "Why").</p> <p><b>137/2000, art. 7:</b> sanctions discrimination of a person at work or in a situation of social protection (for reasons mentioned in column "Why"), except for the cases stipulated by the law, displayed in several areas.</p>	<p><b>137/2000:</b> race, nationality, ethnicity, religion, social category, convictions, sex or sexual orientation, age or unprivileged category.</p> <p><b>Art. 208:</b> any ground.</p>	<p><b>137/2000, art. 6:</b> Same extent.</p> <p><b>137/2000, art. 7:</b> Same extent. Areas concerned are: (a) Concluding, suspending, modifying or terminating work relations; b) Establishing and modifying the work tasks, the place of work and the wage;</p>	<p>The Labour Code also contains provisions against discrimination and unequal treatment in the work field.</p>

	<p>between 2 000 to 100 000 RON (approx. 444 to 22 222 €) if it discriminates a group of people or a community (contravention).</p> <p><b>Art. 208 penal Code:</b> (1) imprisonment between 3 and 6 months or a fine; (2) imprisonment between 1 and 3 months or a fine, unless such act represents a more serious offence; (3) Criminal action shall be initiated based on a prior complaint filed by the victim [4 - fines between 266 € and 26 640 €].</p>	<p><b>137/2000, art. 8:</b> the refusal of hiring someone on basis of (<i>see "Why"</i>).</p> <p><b>137/2000, art. 9:</b> discriminating the employees based on the social performance because of (<i>see "Why"</i>).</p> <p><b>Art. 208 penal Code (harassment):</b> (1) to repeatedly, with or without a right or legitimate interest, pursue an individual or supervise his/her domicile, working place or other places attended by the latter, thus causing to him/her a state of fear; (2) to make phone calls or communications through remote communication devices which, through their frequency or content, cause a state of fear to an individual.</p> <p><b>Law 202/2002</b> on equal opportunity for men and women prohibit discrimination based on gender at work and mentions specific obligations for the employer in order to prevent it. Discrimination based on gender is defined (art. 11) as any unwanted behaviour, defined as harassment or sexual harassment, having as purpose or effect of: (a) creating an atmosphere of intimidation, hostility or demotivation at the work place for the affected person; or (b) negatively influencing the employee as regards to their professional promotion, financial retribution or any kind of revenue or access to professional development in case of refusal of an unwanted behaviour which is connected to sexual life.</p>		<p>c) Granting other social rights than the wage;</p> <p>d) Professional formation, improvement, reconversion and promotion;</p> <p>e) Apply disciplinary measures;</p> <p>f) The right to join a union and the access to the facilities granted by it;</p> <p>g) Any other conditions of work, according to the laws in force.</p>	
Spain	<p><b>Partly prohibited</b></p> <p>- <b>Art. 314 of the penal Code (discrimination):</b> Imprisonment sentence of six months to two years and a fine of between 12 up to 24 months (720 € to 288 000 €) [5].</p> <p>- <b>Art. 172 ter of the penal Code (harassment):</b> imprisonment between 3 months to 2 years</p>	<p>- <b>Art. 314:</b> to produce serious discrimination in employment, public or private, when the offender does not restore the situation of equality before the law requirements or administrative penalty after repairing the economic damage that have been derived (the offence is only punished where the perpetrator does not restore the situation to the desired equality and repairs the economic damage that has been derived, following an administrative</p>	<p>- <b>Art. 314:</b> Against any person because of their ideology, religion or beliefs, ethnicity, race or nation, sex, sexual orientation, family situation, illness or disability, bear the legal or union representation of workers, by the kinship with other workers in the company or by the use of one of the official languages in the Spanish State.</p> <p>- <b>Art. 172 ter:</b> Any ground.</p>	<p>- <b>Art. 314:</b> same extent. Discrimination or harassment is only illegal where committed in one of the following area: conditions for access to employment, to self-employment and to occupation, employment and working conditions.</p> <p>- <b>Art. 172 ter:</b> any means. However, in practice, more than</p>	No other particularities.

	<p>or a fine of 6 to 24 months (360 € to 144 000 €) [5]. Criminal action can only be initiated based on a prior complaint filed by the victim or one of his or her representative.</p> <p>Where the victim is a particularly vulnerable person because of age, illness or situation imprisonment between 6 months and 2 years.</p> <p>Where the injured party is one of the persons referred to in paragraph 2 of Article 173 (wife, husband or partner imprisonment between 1 and 2 years, or a community service between 60 and 120 days. In this case a complaint of the victim is not required.</p>	<p>request or sanction - In addition, the "gravity" of discrimination lies within the discretion of the judges).</p> <p>- <b>Art. 172 ter:</b> to harass a person carrying out insistently and repeatedly, without being lawfully authorised, any of the following behaviours and, thus seriously alter the development of the daily life of the victim: to monitor, chase or search for a physical proximity; to contact or to try to contact the person through any media, or through third parties; to misuse the person's personal data, in order to purchase products or goods, or hire services, or get a third party to come in contact with the person; to violate his or her freedom or his or her property, or the freedom or assets of another person next to him or her.</p>		<p>80% of cases of harassment will happen over ICT, social networks and Internet. The infringement was regulated for the first time 10 2015 and In Spain the first sentence of stalking was pasted in Court of Tudela (Navarra): the offender has been convicted for stalking using ICT.</p>	
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## 7.2.2 Refusing to supply goods or services motivated by illegal grounds

N°	prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
II.2	Refusing to supply goods or services to people by reason of their (see "Why")	Racial or ethnic origin or religion (covered in the 8 countries out of ten that prohibit the behaviour); gender and sexual orientation (6 countries); age, disability, nationality (5 countries).	Any way.	Intentional.	<p>(In 7 countries out of 10 where the behaviour is penally punished:)</p> <p><b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b> - Spain (special media liability regime) - Cyprus, Greece and Spain exclude the liability of legal persons.</p>	Depending on the country, where penally sanctioned and barring aggravating circumstances, imprisonment up to 3 years and fine up to 45 000 €. Particularities in Spain (up to 288 000 €).	<p><b>Council Directive 2000/43/EC</b> (access to and supply of goods and services which are available to the public, including housing; on grounds of racial or ethnic origin).</p> <p><b>Proposal for a Council Directive (2008)</b> on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.</p> <p><b>International Convention</b> on the elimination of all forms of racial discrimination, art. 5: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [...] (f) The right of access to any place or service intended for use by the general public.</p>

I.2 - Countries' particularities			
Country	Provision, sanction	What	Why
Belgium	Not prohibited.	Not regulated regarding private goods and services. Might be punished regarding public ones under the provisions referred to Section 8.2.1.	-
Bulgaria	Not prohibited.	-	-

Cyprus <sup>287</sup>	<p><b>Prohibited.</b></p> <p>- <b>Article 2A (4) of the law 12/1967:</b> up to 1 year and/or fine up to 400 pounds (680 €).</p> <p>-<b>Law 42(I)/2004:</b> fine up to 350 pounds (595 €) pronounced by the Commissioner for the promotion of equal treatment (Ombudsman in Cyprus) if no criminal provision punishes the conduct.</p>	<p><b>Art. 2A (4) L12/1967:</b> to supply goods or services <b>by profession</b> and to refuse such supply to another by reason of (<i>see "Why"</i>), <b>or to make such supply subject to a condition</b> relating to the (<i>see "Why"</i>) of a person.</p>	<p>Art. 2A (4) L12/1967: racial or ethnic origin or religion.</p>
France	<p><b>Punished - Art. 225-2 of the penal Code:</b> imprisonment up to 3 years and fine up to 45 000 €. Imprisonment up to 5 years and fine up to 75 000 € where a refusal to provide a good or service (225-1, 1) is committed in a place welcoming the public or in order to prohibit the access of such a place (this does not apply to 225-1,4).</p>	<p><b>225-2:</b> discrimination (means any distinction applied between persons by reason of their.. <i>see "Why"</i>) committed toward a natural or a legal person, where it consists (1) to refuse to provide a good or service or (4) to make such supply subject to a condition relating to the (<i>see "Why"</i>) of a person.</p> <p><b>Exception (225-3, 4):</b> discriminations based on gender are allowed where it is justified by the protection of victims of sexual violence, or by considerations linked to the respect of private life or decency, or by the promotion of equality between genders or of interests of men or women, freedom of association or organisation of sportive activities; discriminations based on the home place are allowed where the person in charge of supplying a good or service is in a situation of obvious danger. In addition, measures taken for the benefit of persons who live in certain geographical area and aiming to favour equality of treatment are not discrimination.</p>	<p><b>Reg. natural persons,</b> based on their <b>origin, gender, family situation, pregnancy, physical appearance, particular vulnerability due to their economic situation (apparent or known by the perpetrator), surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, way of living/moral, sexual orientation, gender identity, age, political opinions, union activities, ability to speak another language than French, or their membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion; or based on the fact that they suffered or refused to suffer sexual harassment (as defined by the penal Code) or that they testified about such facts; or based on the fact that they suffered or refused to suffer hazing (as defined by the penal Code) or that they testified about such facts;</b></p> <p><b>Reg. legal persons:</b> same grounds, in relation to a member or some members of the legal person.</p>
Germany	<p><b>Prohibited by civil law. Part 3 (section 19 to 21) of General Anti-Discrimination Act</b> stipulates the protection against discrimination under civil law.</p>	<p>Prohibition of Discrimination Under Civil Law:</p> <p>(1) Any discrimination on the grounds of (<i>see "Why"</i>) shall be illegal when founding, executing or terminating civil-law obligations which</p> <p>1. typically arise without regard of person in a large number of cases under comparable conditions (bulk business) or where the regard of person is of</p>	<p>(1) race or ethnic origin, religion, <b>gender disability, age or sexual orientation.</b></p> <p>(2) race or ethnic origin.</p>

<sup>287</sup> Additional information from 2004 can be found at the following address (last accessed on 15 June 2017): [www.coe.int/t/dghl/monitoring/ecri/legal\\_research/national\\_legal\\_measures/Cyprus/Cyprus\\_SR.pdf](http://www.coe.int/t/dghl/monitoring/ecri/legal_research/national_legal_measures/Cyprus/Cyprus_SR.pdf).

		<p>subordinate significance on account of the obligation and the comparable conditions arise in a large number of cases; or which</p> <p>2. have as their object a private-law insurance.</p> <p>(2) Any discrimination on the grounds of (<i>see "Why"</i>) shall furthermore be illegal within the meaning of Section 2(1) n<sup>os</sup> 5 to 8 when founding, executing or terminating other civil-law obligations.</p> <p>(3) In the case of rental of housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.</p> <p>[...]</p> <p>Permissible differences of treatment are stipulated in section 20, the enforcement rules (incl. compensation of damages) arise from section 21.</p>	
Greece	<b>Prohibited</b> – Article 16 of Law 3304/2005: imprisonment up to 6 months and fine between 1 000 € and 5 000 €.	Refusal as regards the access to, the making available and the provision of goods and services to the public, including housing, on certain grounds ( <i>see "Why"</i> ).	Racial or ethnic origin and discrimination due to religious or other beliefs, <a href="#">disability</a> , <a href="#">age</a> or <a href="#">sexual orientation</a> .
Ireland	<b>Prohibited. Equal Status Acts 2000-2012:</b> fine up to £1,500 (1 900 €) and/or imprisonment up to 1 year on summary conviction; fine up to £25,000 (31 250 €) and/or imprisonment up to 2 years on conviction on indictment.	<p>Differences of treatment and harassment (including sexual) are punished within the context of the disposal of goods and provision of services.</p> <p><b>Possible exceptions:</b> section 5 of the act lists 12 exceptions, such as (e) differences of treatment in relation to goods or services provided for a religious purpose; (f, g, h, i, j) some differences of treatment that are reasonably necessary or expected in certain listed conditions and situations; (k) a disposal of goods by will or gift; or (l) differences of treatment where goods or services can reasonably be regarded as suitable only to the needs of certain persons.</p>	<a href="#">Gender</a> , <a href="#">marital status</a> , <a href="#">family status</a> , <a href="#">sexual orientation</a> , religion, <a href="#">age</a> , <a href="#">disability</a> , race (including colour, nationality or ethnic or national origins), <a href="#">traveller community</a> .
The Netherlands	<b>Partly prohibited. Art. 137g of the penal Code:</b> - - Imprisonment up to 6 months or a fine of the third category (8 200 €). - Imprisonment up to 1 year or a fine of the 4 <sup>th</sup> category (20 500 €) for those who do this “habitually” or those who do this in conjunction with other persons.	Any person who, in the exercise of his office, profession or business, intentionally discriminates against persons because of their ( <i>see "Why"</i> ).	Race (which covers the list).
Romania	<b>Mostly prohibited. Article 10 of Government Ordinance no. 137/2000:</b> fine between 1 000 and 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person; fine between 2 000 to 100 000 RON (approximately 444 to 22 222 €) if it discriminates a group of people or a community.	<p>Discriminating a person, a group of people or the people which are administering a legal person, based on their (<i>see "Why"</i>) through:</p> <p>a) refusing legal or administrative public services;</p> <p>b) refusing access to public health services - choosing a general practitioner, medical assistance, health insurance, emergency services or other health services;</p> <p>c) refusing selling or renting land or housing;</p> <p>d) refusing to allow a bank credit or to enter any other contractual relationship;</p> <p>e) refusing access to services offered by theaters, cinemas, libraries, museums</p>	Membership to a race, <a href="#">nationality</a> , ethnicity, religion, <a href="#">social category</a> , <a href="#">convictions</a> , <a href="#">sex</a> or <a href="#">sexual orientation</a> , <a href="#">age</a> or <a href="#">unprivileged category</a>

		<p>or exhibitions;</p> <p>f) refusing access to services offered by magazines, hotels, restaurants, bars, discotheques or any other service providers, public or private;</p> <p>g) refusing access to public transportation services – plane, ship, train, metro, bus, trolley, tram, taxi or any other means;</p> <p>h) refusing to grant a person or a group of people some rights or facilities.</p>	
Spain	<p><b>Prohibited - penal Code:</b></p> <p><b>Art. 512:</b> special barring from exercise of profession, trade, industry or commerce, and d special barring from profession or educational profession, in teaching, sports and leisure area for a term of one to four years.</p> <p><b>Art. 511.1 and 511.2 (Law 10/2015):</b> Imprisonment sentence of 6 months to two years and a fine of between 12 up to 24 months (720 € to 288 000 €) and special barring from public employment and office for a term from one to three years.</p> <p><b>Art. 511.3:</b> public officials in charge of a public service incur (for act provided for in 511.1 and 511.2) the same penalties in the upper half and the special disqualification from public office for a period of two to four years.</p> <p><b>Art. 511.4:</b> in all cases shall also be imposed the penalty of disqualification from profession or educational profession, in teaching, sports and leisure area, for 1 to 3 years more than the duration of the deprivation of freedom imposed in the judgment where appropriate, in proportionate response to the seriousness of the offence and the circumstances surrounding the offender.</p> <p>This intentional infringement of mere activity can be committed by action (denying) or omission (not revoking denial).</p>	<p><b>Art. 512:</b> those who, in the exercise of their professional or business activities, were to deny a person a service to which he is entitled due to his (<i>see "Why"</i>).</p> <p><b>Art. 511.1:</b> private individuals in charge of a public service who refuse to a person a service to which he or she is entitled, due to his/her (<i>see "Why"</i>). (Certain benefits that are not subject to a public service, such as comfort [<i>SAP Balearic Islands no. 256/2000 of 30 December</i>] or absence of enmity, are excluded from the scope).</p> <p><b>Art. 511.2:</b> same acts committed against an association, foundation, society or corporation, or against its members due to the same reasons.</p>	<p><b>Art. 512, 511:</b> <a href="#">ideology</a>, religion <a href="#">or belief</a>, belonging to an ethnic group or race, national origin, <a href="#">gender</a>, <a href="#">sexual preference</a>, <a href="#">family situation</a>, <a href="#">illness or disability</a>.</p>

### 7.3 Civil liability

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
III.1	Civil liability <i>Specific civil (3 countries) or constitutional (1 country) provisions may apply in case of discrimination or attempt to privacy or honour in 4 countries out of 10. General civil liability rules may apply in 6 countries out of 10.</i>	Any (in 7 countries out of the 8 where civil liability is possible)	Any way.	N/A.	The author of the fault, negligence or violation.	Highly variable depending on the country.	

#### I.2 - Countries' particularities

Country	Provision, sanction	What
Belgium	<b>No specific provisions.</b> <b>The common liability regime may apply.</b>	Civil law does not provide for specific provisions in case of illegal hatred or online discrimination. However, the common liability regime under civil law may apply, on the basis of art. 1382 to 1384 of the civil Code. If the act is constitutive of a penal infringement, a civil liability action may be brought together with the penal action. Art. 1382 of the civil Code states that someone committing a fault must repair it. A fault, a damage and a link between them must be proven. Art. 1383 of the civil Code states that someone engages his or her liability for his or her own action, but also in case of negligence or recklessness. Art. 1384 of the civil Code states that a person is also responsible for the damages caused by people for whom he or she must answer (parents for their minor children, teachers and artisans for their students and apprentices during the time they are under their supervision; employers for their employee), or by things that he or she has under his or her custody. Under 1382 and 1383, a fault or negligence, a damage/injury, and a link between both, have to be demonstrated. Under 1384, parents, teachers and artisans are not liable if they prove that they could not prevent the fact that is at the origin of their liability.
Bulgaria	<b>Specific provisions: Protection Against Discrimination Act (PADA)</b> <sup>288</sup>	<b>PADA, art. 71:</b> (1) In cases other than those referred to in Section I ( <i>i.e. in case of proceedings before the Commission for protection against discrimination</i> ), any person whose rights under this or other Acts regulating equal treatment have been violated may bring an action in the Regional Court demanding:

<sup>288</sup> An English version of this Act is available at <http://www.refworld.org/docid/44ae58d62d5.html> (last accessed on 4 September 2017).



		<p>1. the violation to be ascertained;</p> <p>2. the respondent to be sentenced to terminate the violation and to restore the status quo ante the violation, as well as to refrain from further violations in future;</p> <p>3. compensation for damage.</p> <p>(2) Trade union organisations and their units, as well as non-profit legal persons engaged in activity of benefit to the public, may bring action in court upon request from persons whose rights have been violated. These organisations may join as an interested party a pending legal action under § (1).</p> <p>(3) In cases of discrimination where the rights of many people have been violated, the organisations under Paragraph (2) may bring an action on their own. The persons whose rights have been violated may join the legal action as an assisting party as per Article 218 of the Code of Civil Procedure.</p> <p><b>PADA, art. 74:</b> (1) In cases under Section I, any person who has suffered damage from a violation of rights under this or other Acts regulating equal treatment may claim compensation under the general procedure against the persons and/or the authorities that inflicted the damage.</p> <p>(2) Where damage has been inflicted to persons by unlawful acts, actions or lack of actions of state bodies and officials, compensation shall be claimed under the conditions and procedure of the Act on the Liability for Damage Incurred by the State and the Municipalities.</p>
Cyprus	<p><b>No specific provisions.</b></p> <p><b>The constitutional right to non-discrimination may serve as a legal ground for tort action.</b></p>	<p>The Cypriot Torts law (Cap 148) does not provide for a cause of action in case of illegal hatred or online discrimination. However the Supreme Court of Cyprus recognised the possibility to initiate a tort action (and to submit a civil claim for damages) on the violation of the provisions of the Constitution safeguarding fundamental rights in absence of a specific tort in Cap 148 (Decision Takis Yiallourous v Evgeniou Nicolaou (2001) 1 ADD 558). The right to non-discrimination may serve as a legal ground (but there are no significant case law).</p> <p>Civil liability under Cypriot law is governed mainly by the tort of negligence. While the specific conditions of liability vary from tort to tort, the tort of negligence is based on the breach of a duty of care by the defendant. Damages in case of negligence are calculated by the law “restitution in integrum”.</p>
France	<p><b>No specific provisions.</b></p> <p><b>The common liability regime may apply.</b></p>	<p>Civil law does not provide for specific provisions in case of illegal hatred or online discrimination.</p> <p>However, the common liability regime under civil law may apply, on the basis of art. 1382 to 1384 of the civil Code, <b>at the condition that the behaviour does not correspond to an infringement provided for in the Law of 1881 on the freedom of press (in such case art. 1382 and 1383 cannot apply: Cass. crim., 27 March 2005).</b> If the act is constitutive of a penal infringement (provided by different law than L1881), a civil liability action may be brought together with the penal action.</p> <p>Art. 1382 of the civil Code states that someone committing a fault must repair it. A fault, a damage and a link between them must be proven.</p> <p>Art. 1383 of the civil Code states that someone engages his or her liability for his or her own action, but also in case of negligence or recklessness.</p> <p>Art. 1384 of the civil Code states that a person is also responsible for the damages caused by people for whom he or she must answer (parents for their minor children, teachers and artisans for their students and apprentices during the time they are under their supervision; employers for their employee), or by things that he or she has under his or her custody.</p> <p>Under 1382 and 1383, a fault or negligence, a damage/injury, and a link between both, have to be demonstrated (except in case of discrimination: if evidences presume the discrimination, the author must prove he did not discriminate). Under these conditions behaviour inspired by hatred might be sanctioned (by an obligation to do, to not do or to pay a financial compensation).</p> <p>Under 1384, parents and artisans are not liable if they prove that they could not prevent the fact that is at the origin of their liability.</p>
Germany	<p><b>No specific provisions.</b></p> <p><b>The common liability regime may apply.</b></p>	<p>If the illegal hatred is directed against a person or a specific group of persons, the injured party can take different civil actions due to a violation of the right of personality:</p> <ul style="list-style-type: none"> <li>• Formal warning with the request to give a cease-and-desist declaration.</li> </ul>

		<ul style="list-style-type: none"> <li>Claim for damages (incl. compensation for pain and suffering).</li> </ul> <p>These actions can not only be directed against the perpetrator, but also against an internet service provider. In the latter it is necessary to inform the provider about the violation of the right of personality before and to give him the opportunity to remove the violating content.</p>
Greece	<p><b>No specific provisions (except in the field of employment).</b></p> <p><b>The common liability regime may apply.</b></p>	<p>There are no civil provisions prohibiting illegal hatred and/or illegal discrimination in Greek law, with the exception of Act N° 3304/2005, which applies in the field of work and occupation, in the public and private sector. This act implements the E.U. Directives 2000/78 and 2000/43 and includes a prohibition of discrimination on the grounds of racial or ethnic origin, religious or other belief, disabilities, age, or sexual orientation.</p> <p>In other cases, the general provisions establishing the protection of personality can be applied, namely the provisions of article 57 Greek Civil Code, which recognises a general, absolute right of every person through which the protection of personality and of the value of human dignity is safeguarded.</p> <p>On the basis of these provisions, one can file a claim for cessation and omission of the infringement of personality; the injured party may also a claim for compensation for moral damages, in accordance with article 932 Civil Code. In that case, the general provisions on torts apply (articles 914 et seq. Civil Code), which provide for the requirements of illegal and faulty conduct of the defendant.</p> <p>The requirements of civil liability are: a fault or negligence, a damage or injury and a link between both.</p>
Ireland	<p><b>No specific provisions (except in the field of employment).</b></p> <p><b>No common liability regime does apply.</b></p>	<p>No specific provision has been found in civil legislation. In case of Defamation, the special tort of defamation is in use, and is covered by the 2009 Defamation Act. Beside this, general tort law mostly covers direct interferences only, and speech cannot be easily construed as direct interference. As a consequence, there appears little room for actions against hate speech and discriminatory language outside of the context of Defamation.</p> <p>If a defamatory statement is published about a group of people, any member of that group has a cause of action if the statement could reasonably be understood as referring to that person, either because of the number of people in the group or because of the circumstances in which the statement is published. It should be noted that there is no generic civil law tort equivalent.</p> <p>In addition, civil liability might be pronounced in case of violation of the Employment equal quality Acts and the Equal status Acts.</p>
The Netherlands	<p><b>No specific provisions.</b></p> <p><b>No common liability regime does apply.</b></p>	<p>Article 6:162 of the civil Code (BW) lays down the generic rules for civil liability, and requires an (1) illegal act (against the law or a social norm), which will be considered as a fault, (2) some damage, material or immaterial (6:106 BW), and (3) a causal relationship between the deed and the damage. Article 6:106 BW requires both that the person discriminating the victim had the intent to cause immaterial harm, and that the fault results either in a bodily harm or in harm to a person's good name, honour or person (which refers to reputation).</p> <p>Insofar as the hateful or discriminatory speech is covered by the law on equal treatment (AWGB), the resulting unequal treatment is considered a fault and therefore, on the basis of art. 6:162 and art. 6:106 BW, will cause an entitlement to direct and indirect (immaterial) damages.</p> <p>This common liability regime may apply as well to both discriminatory speech and hate speech, as soon as the act can be considered contrary to a social (and/or a legal) norm.</p>
Romania	<p><b>Some specific provisions already studied.</b></p> <p><b>Additional provisions relating to the protection of privacy may apply.</b></p> <p><b>The common liability regime may apply in addition.</b></p>	<p>The causes of civil actions in cases of hate and discrimination are tort and the conditions for where the illegal activity are is sanctioned by special legislation, criminal offences, decisions of the National Council Combating Discrimination or other general provisions under the Civil Code.</p> <p>The civil liability is regulated by the articles 1349 - 1395 of the Civil Code and includes the following cumulative conditions:</p> <ul style="list-style-type: none"> <li>- the existence of the damage</li> <li>- the existence of the illicit deed</li> <li>- the existence of a causality relation between the deed and the prejudice, and</li> <li>- the existence of negligence or intent (as a form guilt)</li> </ul> <p>If all the conditions are met, the injured party is entitled to ask for compensation of the prejudice under a civil action for damages.</p> <p><b>In addition, art. 71 to 74 of the civil Code might apply in certain cases:</b></p> <p><b>Art. 71 of the civil Code (The right to private life):</b> (1) Any person has the right to respect of his/her privacy; (2) No one can be subject to</p>

		<p>invasions of his/her private, personal or family life at his/her domicile or residence or in his/her correspondence, without the consent of or the compliance with the limitations specified in article 75; (3) The use by any means of the correspondence, manuscripts or other personal documents and of one's private information without his/her consent or without the compliance with the limitations specified in Article 75 is also forbidden.</p> <p><b>Article 72 of the Civil Code (The right to dignity):</b> (1) Any person has the right to respect of his/her dignity; (2) Any prejudice to the honour and reputation of a person without his/her consent or without the compliance with the limitations specified in Article 75 is forbidden.</p> <p><b>Article 73 of the Civil Code (The right to one's image):</b> (1) Any person has the right to own image; (2) In exercising the right to own image, the person may forbid or prevent the reproduction by any means of its physical appearance or voice or, as appropriate, the use of such reproduction. The dispositions of Article 75 shall apply.</p> <p><b>Article 74 of the Civil Code (Interference with the right to privacy):</b> Notwithstanding the dispositions of Article 75, in references to the right to privacy can be: (a) penetrating or unrightfully remaining in the dwelling or taking from it any object without the consent of the person occupying it legally; (b) tapping unrightfully a private conversation, made by any technical means, or the use, learnedly, of such an interception; (c) capture or use of the image or voice of a person situated in private premises, without his/her consent; (d) broadcasting of images which present the inside of private premises, without the consent of the person occupying it legally; (e) keeping of the private life under observation, by any means, except in cases provided by law; (f) broadcasting of news, debates, investigations of written feature audiovisual reports on the intimate, personal or family life, without the consent of the person concerned; (g) broadcasting of materials containing images regarding a person under treatment in medical assistance institutions, as well as of data with personal character on the health status, diagnostic issues, prognostic, treatment, circumstances related to the illness and any other various facts, including the result of the autopsy, without the consent of the person concerned, and in case the latter is deceased, without the consent of the family or of the entitled persons; (h) The mala fide use of the name, image, voice or similarity with another person; (j) publication or use of the correspondence, manuscripts or other personal documents, including of data concerning the domicile, residence, as well as the phone numbers of a person or of the members of his/her family, without the consent of the person to whom these belong or who, as the case may be, is entitled to dispose of them.</p> <p><b>Article 75 of the Civil Code:</b> (1) It does not constitute a violation of the rights foreseen in this section the interferences permitted by law or by international conventions and covenants on human rights to which Romania is part of; (2) The exercise of rights and constitutional freedoms in good faith and in compliance with international agreements and conventions to which Romania is part of does not constitute a violation of the rights foreseen in this section.</p>
Spain	<p><b>No specific provisions.</b></p> <p><b>Some provisions relating to the protection of privacy may apply.</b></p> <p><b>The common liability regime does apply in addition.</b></p>	<p>Civil law does not provide for specific provisions in case of illegal hatred or online discrimination.</p> <p>However, the common liability regime under civil law may apply, on the basis of art. 1902 <i>et seq.</i> of the civil Code (possibility that has been recognised by the Supreme Court of Spain). If the act is constitutive of a penal infringement, a civil liability action may be brought together with the penal action.</p> <p><b>- Art. 1902 of the civil Code</b> states that a person who, as a result of an action or omission, causes damage to another by his fault or negligence shall be obliged to repair the damaged caused.</p> <p>Requirements for damages are the following:</p> <ul style="list-style-type: none"> <li>- a culpable breach of the obligation (fault or negligence),</li> <li>- an impossibility to get compliance specifically,</li> <li>- occurred damages (damage or consequential damage such as injury suffered by the heritage, or loss of profits as a result of the breach), and</li> <li>- a causal direct link.</li> </ul> <p>Despite this latter rule, the jurisprudence establishes in practice a reversal of the burden of proof, which means that the production of a damage is enough to lead to accountability, and that the offender must prove that he or she has not committed any fault and that he or she acted with all the</p>

		<p>diligences of a "good father" to prevent the damage, in order to exonerate him or herself from his/her responsibility.</p> <p>- <b>Art. 1903 of the civil Code</b> states that the obligation imposed in article 1902 shall be enforceable not only as a result of one's own actions or omissions but also of those of such persons for whom one is liable. Parents are liable for damages caused by children under their care; guardians are liable for damages caused by minors or incapacitated persons who are under their authority and who live in their company; owners or managers of an establishment or undertaking shall be liable for damages caused by their employees, in the service in which they are employed or in the performance of their duties; persons or entities which own an educational centre other than a centre for higher education shall be liable for the damages caused by its underage students during the periods in which the latter are under the control or supervision of the Centre's teaching staff, or while conducting school, extracurricular or complementary activities.</p> <p>The liability provided in art. 1903 cease if the persons mentioned above evidence that they acted with all the diligence of an orderly paterfamilias to prevent the damage.</p> <p>- <b>Art. 1904 of the civil Code</b> states that the person who pays damages caused by his employees may recover from the latter the amount paid. The owners of educational centres other than centres for higher education may claim from the teachers the amounts paid by the former in the event of wilful misconduct or gross negligence in the exercise of their duties being the cause of the damage.</p> <p>- <b>Art. 1905 to 1910</b> regulate the liability of possessors of an animal, owners of property used for hunting purposes, owners of building or other properties causing damages, and head of a family for damages caused by things falling from his house.</p> <p>- <b>In addition, Organic Law 1/1982, of 5 May, on the Civil Protection of the right to honour, personal and family privacy and personal image, may apply in certain cases.</b></p> <p><b>Art.1:</b> The fundamental right to honour, personal and family privacy and self-image, guaranteed by Article eighteen of the Constitution shall be protected civilly against all kinds of illegal interference, in accordance with the provisions of this Act.</p> <p>When the interference constitutes a crime, it will be subject to the provisions in the Penal Code. However, these legal criteria for determining civil liability of crime shall apply. The right to honour, personal and family privacy and the image itself is irrevocable, inalienable and imprescriptible. The waiver of the protection provided by this act shall be void, without prejudice to cases of authorisation or consent that the second article of this law refers to.</p> <p><b>Art. 2:</b> The civil protection of honour, privacy and self-image will be defined by the laws and social practices in response to the field, by their own actions, keep each person reserved for herself or her family.</p> <p>It not appreciates the existence of illegitimate intrusion into the protected area when he is expressly authorised by law or when the holder of the right has been granted to affect their express consent.</p>
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## 7.4 Additional texts, less or more generic, or prohibited in some countries only

### 7.4.1 Sending of grossly offensive and/or indecent or obscene or menacing content

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.1	Public sending of a content sending of grossly offensive and/or indecent or obscene or menacing character messages or content. <i>Fully prohibited in 1 country out of 10.</i> <i>Partially prohibited or covered in 5 countries out of 10.</i> <i>These results do not take into account (1) infringements of threat, insult, and defamation already studied; and (2) infringements targeting the sending of child-pornography or pornography-related materials, which are clearly outside the scope of the study.</i>	Any ground in 5 countries out of the 6 where the behaviour is at least partially penally punished. In the last country (Spain): Religion or beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, for reasons of gender, illness or disability.	By the use of a public communications network (2 countries out of 6); any means (2 countries out of 6); any means but publicly (2 countries out of 6).	Intentional conduct.	<i>(In 6 countries out of 10 where the behaviour is at least partially penally punished:)</i> <b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.  <b>Exceptions:</b> - Ireland (accomplices) - France and Spain (special press or media liability regime); - Cyprus, Greece, Bulgaria and Ireland exclude the liability of legal persons.	Depending on the country, where penally sanctioned and barring aggravating circumstances, imprisonment up to 6 months and fine up to 8 200 € (up to 3 years and 75 000 € in France but restricted to serious offences). Particularities in Spain (up to 144 000 €).	

### V.1 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	Not specifically prohibited but might be covered by the penal prohibition of indecency. <b>Art. 383 penal Code:</b> imprisonment between 8 days and 6 months and/or a fine between 26 € and 500 €.	Prohibition of public indecency (as defined by case law and by common sense).	Any ground.	Through a computer system.
Bulgaria	Not prohibited (besides the threatening of a person mentioned in Section 8.1.6) - art. 144 of the penal Code).	<i>See Section 8.1.6.</i>	<i>See Section 8.1.6.</i>	<i>See Section 8.1.6.</i>
Cyprus	Prohibited. Art. 149 (6) L112(I)/2004, fine up to 1 700 €.	(A) To send a message, or whatever content, which is grossly offensive and of an indecent or obscene or menacing character	Any ground ( <i>higher sanctions are incurred</i> )	By the use of a public

		(offence).	<i>in case of illegal motivations due to a general provision - see Section 8.1.7).</i>	communications network
<b>France</b>	<b>Partly prohibited. Art. 227-24 penal Code:</b> up to 3 years imprisonment and 75 000 € fine - <b>Liability regime (227-24 § 2):</b> where committed through writing press or audio-visual, specific liability regimes do apply.	The manufacture, transport, broadcasting by any means of a message of a violent [...] or inciting to terrorism or seriously offending human dignity or inciting juveniles to play games which are physically dangerous to them, or to trade such message; is punished where it might be seen or perceived by a juvenile;	Any ground	Any means
<b>Germany</b>	<b>Not specifically prohibited but might be covered by the prohibition, in the penal Code, of insult</b> (Section 185), <b>defamation</b> (Section 186) and <b>intentional defamation</b> (Section 187) - <i>see Sections 8.1.4, 8.1.5).</i>	<i>See Sections 8.1.4 and 8.1.5.</i>	<i>See Sections 8.1.4 and 8.1.5.</i>	<i>See Sections 8.1.4 and 8.1.5.</i>
<b>Greece</b>	<b>Not specifically prohibited but might be covered by the prohibition, in the penal Code, of insult</b> (Article 361 - <i>See Section 8.1.4).</i>	<i>See Section 8.1.4.</i>	<i>See Section 8.1.4.</i>	<i>See Section 8.1.4.</i>
<b>Ireland</b>	<b>Partly prohibited. Criminal Justice (Public Order) Act, 1994, Section 7, (2):</b> imprisonment up to 3 months or/and fine up to £500 (summary conviction).	(1) to distribute or display any writing, sign or visible representation which is threatening, abusive, insulting or obscene with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.	Any ground.	In a public place.
<b>The Netherlands</b>	<b>Partly prohibited - Section 240 of the penal Code:</b> imprisonment up to 2 months or fine of the third category (8 200 €).	To know or to have serious reason to suspect that an image or object is offensive to decency, and to (1) display or offer that image or object in or at a place intended or designed to be frequented or resorted to by the general public; OR (2) to send that image or object to a person, other than at the request of that person.	Any ground.	Publicly.
<b>Romania</b>	<b>Not prohibited.</b>	At the best, such a case could be construed as an infringement of the right to dignity in a tort case (but chances of success seem very low).	-	-
<b>Spain</b>	<b>Not prohibited but might be partly covered by art. 510.2 of the penal Code:</b> imprisonment between 6 months and 2 years and a fine between 6 to 12 months (360 € and 144 000 €) [5]; Imprisonment between 1 to 4 years and a fine between 6 to 12 months when it thereby promotes or encourages a climate of violence, hostility, hatred or discrimination against these groups. <b>Art. 510.3 of the penal Code:</b> the penalties above-mentioned must be imposed in the upper half when the facts have been carried out through a means of social communication, via the Internet or by using information technology, so that, that is made accessible to a large number of people. <b>Art. 510 bis:</b> fine between 2 to 5 years (21 600 € to 9 000 000 €) if the author is a legal person. <b>Art. 510.5:</b> in all cases shall also be imposed the penalty of disqualification	510.2 (a): to infringe the dignity of people through actions involving humiliation, contempt or discredit a group, a part of it, or any particular person by reason of their membership to ( <i>see "why"</i> ), for racist, anti-Semitic or other related ideology, OR to produce, create, possess in order to distribute, provide third parties access, distribute, disseminate or sell written or any other material or supports which content is appropriate in order to injure the dignity to represent a serious humiliation, contempt or discredit any of the above groups, a part thereof, or any particular person because of their belonging to them.	Religion or beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, for reasons of gender, illness or disability.	Any means but sanctions are higher in case information technologies are used.

	from profession or educational profession, in teaching, sports and leisure area, for a 3 to 10 years more than the duration of the deprivation of liberty imposed in the judgement where appropriate, in proportionate response to the seriousness of the offence, the number of tasks and the circumstances surrounding the offender.			
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### 7.4.2 Sending a message that which can cause annoyance, harassment and / or needless anxiety

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.2	<p>Sending of a message, or whatever content, which can cause annoyance, harassment and / or needless anxiety to another person, which the sender knows to be false.</p> <p><i>Fully prohibited in 1 country out of 10.</i></p> <p><i>Might be covered by civil provisions in 1 country out of 10.</i></p> <p><i>In all the other countries might be covered by provisions relating to harassment, threat, insult, and defamation already studied.</i></p>	Any ground.	By the use of a public communications network (1 country out of 10) or any means (1 country out of 10).	Intentional conduct where penalty sanctioned.	<i>(In 1 country out of 10 where the behaviour is fully penalty punished:)</i> author; instigator; accomplice (aiding and abetting); natural persons.	Fine up to 1 700 €.	

V.2 - Countries' particularities				
Country	Provision, sanction	What	Why	How
Belgium	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - art. 442 <i>ter</i> of the penal Code (see Section 8.2.1).	See Section 8.2.1.	See Section 8.2.1.	See Section 8.2.1.
Bulgaria	Not specifically prohibited but might be covered by penal provisions that prohibit insult and slander - art. 147 and 148 of the penal Code (see Section 8.1.4 and 8.1.5).	See Sections 8.1.4 and 8.1.5.	See Sections 8.1.4 and 8.1.5.	See Sections 8.1.4 and 8.1.5.
Cyprus	Prohibited. Art. 149 (6) L112(I)/2004, fine up to 1 700 €.	(B) To send a message, or whatever content, which can cause annoyance, harassment and / or needless anxiety to another person, which the sender knows to be false (offence).	Any ground (higher sanctions are incurred in case of illegal motivations due to a general provision - see Section 8.1.7).	By the use of a public communications network



France	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Art. 222-33-2-2 of the penal Code ( <i>see Section 8.2.1</i> ).	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>
Germany	Not specifically prohibited but might be covered by penal provisions that prohibit threats (Section 240 of the penal Code - <i>see Section 8.1.6</i> ), insult (section 185 of the penal Code ( <i>see Section 8.1.4</i> ) and defamation (Sections 186 and 187 of the penal Code - <i>see Section 8.1.5</i> ).	<i>See Sections 8.1.4, 8.1.5 and 8.1.6</i>	<i>See Sections 8.1.4, 8.1.5 and 8.1.6</i>	<i>See Sections 8.1.4, 8.1.5 and 8.1.6</i>
Greece	Not specifically prohibited but might be covered by the prohibition, in the penal Code, of insult (Article 361 - <i>See Section 8.1.4</i> ).	<i>See Section 8.1.4.</i>	<i>See Section 8.1.4.</i>	<i>See Section 8.1.4.</i>
Ireland	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Section 10 of the Non-Fatal Offences Against the Person Act, 1997 ( <i>see Section 8.2.1</i> ).	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>
The Netherlands	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Section 285b of the penal Code ( <i>see Section 8.2.1</i> ).	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>
Romania	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Article 208 of the penal Code ( <i>see Section 8.2.1</i> ). Might in certain cases also be covered by article 74 of the Civil Code (privacy infringement): civil tort.	Art. 208: <i>See Section 8.2.1.</i> This activity might also fall under tort (Article of the Civil Code), for ex. under Article 74 of the Civil Code where the use of the name, image, voice or resemblance of a person with bad will (mala fide) represent an infringement to the right to privacy.	Art. 208: <i>see Section 8.2.1.</i> Art. 74 civil Code: any ground.	Art. 208: <i>see Section 8.2.1.</i> Art. 74 civil Code: any means.
Spain	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Art. 172 ter of the penal Code ( <i>see Section 8.2.1</i> ).	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>	<i>See Section 8.2.1.</i>

### 7.4.3 Direct public incitement to commit a penal infringement

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.3	<p><b>Direct public incitement to commit any offence or crime.</b></p> <p><i>Fully prohibited or covered in 6 countries out of 10; partly prohibited in 2 additional countries.</i></p> <p><i>5 countries prohibit the behaviour even if no infringement has resulted from the incitement, without any other condition.</i></p> <p><i>2 countries (France, Spain) restrict the prohibition to a limited list of infringements;</i></p> <p><i>2 countries (France alternatively with different sanctions, Belgium) do not restrict the prohibition to a limited list of infringements but prohibit this behaviour only where the incited offence has been at least attempted.</i></p> <p><i>Results do not take into account the infringement of threat, which has been already analysed.</i></p>	Any reason	Any means	Intentional conduct	<p><i>(In 8 countries out of 10 where the behaviour is at least partially penally punished)</i></p> <p><b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b> - France and Spain (special press or media liability regime); - Cyprus, Greece, and France exclude the liability of legal persons (in Spain, it will depend on the infringement for which there is an incitement).</p>	<p>Depending on the country, where penally sanctioned and barring (1) aggravating circumstances and (2) countries where the sanction depends on the infringement object of the incitement, imprisonment up to 5 years and fine up to 45 000 €.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]).</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	

V.3 - Countries' particularities				
Country	Provision, sanction	What	Why	How
Belgium	Not specifically prohibited but might be covered by penal provisions that prohibit threats - Article 327 and 330 of the penal Code (see Section 8.1.6).	See Section 8.1.6.	See Section 8.1.6.	See Section 8.1.6.
Bulgaria	Partly prohibited - Article 320 penal Code: imprisonment for up to 3 years,	320: a person who openly abets to the perpetration of a crime.	Any grounds.	320: by preaching before many people, or by distribution of printed works or in any

	<p>but the punishment must not be more severe than the one provided for the crime itself (abettors are punished as accomplices, who incur the same penalty as the perpetrator --art.20 and 21 Penal Code).</p> <p>- Punishment for open abetment to the perpetration of a crime under Article 108a (commission of certain crimes such as murder, severe bodily injury, kidnapping, etc., with special motivations), is an imprisonment between 2 and 10 years.</p> <p>- <b>Article 320a of the penal Code:</b> deprivation of liberty for up to 2 years.</p>	<p><b>320A:</b> a person who threatens to commit some listed infringements (those under articles 108a, par. 1, 330, 333, 334, 340, 341a, 341b, 352 §1 of the penal Code), and where such threat might give rise to justified fear of its implementation.</p>		<p>other similar manner.</p> <p><b>320A:</b> any means.</p>
Cyprus	<p><b>Covered by article 51 A of the penal Code (Cap 154):</b> imprisonment of 12 months or/and fine of 1 700 €. In case the act is committed by a legal person the sentence is a fine of 5 100 €. Prosecution based on this provision can be instigated only with the written consent of the Attorney-General.</p> <p>In addition, Article 99 of Cap 154 might apply - (<i>see Section 8.1.4</i>)..</p>	<p><b>Article 51 A:</b> any public incitement which procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance.</p>	<p><b>Article 51 A:</b> any ground.</p>	<p><b>Article 51 A:</b> any means.</p>
France	<p><b>Prohibited</b></p> <p>- <b>Art. 23 1881:</b> sanction: same as accomplice - who incurs the same penalty as the author.</p> <p>- <b>Art. 24 1881:</b> up to 5 years imprisonment and/or fine up to 45 000 €.</p>	<p>Art. 23: direct public incitement to commit any misdemeanour or crime if the incitement has led to the commission of this misdemeanour or crime, or to its attempt in case of crime (misdemeanours not concerned).</p> <p>Art. 24: direct public provocation to commit a limited list of misdemeanours or crimes where the provocation did not drive to the commission of the misdemeanour/crime (the list includes wilful attacks on life, wilful attacks on the physical integrity of the person and sexual assaults; thefts, extortions and destructions, and intentional damages and spoils that are dangerous to persons).</p>	<p>Any ground.</p>	<p>Any means (<i>see Section 8.1.1 for details</i>).</p>
Germany	<p><b>Prohibited.</b></p> <p><b>Section 111 of the penal Code: (1)</b> same sanction than the abettor (section 26); (2) If the incitement is unsuccessful, imprisonment up to 5 years or a fine [3]. The penalty must not be more severe than if the incitement had been successful; section 49(1) No 2 shall apply.</p> <p><b>Section 26 of the penal Code:</b> same sanction as the principal.</p>	<p><b>Section 111 (Public incitement to crime):</b> (1) whosoever publicly, in a meeting or through the dissemination of written materials (section 11(3)) incites the commission of an unlawful act.</p> <p><b>Section 26:</b> to intentionally induce another to intentionally commit an unlawful act, if the crime has been committed or attempted.</p> <p><b>Section 130a (attempting to cause the commission of</b></p>	<p>11, 26: any ground. 130a: any ground.</p>	<p>11, 26: any means. 130a (1), (2)a: to disseminate, publicly display, post, present, or otherwise make accessible written material (section 11(3)) ("Written materials" include any kind of audio-visual media, data storage media, illustrations and other depictions - see section 11(3) of the penal Code).</p>

	<p><b>Section 130a of the penal Code:</b> (1) and (2) imprisonment up to 3 years or a fine [3]; (3) by reference of Section 86(3), there is no penal infringement if the propaganda materials or the act is meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes.</p>	<p><b>offences by means of publication :</b> (1) To disseminate (... see "How") written material capable of serving as an instruction for an unlawful act named in section 126(1) and intended by its content to encourage or cause others to commit such an act; (2) To (a) disseminate (... see "How") written materials capable of serving as an instruction for an unlawful act named in section 126(1); or (b) to give instructions for an unlawful act named in section 126(1), in order to encourage or cause others to commit such an act.</p> <p><i>126 (1) = threat to commit some listed offences (riot, aggravated murder, grievous bodily harm, offences against personal freedom, robbery or blackmail, felony or misdemeanour endangering the public), in a manner capable of disturbing the public peace.</i></p>		130a (2)b: publicly or in a meeting
Greece	<p><b>Prohibited.</b></p> <p><b>Article 184 of the penal Code:</b> imprisonment up to 3 years.</p>	To induce or stimulate another to commit a felony or misdemeanour (even if no crime is committed).	Any ground.	Publicly or through any means
Ireland	No provisions found.	-	-	-
The Netherlands	<p><b>Prohibited.</b></p> <p>- <b>Section 131 of the penal Code:</b> imprisonment up to 5 years and fine of the 4<sup>th</sup> category (up to 20 500 €). This sanction shall be increased by one third if the criminal offence incited is a terrorist offence or is a serious offence for the preparation or facilitation of a terrorist offence.</p> <p>- <b>Section 132 of the penal Code: (1) and (2)</b> imprisonment up to 3 years and fine of the 4<sup>th</sup> category (up to 20 500 €); (3) Sanction increased by one third if the criminal offence incited by written matter or images is a terrorist offence or is a serious offence for the preparation or facilitation of a terrorist offence.</p> <p>- <b>Section 133 of the penal Code:</b> imprisonment up to 6 months and fine of the 3<sup>rd</sup> category (up to 8 200 €).</p> <p>- <b>Section 134 of the penal Code, (1) and (2):</b> imprisonment up to 3 months and fine of the 2<sup>nd</sup> category (up to 4 200 €).</p>	<p><b>Section 131:</b> to incite another or others to commit any criminal offence or act of violence against the authorities.</p> <p><b>Section 132: (1)</b> to distribute, publicly display or posts written matter or an image inciting commission of any criminal offence or any act of violence against the authorities, or who has such in store to be distributed, publicly displayed or posted, if the author knows or has serious reason to suspect that the written matter or image contains such incitement; (2) To publicly utter the content of such written matter, with the same knowledge or reason to suspect such.</p> <p><b>Section 133:</b> to offer to provide information, opportunity or means to commit any criminal offence.</p> <p><b>Section 134: (1)</b> to distribute, publicly display or posts written matter or an image, in which the provision of information, opportunity or means to commit any criminal offence is offered, or has such in store to be distributed, publicly displayed or posted, if the perpetrator knows or has serious reason to suspect that the written matter or the image contains such an</p>	Any ground.	<p><b>Section 131:</b> in public, either verbally or in writing or through images</p> <p><b>Section 132:</b> through distribution, public display or posting of written matter or an image.</p> <p><b>Section 133:</b> publicly, either verbally or in writing or through images</p> <p><b>Section 134:</b> through distribution, public display or posting of written matter or an image.</p>

		offer; <b>(2)</b> with the same knowledge or reason to suspect such, to publicly utter the content of such written matter.		
Romania	<b>Prohibited - Art. 368 of the penal Code (public instigation):</b> (1) imprisonment between 3 months and 3 years or a fine [2], without exceeding however the penalty provided by law for the offences to which the perpetrators instigated; (2) imprisonment between 1 and 5 years and a ban on the exercise of certain rights, without exceeding however the penalty provided by law for the offences to which the offender instigated, if the act is committed by a public servant; (3) if public instigation resulted in the commission of the offence that was the object of the instigation, the penalty applied shall be the one provided in the laws for the offence in question.	To urge the public to commit offences.		Verbally, in writing or by any means
Spain	<b>Partly prohibited.</b> <b>Art. 18 of the penal Code:</b> provocation is punished exclusively in cases in which the Law foresees this. Sanctions are provided for in the provisions that foresee its prohibition. In case the incitement has been followed by the perpetration of an offence, it is punished as induction. <b>Might also be covered in certain situation by art. 570 bis of the penal Code:</b> imprisonment between 4 and 8 years if the organisation has the purpose or object of committing serious felonies; imprisonment between 3 and 6 years in other cases. These penalties are imposed in the upper half where the organisation (a) is formed by a large number of persons; (b) possesses weapons or dangerous instruments; or (c) has advanced technological resources for communication or transport that, due to their characteristics, are especially fit to facilitate commission of the offences or the impunity of the offenders. Where at least two of these conditions are met, the higher degree penalties must be imposed. Where the offences are against the life or integrity of persons, liberty, sexual freedom and indemnity, or involve trafficking in human beings, the penalties mentioned above are imposed in the upper half. <b>Might also be covered in certain situations by art. 510.2 (b) of the penal Code:</b> <i>see Section 8.1.8.</i>	<b>18: provocation</b> exists when there is a public direct incitation to perpetrate a crime. <b>Apologia</b> is the presentation of ideas or doctrines that extol crime or extol its author. The apology will only be criminal as a form of provocation and if, due to its nature and circumstances, it constitutes a direct incitement to commit a crime. <b>Eventually, in addition:</b> <b>570 bis: to promote [...] a criminal organisation.</b> A criminal organisation is construed to be a stable group formed by one or more persons, for an indefinite term, in collusion and co-ordination to distribute diverse tasks or duties in order to commit felonies, as well as to carry out reiterated commission of misdemeanours. <b>510.2: to extol or justify</b> crimes that have been committed against a group or a person motivated by illegal grounds - <i>see Section 8.1.8.</i>	<b>18:</b> Any ground. <b>570 bis:</b> Any ground. <b>510.2:</b> <i>see Section 8.1.8.</i>	<b>18 (provocation):</b> by means of the printing press, radio broadcasting or any other means with a similar effectiveness, which enables publicity, or before an assembly of people. <b>18 (apologia):</b> before an assembly of persons, or by any means of dissemination. <b>570 bis:</b> any means. <b>510.2:</b> <i>see Section 8.1.8.</i>

#### 7.4.4 Promotion or public incitement to hostility or violence between communities

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International /European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.4	Promotion or public incitement to hostility or violence between communities. <i>Prohibited or covered in 2 countries out of 10.</i>	Nationality, national or the ethnical ancestry, race, skin colour, and (following the Constitution, two Acts of 10 <sup>th</sup> May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, religious, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.	Any means.	Intentional conduct.	<i>(In 3 countries out of 10 where the behaviour is penally punished:)</i> <b>In principle:</b> author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.  <b>Exceptions:</b> - Cyprus excludes the liability of legal persons.	Depending on the country, imprisonment up to 5 years and fine up to 5 100 €.	

#### V.4 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	<b>Prohibited</b> - <b>Article 20.4° Moureaux Act:</b> imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000 €. - <b>Article 20.3° Moureaux Act.:</b> imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000 €.	<b>Article 20.4° Moureaux Act:</b> public incitement to illegal hatred or violence between communities <b>Article 20.3° Moureaux Act:</b> public incitement to discrimination or segregation between communities	Nationality, national or the ethnical ancestry, race, skin colour, and (following the Constitution, two Acts of 10 <sup>th</sup> May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, religious, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.	Any means.
Bulgaria	<b>Not prohibited. Might be partly covered in some situations by article 163 of the penal Code:</b> (1) imprisonment up to 5 years for the abettors and leaders; imprisonment up to 1 year or probation for all others; (2) if the crowd or some of the participants are armed, imprisonment between 1 to 6 years for the abettors and leaders, and imprisonment for up	The persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their ... <i>(see "why")</i>	National, ethnic or racial affiliation.	Any means.

	to 3 years for all others; (3) if an assault has been made which has resulted in severe bodily injury or death, imprisonment between 3 to 15 years for the abettors and leaders, imprisonment up to 5 years for all others - if they are not liable to more severe punishment.			
<b>Cyprus</b>	<b>Prohibited - Criminal Code (Cap.154)</b> <b>Art. 47(b):</b> imprisonment up to 5 years. <b>Art. 51A:</b> imprisonment of 12 months and/or fine of 1000 pounds (1 700 €)- 3000 pounds (5 100 €) if committed by a legal person. Prosecution can be instigated only with the written consent of the Attorney-General.	<b>Art. 47 (b):</b> any act done with the intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic. <b>Art. 51A:</b> any public incitement which procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance.	Any ground.	Any means.
<b>France</b>	<b>Not prohibited.</b>	-	-	-
<b>Germany</b>	<b>Not specifically prohibited but might be covered by:</b> <b>- Section 130 (1) of the penal Code</b> (incitement to hatred): <i>see Section 8.1.1.</i> <b>- Section 111 of the penal Code</b> (public incitement to crime): <i>see Section 8.4.3.</i>	<i>See Sections 8.1.1. and 8.4.3.</i>	<i>See Sections 8.1.1. and 8.4.3.</i>	<i>See Sections 8.1.1. and 8.4.3.</i>
<b>Greece</b>	<b>Not prohibited.</b>	-	-	-
<b>Ireland</b>	<b>No specific offence found.</b>	-	-	-
<b>The Netherlands</b>	<b>No specific offence.</b>	-	-	-
<b>Romania</b>	<b>No specific provisions. Might be covered by Article 369 of the penal Code</b> (inciting to hatred or discrimination against a category of people) - <i>See Section 8.1.1.</i>	<i>See Section 8.1.1.</i>	<i>See Section 8.1.1.</i>	<i>See Section 8.1.1.</i>
<b>Spain</b>	<b>No specific provisions. Might be covered by Articles 510.1</b> (inciting to hatred or discrimination against a category of people - <i>see Section 8.1.1.</i> ) <b>and 510.2</b> (to extol or justify crimes that have been committed on illegal grounds- <i>see Section 8.1.8.</i> ) <b>of the penal Code.</b>	<i>See Sections 8.1.1. and 8.1.8.</i>	<i>See Sections 8.1.1. and 8.1.8.</i>	<i>See Sections 8.1.1. and 8.1.8.</i>

## 7.4.5 Insult to religion / blasphemy

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/Euro pean basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.5	<p>Insults to religion (Outside provisions that prohibit the solely physical or material violence or destruction without special insulting intent).</p> <p><i>Fully covered in 4 countries out of 10.</i></p> <p><i>Partly covered in 3 countries out of 10 (including one case of prohibition of defamation of religion - Germany).</i></p>	Any ground / religion.	Any means, publicly.	Intentional conduct.	<p><i>(In 7 countries out of 10 where the behaviour is at least partially penally punished:)</i></p> <p><b>In principle:</b> Author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p><b>Exceptions:</b> - Spain (special media liability regime); - Cyprus, Greece, and Spain exclude the liability of legal persons.</p>	<p>depending on the country, imprisonment up to 4 years and/or a fine up to 26 640 € -</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 144 000 €).</p> <p>[*] Such a high amount has never been applied up to now</p>	

## V.5 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p><b>Partly covered by several provisions of the penal Code:</b></p> <p>- <b>Article 144:</b> imprisonment between 15 days and 6 months, and fine between 26 € and 500 €.</p> <p>- <b>Article 145:</b> imprisonment between 15 days and 6 months, and fine between 26 € and 500 €.</p> <p><b>And eventually:</b></p> <p>- <b>Article 142:</b> imprisonment between 8 days and 2 months, and fine between 26 € and 200 €.</p> <p>- <b>Article 143:</b> imprisonment between 8 days and</p>	<p>- <b>Article 144</b> (Outraging an object of worship): To outrage an object of worship.</p> <p>- <b>Article 145:</b> Outraging a minister in the exercise of his or her ministry.</p> <p><b>And eventually:</b></p> <p>- <b>Article 142:</b> To force or prevent a person to practicing a religion or to attending worship, to celebrate religious fests, to observe religious holidays and, as a consequence, to open or close their shops or stores, and to do or leave certain works.</p>	Any ground.	<p><b>Art. 144:</b> through facts, words, gestures, or threats, either in places dedicated or usually used to exercise this worship, or in a public ritual of this worship.</p> <p><b>Art. 145:</b> through facts, words, gestures, or threats.</p>	



	3 months, and fine between 26 € and 500 €.	- <b>Article 143:</b> To prevent, delay or interrupt the practice of a religion which take place in a place dedicated or usually used to this practice or in a public ritual of this worship.		<b>Art. 142:</b> Through violence or threats. <b>Art. 143:</b> through troubles or disorders	
<b>Bulgaria</b>	<b>Not prohibited.</b> <b>Might be in some situations partly covered by Article 164 of the penal Code:</b> (1) Imprisonment for up to 4 years or probation and a fine from 2 500 € to 5 000 €; (2) Imprisonment up to 3 years or probation, and a fine from 1 500 € to 5 000 €. <b>Eventually:</b> <b>Art. 165:</b> imprisonment up to 1 year.	<b>Art. 164:</b> (1) To propagate or instigate discrimination, violence or hatred on religious basis; (2) A person who desecrates [...] a religious temple, a house of prayer, sanctuary or an adjoined building, their symbols or gravestones. <b>Eventually:</b> <b>Art. 165:</b> (1) To, by force or threat, hinder the citizens from freely practising their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morality; (2) To compel another to take part in religious rituals and services.	Religion.	<b>164 (1):</b> by speech, through the press or other mass media, through electronic information systems or in another way.	<b>Article 166 of the penal Code</b> prohibits the use of religion against the State: "A person who forms a political organisation on religious basis or who by speech, through the press, action or in another way, uses the church or religion for propaganda against the state power or its undertakings, shall be punished by deprivation of liberty for up to three years, if he is not subject to more severe punishment".
<b>Cyprus</b>	<b>Prohibited. Penal Code (Cap.154) -</b> <b>Art. 35:</b> when the penal code does not provide a specific penalty, misdemeanours are punishable by imprisonment up to two years, or/and with a fine up to 2 550 €. <b>Art. 141:</b> imprisonment of up to one year. <b>Art. 142:</b> no specific penalties, therefore Art. 35 of the penal Code applies. Prosecution based on this provision can be instigated only by the Attorney-General or with his consent <sup>289</sup> . <b>Art. 138:</b> no specific penalties, therefore Art. 35 of the penal Code applies.	<b>Art. 141:</b> the insulting, aiming to harm the religious feelings of a person. <b>Art. 142:</b> a publication which is perceived by a group of people as a public insult to their religion, with intent to ridicule such religion or to shock or insult its followers. Prosecution based on this provision can be instigated only by the Attorney-General or with his consent (Article 142) <sup>290</sup> <b>Eventually:</b> <b>Art. 138:</b> the destruction, damaging or defiling of any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider	<b>Art. 141:</b> Intention to harm religious feelings <b>Art. 142:</b> Intention to ridicule a religion or to shock or insult its followers. <b>Art. 138:</b> Intention to insult.	<b>Art. 141:</b> orally or via sounds and gestures <b>Art. 142:</b> the publication of a book or pamphlet or any article or letter in a newspaper or magazine. <b>Art. 138:</b> any means.	As a general principle, but only where they fall outside the scope of the provisions referred to in the other columns, caricatures can be protected by Article 19 of the Constitution of the Republic of Cyprus which guarantees the right to freedom of expression.

<sup>289</sup> Nicos Trimikliniotis and Corina Demetriou, Evaluating the Antidiscrimination Law in the Republic of Cyprus: A Critical Reflection, THE CYPRUS REVIEW (VOL. 20:2 FALL, at: 2008) [https://www.prio.org/Global/upload/Cyprus/Publications/4\\_TRIMIKL\\_DEMETRIOU.pdf](https://www.prio.org/Global/upload/Cyprus/Publications/4_TRIMIKL_DEMETRIOU.pdf).

<sup>290</sup> Nicos Trimikliniotis and Corina Demetriou, Evaluating the Antidiscrimination Law in the Republic of Cyprus: A Critical Reflection, THE CYPRUS REVIEW (VOL. 20:2 FALL, 2008, [https://www.prio.org/Global/upload/Cyprus/Publications/4\\_TRIMIKL\\_DEMETRIOU.pdf](https://www.prio.org/Global/upload/Cyprus/Publications/4_TRIMIKL_DEMETRIOU.pdf)).

		such destruction, damage or defilement as an insult to their religion.			
France	Not prohibited.	-	-	-	-
Germany	<p><b>Partly prohibited by Section of the penal Code</b> (if the insult of the religion is capable of disturbing the public peace): Imprisonment up to 3 years or a fine [3].</p> <p><b>Section 185 of the penal Code</b> (insult committed against a person or a group consisting of a limited number of persons that is clearly defined - protects the personal honor - <i>see Section 8.1.4</i>) will not be applicable in most cases, because of its strict definition.</p>	<p><b>Section 166 (Defamation of religions, religious and ideological associations):</b> (1) Whosoever defames the religion or ideology of others in a manner that is capable of disturbing the public peace; (2) Whosoever defames a church or other religious or ideological association within Germany, or their institutions or customs in a manner that is capable of disturbing the public peace.</p>	Any ground.	Publicly or through dissemination of written materials (section 11(3))	
Greece	<p><b>Prohibited.</b></p> <p><b>Article 198 of the penal Code:</b> (1) Imprisonment up to two years; (2) Imprisonment up to 3 months.</p> <p><b>Article 199 of the penal Code:</b> Imprisonment up to two years.</p>	<p><b>198 (1):</b> to insult publicly and maliciously the God.</p> <p><b>198 (2):</b> the public blasphemy showing lack of respect to the Divine.</p> <p><b>199:</b> the publicly and maliciously insulting of the Greek Orthodox Church or any other religion.</p>	Any ground.	Publicly.	
Ireland	<p><b>Prohibited.</b> Defamation Act 2009.</p> <p><b>Section 36:</b> fine not exceeding 25 000 € (conviction on indictment).</p>	<p>(1) To publish or utter blasphemous matter.</p> <p>(2) For the purposes of this section, a person publishes or utters blasphemous matter if—</p> <p>(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and</p> <p>(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.</p> <p>(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.</p> <p>(4) In this section “ religion ” does not include an organisation or cult—</p> <p>(a) the principal object of which is the making of profit, or</p> <p>(b) that employs oppressive psychological</p>	Any ground.	Any means (a publication or uttering is needed).	Blasphemy is required to be an offence under Article 40.6.1.i. of the 1937 Constitution.

		manipulation— (i) of its followers, or (ii) for the purpose of gaining new followers.			
<b>The Netherlands</b>	<b>Not prohibited.</b> <b>Section 137e of the penal Code</b> (insult motivated by the religion of victims - <i>see Section 8.1.2</i> ) is only applicable where the insult is directed against persons.	In the spirit of 2008/913/JHA, a Court did not punish an insulting speech that addressed a religion. Since the speech addressed only the religion and not its followers, and the article specifically speaks of “persons” the feelings of these persons about this speech alone were not enough to fulfil the criteria for 137c (High Court, March 2009 (HR 10 march 2009 nr 01509/07, ECLI:NL:HR:2009:BF0655, See <a href="http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2009:BF0655">http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2009:BF0655</a> ).	-	-	-
<b>Romania</b>	<b>Not prohibited but might be partly covered by some provisions of the penal Code.</b> - <b>Article 382:</b> imprisonment between 6 months and 2 years or a fine (266 € to 26 640 €) [2]. - <b>Article 381 (1):</b> imprisonment between 3 months and 2 years or a fine (266 € to 26 640 €) [2]. - <b>Article 381 (2) and (3):</b> imprisonment between 1 and 3 years or a fine (399 € to 33 300 €) [4].	- <b>Article 382</b> (Desecration of places or objects of worship): The desecration of a place or object of worship belonging to a religious denomination which is organised and operates according to the law. <b>Eventually:</b> <b>Art. 381</b> (Preventing the freedom to practice religion): (1) The act of preventing or disturbing the freedom to practice any ritual specific to a religion, which was organised and operates according to the law; (2) The act of compelling a person, by coercion, to take part in the service of any religion or to perform a religious act related to the practice of a religion; (3) To compelling an individual, by violence or threats, to perform a religious act forbidden by the religion, organised according to the law, to which they belong.	Any ground.	Any means.	There is a general obligation under Government Emergency Ordinance no. 31/2002 for all natural and legal persons to respect the principle of equality which, among other rights, includes the respect of the right to religion.
<b>Spain</b>	<b>Prohibited - Article 525 of the penal Code:</b> fine between 8 to 12 months (480 € to 144 000 €) [4]. The same penalties shall be incurred A special intent to humiliate, injure or impair the religious feelings must be proven in order to punish the infringement. The conduct must be wilful, and the evidence of the offence or ridicule is not sufficient.	(1) To offend the feelings of members of a religious confession, made publicly, orally, in writing or by any type of document, mockery of their dogmas, beliefs, rites or ceremonies, or <i>vejen</i> , also publicly, to those who profess or practice. (2) To publicly ridicule those who do, in word or in writing, of those who have no religion or belief.	Any ground. The intent to humiliate or hurt the religious feelings is however necessary.	Publicly, orally, in writing or by any type of document, mockery of their dogmas, beliefs, rites or ceremonies, or <i>vejen</i> , also publicly, to those who profess or practice or those who have no religion or belief. In word or in writing.	Since 1985 the offence of blasphemy was abolished, but our Criminal Code regulates derision. In practice the Courts only appreciate the crime when there is fraud and there is an offence of religious feelings.

#### 7.4.6 Recording of images of the commission of a crime or offence

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.6	Recording of images of the commission of a crime or offence against a person. <i>Prohibited in 1 country out of 10. Might be partly covered in 3 additional countries (2 penal prohibitions and 1 civil one). Results do not take into account infringements targeting child-pornography or pornography-related materials, which are clearly outside the scope of the study.</i>	Any ground.	Any means.	Intentional conduct where penally punished.	<i>(In 3 countries out of 10 where the behaviour is at least partially penally punished).</i> Author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.	Depending on the country, imprisonment up to 5 years and fine up to 75 000 €.	

#### V.6 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	<b>Not prohibited.</b> <b>Might be partly covered by the Act of 21st March 2007 on the installation and use of video camera:</b> fine between 25 and 1 000 €).	Recording or possession of images in public using a video camera, captured in violation with the Act.	Any ground.	Any means.
Bulgaria	<b>Not prohibited.</b>	-	-	-
Cyprus	<b>Not prohibited unless it is considered as an illegal processing of personal data.</b>	-	-	-
France	<b>Prohibited - Art. 222-33-3 penal Code:</b> same sanction as the author of the attack on the physical integrity; imprisonment up to 5 years and fine up to 75 000 € in case of broadcasting of such images.	To knowingly record any images relating to wilful attacks on the physical integrity of the person as they are punished by the penal Code. This provision is not applicable when the recording or broadcast of such images derives from the normal course of a professional activity aiming at informing the public or is done in order to serve as evidence in justice.	Any ground.	Any means.
Germany	<b>Not prohibited but partly covered by Section 201a, Subsection 1 no. 2 of the penal Code</b> (Violation of intimate privacy by taking	The recording of an image that shows a person in a helpless situation in a way that violates the intimate privacy of this person.	Any ground.	Any means.

	photographs): Imprisonment up to 2 years or a fine [3].			
Greece	Not prohibited unless it is considered as an illegal processing of personal data.	-	-	-
Ireland	No specific provisions found.	-	-	-
The Netherlands	No specific provisions.	-	-	-
Romania	<p>No specific provisions but might be partly covered by articles 48 and 226 of the penal Code.</p> <p><b>Art. 48</b> (accomplice - sanctions art. 49): the co-author, the instigator and the accomplice to a deliberately performed crime is punished with the penalty stipulated by law for the author of the act. When the penalty is established, the contribution of each person to the commission of the act shall be taken into account, as well as the stipulations stipulated in art. 74 (this article regulates General criteria for customisation of a sentence).</p> <p>There is one specific provision regarding the violation of the rights to privacy (Article 226 of the Criminal Code). However such activities would fall under criminal law and might constitute complicity to crime.</p> <p><b>Article 226</b> (Violation of privacy): (1) Imprisonment between 1 and 6 months or a fine [4]; (2) Imprisonment between 3 months and 2 years or a fine [4]; (3) Criminal action shall be initiated based on a prior complaint filed by the victim; (5) Imprisonment between 1 and 5 years.</p>	<p><b>Art. 48: (1)</b> The accomplice is the person who deliberately facilitates or helps in any way with the commission of an act stipulated by criminal law; <b>(2)</b> the accomplice is also the person who promises, before or during the commission of the act, that they will conceal the assets originating from it or that they will favour the perpetrator, even if, after the commission of the act, the promise is not fulfilled.</p> <p><b>Art. 226: (1)</b> The unlawful violation of privacy, by photographing, capturing or recording images, by listening using technical means or by recording audio of an individual, in a house or room or outbuilding related to them or to a private conversation.</p> <p><b>(2)</b> The unlawful disclosure, dissemination, presentation or transmission of sounds, conversations or images set out in par. (1) to another person or to the general public.</p> <p><b>(4)</b> The following do not constitute offences: <b>a)</b> the act committed by the individual who attended the meeting with the victim during which the sounds and conversations were recorded and photos were taken, if there is a legitimate interest; <b>b)</b> if the victim has acted with the explicit intention to be seen or heard by the perpetrator; <b>c)</b> if the perpetrator has records of the commission of an offence or helps prove that an offence was committed; <b>d)</b> if public-interest acts are recorded, which are meaningful to the life of the community and whose disclosure has public advantages that outweigh the damage to the victim.</p> <p><b>(5)</b> Unlawfully installing technical means for audio or video recording, in order to commit the acts set out in par. (1) and par. (2).</p>	Any ground.	<p><b>48:</b> any means.</p> <p><b>226 (1):</b> any means for the acts referred to in column "What".</p> <p><b>226 (2):</b> any means for the acts referred to in column "what".</p> <p><b>226 (5):</b> any means;</p>
Spain	<p>Not prohibited. Might be very partly covered by articles 197 to 201 of the penal Code relating to the discovery and disclosure of secrets.</p> <p>In addition, civil liability could be engaged on the basis of Organic Law 1/1982, of 5 May, Civil Protection of the right to honour, personal and family privacy and personal image (see 8.3).</p>	See Section 8.3.	See Section 8.3.	See Section 8.3.

**7.4.7 Realising a montage with the talk or the images of a third party without his or her consent**

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.7	<p>A montage realised with the talk or the images of a third party without his or her consent, if it is not obvious that it is a montage or if it is not specified that it is a montage.</p> <p><i>Prohibited or covered in 2 countries out of 10 (France and Spain).</i></p> <p><i>Results do not take into account infringements targeting privacy or personal data violations, falsification of technical records for the purpose of misleading judicial authorities, copyright and related rights, insults.</i></p>	Any ground.	Any means.	Intentional conduct where penally punished.	<p><i>(In 2 countries out of 10 where the behaviour is penally punished:)</i></p> <ul style="list-style-type: none"> <li>- Special press or media liability regime</li> <li>- Legal persons are only liable in 1 country (Spain).</li> </ul>	Imprisonment up to 4 years depending on the country, and fine up to 15 000 € in France and up to 288 000 € in Spain.	

**V.7 - Countries' particularities**

Country	Provision, sanction	What	Why	How
Belgium	<p><b>Not prohibited</b>, beside the possibility to initiate a civil proceedings on the two following basis:</p> <ul style="list-style-type: none"> <li>- Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data;</li> <li>- article 10 of the Act of 30th June 1994 on the copyright and related rights.</li> </ul>	-	-	-
Bulgaria	<p><b>Not prohibited</b>, besides the forgery or creation -and use- of a false technical record for the purposes of misleading the judicial authorities". (art. 287a of the penal Code).</p>	-	-	-
Cyprus	<p><b>Not prohibited</b>, unless it is considered as an illegal processing of personal data.</p>	-	-	-
France	<p><b>Prohibited - Article 226-8 penal Code</b> (attempt is punishable: art. 226-9) - imprisonment up to 1 year and fine up to 15 000 €.</p>	Same extent <a href="#">[1]</a> .	Any ground.	Any means.
Germany	<p><b>Not prohibited</b>, beside the general provision of the penal Code criminalising insult (section 185), defamation (section 186) and intentional defamation (section 187) - <i>See Sections 8.1.4. and 8.1.5.</i></p>	-	-	-
Greece	<p><b>Not prohibited unless it is considered as an illegal processing of personal data.</b></p>	-	-	-

Ireland	No specific provisions found.	-	-	-
The Netherlands	Not prohibited.	-	-	-
Romania	Not prohibited but art. 226 of the penal Code might apply ( <i>see Section 8.4.6</i> ), as well as articles 71 to 74 of the civil Code in relation to the right to image, dignity and private life. Art: 226: <i>see Section 8.4.6</i> . Art: 71-74: <i>see Section 8.3</i> .	<i>See Section 8.4.6. and 8.3.</i>	<i>See Section 8.4.6. and 8.3.</i>	<i>See Section 8.4.6. and 8.3.</i>
Spain	Covered by article 197 of the penal Code. Art. 197 (1) and (2): imprisonment between 1 to 4 years and a fine between 12 and 24 months (720 € to 288 000 €). Art. 197 (3): imprisonment from two to five years; Imprisonment between 1 to 3 years and a fine between 12 to 24 months (720 € to 288 000 €) [4] in case the author engages in the conduct described in § (3) with knowledge of the illicit origin of the data but without having taken part in their discovery. Art. 197 (4): the events described in paragraphs (1) and (2) are punished with an imprisonment between 3 and 5 years where (a) committed by persons in charge or responsible for the files, computer, electronic or telematics media, files or records committed; or (b) they consist of an unauthorised use of the personal data of the victim. If the reserved data had been released, transferred or disclosed to third parties, penalties are imposed in the upper half. Art. 197 (5): where the events described in the previous § affect personal data which reveal the ideology, religion, beliefs, health, racial origin or sexual life, or where the victim is a minor or a disabled person in need of special protection, the penalties are imposed in the upper half. Art. 197 (6): if the facts are made for profit, the penalties provided respectively in paragraphs 1 to 4 shall be imposed in their upper half. If data mentioned in the preceding paragraph are moreover affected, the penalty to be imposed shall be imprisonment between 4 to 7years. Art. 197 (7): imprisonment between 3 months and 1 year or a fine between 6 to 12 months (360 € to 144 000 €) [4]. Penalties are imposed in the upper half when the acts were committed by the spouse or person who has an analogous relationship with the victim, even without cohabitation, or if the victim is under age or is disabled in need of a special protection, or if the facts were committed with a profit motive.	Art. 197 (1): without authorisation, to take over, use or modify to the detriment of a third party, data reserved for personal or family use which are registered in files or computer, electronic or telematics media, or in any other file type or public or private registry. Art. 197(2): without authorisation, to access by any means to these data, to alter or use them to the detriment of the data subject or a third party. Art. 197 (3): to spread, reveal or transfer data to third parties or facts discovered or captured images referred to in the above provisions. Art. 197 (7): without authorisation of the person concerned, to disseminate, disclose or transfer to third parties images or audio-visual recordings that have been obtained with the consent of the concerned person in a home or anywhere else away from the eyes of third parties, where disclosure would seriously undermine the personal privacy of this concerned person.	Any ground. Sanctions are higher under art. 197 (5) where some sensitive personal data are concerned.	Any means, included using ICT, through the Internet, social networks, computers, electronics or telematics media, files or records.

## 7.4.8 To misuse / usurp someone else's identity

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.8	To misuse / usurp someone else's identity. <i>Only 2 countries out of 10 prohibit this behaviour (Spain and France). In some other countries the infringement of forgery may cover this behaviour in some situations.</i>	Any, but a prejudice might be required as an aim or as a result.	Any (including the use of an online public communications network)	Intentional conduct where penally punished.	Author; instigator; accomplice (aiding and abetting); natural and legal persons. <b>Exception:</b> - Spain (special press or media liability regimes).	Imprisonment up to 1 or 3 year depending on the country. Fine up to 15 000 € in 1 country.	European Commission, DG Home Affairs, Centre for Strategy & Evaluation Services, <i>Study for an Impact Assessment on a Proposal for a New Legal Framework on Identity Theft</i> ( <a href="http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/cybercrime/docs/final_report_identity_theft_11_december_2012_en.pdf">http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/cybercrime/docs/final_report_identity_theft_11_december_2012_en.pdf</a> ).

V.8 - Countries' particularities				
Country	Provision, sanction	What	Why	How
Belgium	<b>Not prohibited, beside extortion</b> (art. 470 of the penal Code - Imprisonment between 5 years and life) <b>and the offence of forgery of data processed or stored in a computer system</b> and of use of these false data (art. 210 <i>bis</i> of the penal Code - Imprisonment between 6 months and 5 years and a fine between 26 € and 100 000 €).	Art. 210 <i>bis</i> has already been invoked successfully in order to sanction identity theft or usurpation over the Internet, as well as the Privacy Act.	-	-
Bulgaria	<b>Not prohibited, beside the unlawful acquisition, disclosure, or dissemination of traffic data</b> (article 171a of the penal Code - imprisonment up to 3 years or probation; imprisonment from one to six years if committed from mercenary motives).	-	-	-
Cyprus	<b>Not prohibited</b> , unless it is considered as an illegal processing of personal data, <b>but general provisions of tort law (protection of honour or reputation) might apply.</b>	-	-	-
France	<b>Prohibited. Article 226-4-1 of the penal Code:</b> Imprisonment up to 1 year and fine up to 15 000 €.	To misuse / usurp someone else's identity or to use one or several data that enable to identify this person,	With the aim of disturbing his or her tranquillity or the one of a third party, or of damaging his or her honour or reputation.	Same extent



Germany	<b>Not prohibited, beyond the offence of forgery and of use of a falsified or counterfeit document</b> (esp. Sections 267 and 269 of the penal Code). In addition, the behaviours might be partly covered by provisions prohibiting insult (section 185), defamation (section 186) and intentional defamation (section 187) - <i>see Sections 8.1.4 and 8.1.5.</i>	-	-	-
Greece	<b>Not prohibited, beyond the offence of forgery (article 216 of the penal Code</b> - imprisonment between 3 months and 5 years).	-	-	-
Ireland	<b>No specific provisions found.</b>	-	-	-
The Netherlands	<b>No specific provisions.</b>	-	-	-
Romania	<b>Not prohibited but articles 71 to 74 of the civil Code might apply</b> in relation to the right to image, dignity and private life- <i>see Section 8.3.</i>	<i>See Section 8.3.</i>	<i>See Section 8.3.</i>	<i>See Section 8.3.</i>
Spain	<b>Prohibited. Article 401 of the penal Code:</b> imprisonment between 6 months and 3 years. It is not necessary that injury, property or other is caused. The offence does not require the conduct to take place "without prejudice to" the impersonated person or to damage it. However, the law introduces this requirement It is admissible only direct fraud. Must be an intentional conduct.	To usurp the civil status of another. The fraud must be direct, but law does not require an injury or prejudice as a result of the infringement. However this requirement has been introduced by way of interpretation (for ex. the SAP Sevilla 23/05/2000 [ARP 1861] has absolved the perpetrator of responsibility in a case where he acted with the knowledge and for the benefit of the impersonated).	Any ground. However, acting in order to serve the benefit of the victim might not be covered.	Same extent. In practice more than 80% cases of usurpation will happen using IT through the Internet.

## **List of main acronyms and abbreviations**

**ECRI:** European Commission against Racism and Intolerance of the Council of Europe.

**EUCJ:** European Union Court of Justice.

**ECHR:** European Convention on Human Rights, referring to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.

**ECtHR:** European Court of Human Rights.

**EU:** European Union.

**EUCFR:** European Union Charter on Fundamental Rights.

**ICTs:** information and communication technologies.

**ISPs:** Internet service providers.

## **Annex - List of experts who contributed to the study**

The following experts contributed to the current study by providing information relating to the country referred to before their name. They are the authors or main authors of the texts relating to this country, unless stated otherwise.

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