



Code of Conduct – Illegal online hate speech

Questions and answers

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1 What will the Code of Conduct change for me when I experience racist threats on my Twitter or Facebook account or when I see a video on YouTube which incites violence?

If you inform the IT company, they will check not only against the company's (global) terms and conditions, but also against your country's national law transposing the EU Framework Decision on combating racism and xenophobia.

This will be done quickly (in a majority of cases within 24 hours).

If the IT company finds that the violent racial message that you reported is illegal, i.e. breaches the law, you can expect that they will remove or disable access to it.

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.

3 Does the Commission only tackle online hate speech?

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

(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>

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 remove **illegal** online hate speech. 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. By contrast, as set out by the European Court of Human Rights, other content that '*offends, shocks or disturbs the State or any sector of the population*' is not illegal and the code will not require its removal.

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. IT companies are only asked to apply the definition of illegal hate speech as it stands in our laws when they assess requests for removal of content by users.

There is a need to act fast as the posting of illegal hate speech online is in some extreme cases followed by threats in the real world. For example, after an online hate campaign, refugee shelters have been burned down in Germany.

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

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 excessive to ask the global internet 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.

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 (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>

At the same time, IT companies have to act in accordance with the law. Upon receiving actual knowledge of illegal content, a hosting service provider must remove or disable access to it, as required by the 2000 e-commerce Directive⁽³⁾. In this way they can benefit from the liability exemption of a hosting service provider, stated in the same e-Commerce Directive.

Upon knowledge of such content, the IT companies will assess it not only against their terms of use but also against hate speech law, as defined in national laws implementing EU law, which fully complies with the principle of freedom of speech.

7 Should one take down ‘I hate you’?

Every notification concerning illegal hate speech needs to be analysed against hate speech law and the principle of freedom of expression as assessed by the European Court of Human rights. This 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.

8 Will online illegal hate speech be removed from US websites or only in Europe?

The code of conduct aims at better removing and fighting hate speech online in the EU as defined by EU legislation. Any hate speech done or accessible in a Member State, falls under the scope of the code of conduct.

Any content posted from anywhere in the world and accessible in the EU can be notified in one or more Member States to the companies which subscribed to the code. If one of the signatories of the code finds the content to be illegal hate speech according to national law that implements the Framework Decision, it should be removed or the access to it should be disabled within the EU territory.

Neither the Framework decision nor the code contain any obligations on companies to make such content inaccessible also outside the EU.

9 What prevents government abuse?

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

The code relates only to action to be taken by the IT companies when they are requested by a user to remove or disable access to content that constitutes illegal hate speech.

The code cannot be used to oblige companies to take down content that is not 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⁾.

(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>

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