

ACT FEEDBACK ON THE EUROPEAN COMMISSION’S INCEPTION IMPACT ASSESSMENT ON HATE SPEECH & HATE CRIME – INCLUSION ON LIST OF EU CRIMES

REFERENCE DOCUMENT

European Commission’s [Inception Impact Assessment](#) on hate speech & hate crime – inclusion on list of EU crimes.

CONTEXT

This paper’s aim is to give feedback on the Commission’s Inception Impact Assessment on “hate speech & hate crime - inclusion on the list of EU crimes” and share the Association of Commercial Television in Europe’s views on tackling hate speech & hate crime.

ACT VIEW

The Association of Commercial Television in Europe (“ACT”) represents Europe’s leading Commercial Broadcasters in Europe. ACT members make up the vast majority of television and on-demand audiovisual media services available in Europe.

As foreseen in articles 6.1(a) of the [Audiovisual Media Services Directive](#) (AVMSD), and previously in article 22a of the [Television Without Frontiers Directive](#) broadcasters’ content shall not contain any “incitement or hatred directed against a group of persons or a member or a group based on any of the grounds referred to in [Article 21](#) of the Charter of Fundamental Rights of the EU (CFR), namely “sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”.

This concept of ‘incitement to hatred’ has been broadly interpreted as “first, to an action intended to direct specific behaviour and, second, a feeling of animosity or rejection with regard to a group of persons” and is “designed to forestall any ideology which fails to respect human values, in particular initiatives which attempt to justify violence by terrorist acts against a particular group of persons”¹.

Furthermore, article 9.1(c.ii) ensures that commercial communications carried by broadcasters do not include or promote any discrimination based on sex, racial or ethnic origin, nationality, region or belief, disability, age or sexual orientation. Essentially reproducing the criteria found in the Charter. This ensures a high level of protection of citizens / viewers across broadcasters’ content, be they available via free-to-air, pay-TV and/or on-demand services.

In striking dissonance, stands the networks and services provided by Video Sharing Platforms, where hate speech proliferates with little to no control or sanctions. Indeed, while broadcasters must ensure that no incitement or hatred is present on their services, under article 28b of the AVMSD Video Sharing Platforms need only take “appropriate measures” to protect the public against content that is “incitement to hatred” (ie. no ban). However, these – already limited – obligations only apply to Video Sharing Platforms and not to online

¹ See joint cases Mesopotamia Broadcast and Roj TV (C-244/10 and C-245/10)

intermediaries in a broader sense (as defined in article 2(f) the Digital Services Act). As the Inception Impact Assessment rightly points out, online hatred spreads both at national level and across borders, and in particular through online platforms, large and small. Yet, there are little to no rules existing to ensure a safe online environment with regards to hate speech and that is in part due to a lack of harmonisation at EU level beyond Council Framework Decision 2008/913/JHA – which does not cover all the grounds foreseen in article 21 CFR (or for that matter, [Article 19 TFEU](#)) – and the self-regulatory initiatives surrounding it, namely the EU Code of conduct on countering illegal hate speech online.

The fact that this Code of Conduct only deals with illegal hate speech, and not hate speech in a broad sense, demonstrates that platforms are not willing to commit to anything going beyond statutory obligations, an approach not unlike the one taken in other areas such as disinformation, resulting in limited effectiveness and lack of oversight, which leads to Europeans being exposed to hate speech on a daily basis.

We therefore welcome the Commission’s proposal to extend the list of EU crimes to hate speech and hate crime. A common EU approach will help ensure online platforms take more responsibility for the content shared through their service and take serious steps to curb the spread of harmful content. In this context, we would recommend fully aligning this list with article 21 CFR / Article 19 TFEU to include “sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation”.

This, combined with robust rules in the Digital Services Act with regards to the removal of illegal content will help create an environment where harmful content, such as hate speech, is handled more appropriately online. A more harmonised and comprehensive approach to tackling hate speech and hate crimes would also contribute to creating more responsibility and accountability for online platforms, which is overdue.