



Code of Conduct – Illegal online hate speech

Questions and answers

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1 What is the aim of this Code of Conduct?

Each of the IT companies that signed this Code of Conduct is committed to countering the spread of illegal hate speech online, and to have rules or community guidelines in place clarifying that they prohibit the promotion of incitement to violence and hateful conduct.

Upon receipt of a valid removal notification, the IT Companies will assess such requests against their rules and community guidelines and where necessary national laws transposing the Framework Decision on combating racism and xenophobia, with dedicated teams reviewing requests. To be considered valid in this respect, a notification should not be insufficiently precise or inadequately substantiated.

The code is intended to help to ensure valid reports are dealt with expeditiously. Each company will review the majority of valid removal notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary.

2 What is the definition of illegal hate speech?

Illegal Hate speech is defined in EU law⁽¹⁾ as the public incitement to violence or hatred on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin. While the Framework Decision on combatting racism and xenophobia covers only racist and xenophobic speech, the majority of Member States have extended their national laws to other grounds such as sexual orientation, gender identity and disability.

(1) Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33178>

3 Does the Commission only tackle online hate speech?

No. The core objective of the Framework Decision on combating racism and xenophobia is ensuring that authors of illegal hate speech offences — whether online or offline — are effectively prosecuted under criminal law by Member States' authorities.

Hate speech is also tackled at EU level by the Audiovisual Media Services Directive (AVMSD)⁽²⁾ which requires national authorities in every EU country to ensure that audiovisual media services do not contain incitement to hatred.

The Commission has also recently proposed that these rules be extended so as to ensure that all Video Sharing platforms that organise and tag a large quantity of videos will have to take measures to protect minors from harmful content and to protect all citizens from incitement to violence and hatred.

4 Will the Code of Conduct lead to censorship?

No. The Code of Conduct's aim is to tackle online hate speech that is already illegal. The same rules apply online as offline: any content that is criminal in the offline world should not be free to remain on the internet.

The Code also highlights that the IT Companies and the European Commission stress the need to defend the right to freedom of expression, which, as the European Court of Human Rights has stated, 'is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population'.

The Council Framework Decision on combatting racism and xenophobia obliges Member States to criminalise public incitement to violence or hatred against a person or group on the basis of their race, colour, religion, descent or national or ethnic origin. This is the legal basis for defining illegal online content. For instance, public calls to kill all members of a certain religion or to burn down refugee shelters represent illegal hate speech.

As seen from international comparisons, the systems for fundamental rights protection in place in Europe has allowed this region to become a world leader in terms of freedom of the press: <https://rsf.org/en/news/2016-world-press-freedom-index-leaders-paranoid-about-journalists>

5 Are we outsourcing to some private entity the decision on what is illegal?

No. The Code of Conduct is aimed at guiding the activities of the IT companies in applying existing laws. This includes not only having rules or community guidelines in place to clarify that they prohibit the promotion of incitement to violence and hateful conduct, and also that each company will review, where necessary, valid removal notifications against applicable national laws transposing the Framework Decision on combating racism and xenophobia.

The balance between freedom of speech and what is prohibited illegal hate speech is set out in European case law, starting with the Jurisprudence of the European Court of Human Rights.

(2) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0013>

These rules are already applied on a daily basis by newspapers, radio and TV stations in Europe, including on their internet website where millions of third party comments are made. It is neither a privatisation of justice nor is it excessive to ask all companies to do the same when they are notified about the existence of illegal content on their services.

More information on the most salient case law of the European Court of Human Rights can be found here: http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

6 ▶ Isn't it for courts to decide what is illegal?

Yes, interpreting the law is and remains the competence of the courts.

At the same time, IT companies have to act in accordance with national laws, in particular those transposing the Framework Decision on combatting racism and xenophobia and the 2000 e-commerce Directive⁽³⁾.

Upon receiving a valid notification of content allegedly containing hate speech, the IT companies will assess it not only against their rules and community guidelines but where necessary against applicable national law (including that implementing EU law), which fully complies with the principle of freedom of speech.

7 ▶ Should one take down 'I hate you'?

Not every piece of offensive or controversial content will rise to the threshold of illegality. As the European Court of Human Rights has stated, 'freedom of expression ... is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population'. The IT Companies and the European Commission also stress within the code, the need to defend the right to freedom of expression. The assessment of what constitute illegal hate speech includes taking into account factors such as the purpose and context of the expression. The term 'I hate you' would not appear to qualify as illegal hate speech, unless coupled with other statements relating to for example the threat of violence and making reference to certain characteristics, including race, colour, religion, descent and national or ethnic origin.

Each company also has in place rules or community guidelines clarifying that they prohibit the promotion of incitement to violence and hateful conduct. In addition, the IT Companies commit to continue their work to educate and raise awareness with their users about the types of content not permitted under their rules and community guidelines.

8 ▶ Will online illegal hate speech be removed from websites out of the EU or only in Europe?

The Code of Conduct aims at countering the spread of illegal hate speech online in the EU as defined by national laws transposing the Framework Decision on combatting racism and xenophobia. All European member states fall under the scope of the Code of Conduct.

(3) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32000L0031>

IT companies will assess valid removal notifications against their rules and community guidelines and where necessary against applicable national laws transposing the Framework Decision 2008/913/JHA.

Neither the Framework decision nor the code contain any obligations on companies to make such content inaccessible in places where the relevant law(s) on illegal hate speech don't apply (for example, in countries outside the EU or the specific countr(y/ies) in question).

9 What prevents government abuse?

The code is a self regulatory commitment by these IT companies. It is not a legal document and does not confer any rights on governments to take down content.

The code cannot be used to oblige companies to take down content that is not clearly illegal or that falls within the type of speech that is protected by the right of freedom of expression as defined in Article 11 of the Charter of Fundamental Rights ⁽⁴⁾.

(4) Charter of Fundamental Rights of the European Union: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>