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Monitoring and Detecting Online Hate Speech

D2.1 - Intermediate report: Definition of illegal hatred and implications

Abstract: A lot of disparities can be noticed between the national legislations of the six countries that have been compared so far, despite the existence of European and International instruments that provide the definitions of certain behaviours to be prohibited. However, some first definitions of prohibited conducts that are common to the compared countries can be reached, in addition to the definition of some infringements that are common to most of them.

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1 Introduction

Task 2.1 aims at analysing the legislations relating to illegal hatred at the European, International and national levels in 10 countries (6 participants in the project - France, Spain, Greece, Cyprus, Ireland, Bulgaria - covering also the Netherlands, plus 3 additional, with the contribution of external legal experts in countries in which there is no MANDOLA partner). This analysis pursues the following objectives:

- Identifying the materials on which the MANDOLA project will focus;
- 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;
- Analysing the answers that may be brought by MANDOLA to non-illegal but harmful hatred, while respecting the requirements of fundamental rights protection, including freedom of expression.

The current intermediate report consists of a preliminary study of the definition of illegal hatred and its implications, based on the description of the legal frameworks of six EU Member States (some constraints have imposed to include Spain in the final report only, and financial constraints impose to approach external experts once the first outcomes of the study are obtained). It focuses on main behaviours, relevant to the MANDOLA topic, that are prohibited by the legislation of these countries.

In order to achieve this study, a questionnaire (enclosed as Annex 2 below) has been prepared and sent to the MANDOLA partners, with the aim of collecting relevant elements of each partner's national legislation. This questionnaire included some questions to be answered with a view to the preparation of the current report, and questions to be answered for the purpose of the preparation of the final report, knowing that, in any case, those questions might evolve after the completion of the first intermediate study, in order to take the outcomes of this study into account.

Answers received show that some common or largely common prohibited conducts can be identified, as well as a certain number of prohibited conducts that appear to be shared by a majority of countries. In addition, some definitions of illegal conducts have been reported for now by only a minority of countries, notably due to the autonomy amplitude let by the first questionnaire that has been sent and to the possible application of these definitions to conducts that are not hatred-related. However, these definitions need further investigations since they appear to be of interest for the definition of illegal hatred-related conducts.

This being said, the way that even common prohibited conducts are formulated in each National legislation show a high disparity between countries, which was not expected given the fact that a lot of these prohibited conducts have been defined in European or International texts.

These intermediate results will be presented in greater details in the current report.

On the basis of these intermediate results, the final report will include:

1. The study of the legislation of the four remaining countries;

2. A deeper and more extensive analysis of relevant prohibited conducts which definition is common or mainly common to the studied legislations (specifying differences), or specific to one or some of these countries;
3. A study of the issues relating to the presumption of innocence and to the handling of potentially illegal and non-illegal contents;
4. Conclusions on materials on which MANDOLA will focus, on the precautions to be taken during the project and after the project when handling or targeting these materials in relation with presumption of innocence and freedom of expression issues, and on the answers that may be brought in relation to the other categories of materials.

2 Working method and extent of the intermediate study

In order to investigate the national legislations of studied countries, a questionnaire has been first sent to MANDOLA partners. On the basis of the answers that have been received, a table has been created in order to be able to compare legislations efficiently.

This table, which first draft is available in Annex 1 below, proposes some definitions of illegal behaviours in their most common definition (where possible at this stage of the study), and highlights the particularities of each studied country (elements which extend the scope of the prohibition are written in blue colour, and elements which reduce this scope are written in green colour). At this stage of the research, these so defined prohibited conducts may be sanctioned under penal, civil or administrative law without distinction, although the nature of the sanction is specified in the column relating to each particular country.

This table will have to be completed and refined in order to extend and perfect the analysis, for the purpose of the final report. Indeed, some of the elements included in this table will have to be more deeply analysed, and may be refined in terms of presentation. Some links that have been done between connected prohibitions might also be further done or, on the opposite, removed. In addition, the elements of four countries are missing, and some elements are also missing in relation with the countries that have been already studied, since each partner focused on certain legal issues that are of importance in his own territory, which has been voluntarily incited by the autonomy amplitude let by the first questionnaire that has been sent. All these missing elements will have to be collected in order to obtain a comprehensive overview of the legislations at stake and of their details.

Moreover, some provisions have been for the moment voluntarily ignored, because they are expected to be more harmonised between countries (such as the protection of personal data that are of a sensitive nature), or because they are not lying exactly inside the core of the study (such as the legislation relating to audiovisual). These provisions will also be identified within the framework of the final report.

3 First outcomes of the study

The analysis shows, at this intermediate stage, a huge disparity between legislations. It also enables to highlight, subject to further investigations, that:

- few definitions of prohibited behaviours are shared or globally shared by studied countries, in addition to the possibility (under certain conditions) to engage the civil liability of the author or a hatred-related behaviour,
- a greater number of prohibitions appear to be shared by a majority of countries but are not totally common, and
- finally, several prohibited conducts, limited or not to some particular hatred motivations, have been reported by a few countries. Since they could be useful in order to determine which behaviours can or cannot be considered as illegal, in relation with hate, they will be further investigated (as well as their possible existence in other countries).

These results must however be handled with care since some elements of the legislations of the studied countries are still missing, and that, in any case, these six countries cannot be considered as statistically representative of all the EU Member States.

3.1 Common or largely common prohibited behaviours

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

- Publicly inciting to violence or hatred directed against a group of persons or a member of such a group,
 - determined on the basis of race, national or ethnic origin, and (if used as a pretext for any of the other factors) religion;
 - if the incitement is either carried out in a manner likely to disturb public order [one out of six countries] or which is threatening, abusive or insulting [one out of six countries]; four countries do not add this requirement

(On the basis of the Council Framework Decision 2008/913/JHA, and of the International Convention on the Elimination of All Forms of Racial Discrimination).

It must be noted that the scope of the prohibition is often extended, but not always in a harmonised manner between countries.

In addition, making available xenophobic or racist material which incites or promotes racial differences, hatred or violence is also sometimes more or less punished under the same provisions when the scope of these provisions is more extended than the common definition mentioned above.

- Establishing or participating in organisations that promote propaganda aiming at racial discrimination (on the basis of the International Convention on the Elimination of All Forms of Racial Discrimination),
- Direct or indirect discrimination, including harassment (on the basis of the Council Directive 2000/43/EC). However, it has to be noted that

- This behaviour is generally only punished in the following areas: 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;
- 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 sanctioned under these provisions.

3.2 Prohibitions that appear to be shared by a majority of countries

Four prohibited conducts appear to be shared by a majority of countries (three to four out of six countries). They are the following:

- Publicly expressing ideas which insult persons by reason of their racial or ethnic origin or religion (based on the International Convention on the Elimination of All Forms of Racial Discrimination),
- Publicly condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes, 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 (based on the Council Decision Framework 2008/913/JHA, and the additional protocol to the Convention on cybercrime),
- To a lesser extent, threatening a natural person, motivated by racism or xenophobia (based on the additional protocol to the Convention on cybercrime). This prohibited behaviour is shared as regards a part only of its definition mentioned above (what is shared by 3 countries is more exactly the "threat to commit a crime or an offense against persons whose attempt is punishable or when done with the order to fulfil a condition with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned"),
- In addition, hatred is an aggravating circumstance of some other penal offences and crimes (and sometimes of all crimes - which is the case in three countries out of six).

3.3 Prohibitions that have been reported by a minority of countries, to be further investigated

Finally, some prohibitions, limited or not to some specific hatred motivations, have been reported by a few countries. Since they could be useful in order to determine which behaviours can or cannot be considered as illegal, in relation with hate, they will be further investigated (in their details and existence in other countries). These prohibitions are the following:

- Defamation because of the origin, race or other particularities of a person;
- Sending of grossly offensive and/or indecent or obscene or menacing character messages or whatever other content;

- 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;
- Behaviors which threaten the life, health of persons, but without taking motivations into account;
- Direct public incitement to commit any offence or crime if the incitement has led to the commission of the offence or the crime, or to its attempt, for any reason;
- Direct public provocation to commit a limited list of offences or crimes where the provocation did not drive to the commission of this offence/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), for any reason.

4 Annex 1 - Table of prohibited behaviours

This annex presents the working table that has been used in order to generate first outcomes of the comparative study.

4.1 Texts that appear to be particularly appropriate to sanction hatred-related contents (inciting and promoting hatred; hatred insult, defamation, threatening, and other crimes; denial and apology of crimes against humanity)

Legend: elements which extend the scope of the prohibition are written in blue colour, and elements which reduce this scope are written in green colour

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.1	Publicly inciting to violence or hatred directed against a group of persons or a member of such a group determined on the basis/grounds of... (see column B), if the incitement <i>is either carried out in a manner likely to disturb public order [1 out of 6 Countries] or which is threatening, abusive or insulting [1 out of 6 Countries]</i>	Race, national or ethnic origin, and (if used as a pretext for any of the other factors) religion	Any way	Intentional conduct (to be confirmed regarding some countries)	Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (JHA; to be confirmed regarding some countries)	3 months to 5 years and/or fine up to 45000 € - depending on the country	<p>Council Framework Decision 2008/913/JHA, art. 1 (1 to 3 years minimum) - What: the behaviour referred to in column B must be performed "in such a way or that has a threatening, abusive or insulting character" (not required in the analysed countries); How: notably by public dissemination or distribution of tracts, pictures or other material; Why: race, colour, descent, or national or ethnic origin or (at least if used as a pretext for one of the other factors) religion.</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination (notably art. 4)</p>

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N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.1	<p>Punished - art.3 L134(l)/2011 (up to 5 years of imprisonment and/or fine up to 10000 euros) What: public transmission of violence or hatred is also punished; Cyprus does not prohibit content with "insulting" character, but content with "offensive" character instead, <i>which meaning appears broader</i>; the conduct is also prohibited if the transmission or incitement is done in such a way "to cause public disorder"; Why: "genealogical origin" ("descent" in JHA) is an additional illegal motivation; The motivation of "sexual orientation" is also punished, lower (up to 3 years and/or 5000 euros); How: punishes transmissions and incitements "in any way" (includes oral and physical dissemination). Additional infringement - Art. 2A L 12/1967 - up to 1 year imprisonment and/or fine up to 400 pounds: What: publicly inciting acts which are likely to cause discrimination, hatred or violence; Why: race, ethnic origin, religion; How: orally, in writing, through the press, or by the use of images or in any other way</p>	<p>Punished - 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 euros; at least 6 months and a fine if the incitement, causing or inducement has resulted in the commission of a crime). What: The conduct (to incite, to "cause" or "induce") is punishable if it "can lead" to "discrimination", violence or hatred; however the conduct is punishable only if it is performed "in a manner that compromises public order or poses a threat to life, liberty or physical integrity" of the victims; Why: additional motivations are descent, sexual orientation, gender identity and disability; How: orally or through the press, the Internet or by any other means or way. In addition: (1) the intentional incitement, causing or inducement to damages or destruction of material objects with the same means and in the manner described above is also punished, with the same penalty (including more severity in case it leads to the commission of a crime).</p>	<p>Punished - (art. 24L1881 - up to 1 year imprisonment and/or fine up to 45,000 euros): What: Inciting to discrimination (only punished if grounds are origins, ethnies, nation, race or religion), hatred or violence against a person or group of persons; Why: because of their origin or their membership or non-membership of an ethnic group, nation, race or religion (for discrimination, hatred or violence); because of their gender, sexual orientation or identity, or disability (for hatred and violence). Other forms of punished discrimination listed line II.1. ; How: any way (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 electronic means). IN ADDITION, non-public hatred is penally punished (art. R.625-7 penal Code - Sanction: 5th class fine - 1500 euros) - What: the non-public incitement to discrimination (all forms in rel. to group 1 above; only forms exposed line II.1 in rel. to group 2 above), hatred or violence (reg. groups 1 and 2) against a person or group of persons; Why: group 1: because of their origin, membership or non-membership, real or supposed, of a given ethnic group, nation, race or religion; group 2: because of their gender, sexual orientation, disability.</p>	<p>Punished (art. 162 penal Code - 1 to four years imprisonment and fine from BGN 5,000 to 10,000 and public censure) What: Anyone who propagates or incites discrimination, violence or hatred; Why: on the grounds of race, nationality or ethnic origin (religion is missing but handled in another text quoted below); How: any means ("by speech, press or other media, by electronic information systems or in another manner"). Specific provisions relating to Religion - art. 164 penal Code - up to four years imprisonment or probation and fine from BGN 5,000 to 10,000): What: A person who propagates hatred on religious basis; How: same means as above (by speech, through the press or other media, through electronic information systems or in another way). 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 BGN three thousand to ten thousand.</p>	<p>Punished - Prohibition of incitement to hatred act, 1989 (on summary conviction, up to 6 months of imprisonment and/or fine up to £1,000; on conviction on indictment, up to 2 years of imprisonment and/or fine up to £10,000;) What: 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 (<i>it seems to mean that the scope of the text is wider (intended / likely to) but difficult to apply since obscure - to be confirmed</i>), if they are threatening, abusive or insulting; Why: Nationality and membership of the travelling community are additional illegal motivation; How: illegal ways: 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 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.</p>	<p>Punished - art. 137d Dutch penal Code - up to 1 year imprisonment or a fine of the 2nd class, with an exception for discrimination: up to 6 months imprisonment or a fine of the 3rd class - What: incitement to hatred, violence or discrimination against persons or their property; Moreover, a Court punished incitement to "intolerance" (chocking and disturbing are however permitted) and not "hatred" from a politician (2015); Why: also includes sex, hetero or homosexuality, and bodily, psychological or mental handicap; on the opposite national /ethnic origins are lacking; How: "orally, in a scripture or drawing", which in practice includes any means (<i>to be confirmed</i>).</p>

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			
1.2	Making available xenophobic or racist material which incites or promotes racial differences, hatred or violence	Race, colour, descent or national or ethnic origin, as well as religion (if used as a pretext for one of the other factors)	Through a computer system	Intentional conduct, without right (<i>to be confirmed regarding some countries</i>)	Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (<i>to be confirmed regarding some countries</i>)	Up to 5 years imprisonment and/or a fine up to 45000 € - depending on the country	Additional protocol to the Convention on cybercrime (any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites 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)

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.2	<p>Punished - art. 4 of law 26(III)/2004 (up to 5 years imprisonment and/or a fine up to 20000 pounds).</p>		<p>Punished through line I.1</p>	<p>Punished through line I.1 (only for grounds of race, ethnic origins, nationality and religion)</p>	<p>Not punished - The Prohibition of incitement to hatred act, 1989 punishes public distribution/display of contents (see line I.1) that are likely to stir-up hate, but only if the conduct has a threatening, abusive or insulting character (no exception when the action is done through a computer system). .</p>	<p>Punished through I.1 - art. 137e Dutch penal Code - What: public content that incites hatred or incites violent acts toward persons or their property (promotion is missing; promotion and incitement to racial differences are also missing); Why: race, religion, and also beliefs, sex, hetero or homo-sexual orientation, bodily, psychological and mental handicaps (however colour, descent and national or ethnic origin are missing); How: in writing, drawing or actual speech - covers computer systems.</p>

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.3	Establishing or participating in organisations that promote propaganda aiming at racial discrimination	Race, colour, descent, or national or ethnic origin	Any way	Intentional conduct (to be confirmed regarding some countries)	Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (to be confirmed regarding some countries)	[Range to be identified]	International Convention on the Elimination of All Forms of Racial Discrimination (http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx) - Signature + ratification or accession (http://indicators.ohchr.org/): France, Greece, Ireland, Cyprus, Bulgaria, Spain, Netherlands)

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.3	Punished (same extent) - Article 2A (2) of the law 12/1967)	Punished (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 euros; if the incitement, causing or inducement has resulted in the commission of a crime, at least 6 months of imprisonment and a fine). What: Whoever establishes or participates in an organisation or group of any kind that systematically seeks to carry out (instead of "promote") acts described line I.1 above; Why: race, colour, religion, descent, national or ethnic origin; in addition, sexual orientation, gender identity or disability .	Disband is organised - Art. L212-1 Internal security Code - Sanction: disband by decree of the Council of Ministers) - What: "any associations or groups of people: (...) that, either incite to discrimination, hatred or violence against a person or group of persons, or disseminate ideas or theories which attempt to justify or encourage such discrimination, hatred or violence"; Why: because of their origin, membership or non-membership of a given ethnic group, nation, race or religion ; (colour and descent are missing but implied) How: any means.	Punished - art. 162 (3) penal Code - (1) imprisonment for 1 to 6 years and a fine from BGN 10,000 to 30,000 and by public censure ; (2) imprisonment for up to 3 years and public censure - What: (1) a person who forms or leads an organisation or group which has set itself the objective of committing acts (referred to line I.1 rel. to Bulgaria) and acts of violence against a person or his/her property for illegal hatred reasons or systematically allows the performance of such acts; (2) A person who is a member of such an organisation or group; Why: race nationality, ethnic origins, religion or political convictions (decent and colour are missing).		Potentially punished under 137f penal Code (to be confirmed).

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.4	Publicly express ideas which insult persons by reason of their (see column B)	Racial or ethnic origin or religion	Any way	Intentional conduct (to be confirmed regarding some countries)	Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (to be confirmed regarding some countries)	<i>[Range to be identified]</i>	International Convention on the Elimination of All Forms of Racial Discrimination Additional protocol to the Convention on cybercrime (http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no).

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.4	<p>Punished (same extent - Article 2A (3) of the law 12/1967 - up to 1 years of imprisonment and/or fine of 500 pounds) .</p> <p>Cyprus also punishes (art. 6 of law 26(III)/2004 - up to 5 years imprisonment and/or a fine up to 20000 pounds) What: Racist and xenophobic insult with an effect that the insulted person is exposed to hatred, contempt or ridicule; Why: for the same reasons (racial or ethnic origin or religion), How: through a computer system (implementing specifically the additional protocol to the Convention on cybercrime).</p>		<p>Punished - art. 33 L 1881 - up to 6 months imprisonment and 22,500 euros fine - What: insult committed against a person or group of persons; Why: because of their origin, membership or non-membership of a given ethnic group, nation, race or religion, gender, sexual orientation or gender identity or disability; How: any means (means set forth in article 23 of the same law - see line I.1 for France)</p> <p>Non-public insult is also punished (R624-4 penal Code - 4th class contravention - 750 euros fine) - What: non-public insult directed towards a person or group of persons; Why: 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>Partly punished - Section 6 of criminal justice act 1994, up to 3 months imprisonment and/or fine up to £500 (summary conviction - <i>conviction on indictment to be confirmed</i>) - What: 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 (<i>the way Courts apply this restriction to be confirmed</i>); Why: any reason (<i>to be confirmed</i>).</p>	<p>Punished - Art. 137e penal Code - up to 6 months imprisonment or a fine up to (<i>to be confirmed</i>) (3rd class)- What: publication (to a group of the population) of insulting, inciting (hatred) or discriminating content or objects; Why: ethnic origins is missing, race and religion are included, and additional grounds are beliefs, sex, hetero homo-orientation, handicap (bodily, psychological or mental); How: any means (<i>to be confirmed</i>). Regarding religion specifically, in the spirit of 2008/913/JHA, a Court did not punish an insulting speech against religion since the speech addressed religion and not its followers (High Court, March 2009 - <i>references and the possibility to extend the reasoning to line I.1 to be confirmed</i>). Concerning insults, a three step test was developed by courts (<i>reference to be confirmed</i>), 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>

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.5	Threatening of a natural person, motivated by racism or xenophobia	Racial or ethnic origin or religion	Through a computer system	Intentional conduct (to be confirmed)	Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (to be confirmed regarding some countries)	[Range to be identified]	Additional protocol to the Convention on cybercrime (http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no).

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.5	<p>Punished - same extent (5 years imprisonment and/or a fine up to 20000 pounds).</p>		<p>Partly punished -What/How: 222-17 penal Code: (§1)“Threats to commit a crime or an offense against persons whose attempt is punishable when they are, either repeated or materialized in writing, picture or any other object (6 months of imprisonment and 7 500 euro fine); (§2)The penalty is increased to three years of imprisonment and a 45,000 euro fine if it is a threat of death”; 222-18 penal Code: (§1) threatening by any means to commit a crime or an offense against people, when done with the order to fulfil a condition (3 years of imprisonment and a 45,000 euro fine); (§2)The penalty is increased to five years of imprisonment and a 75,000 euro fine if it is a threat of death. Why: art. 222-18-1 penal Code “When committed because of the victim membership or non-membership, real or supposed, to a given ethnic group, nation, race or religion, threats defined in the first paragraph of Article 222 -17 is punishable by two years of imprisonment and a 30,000 euro fine, those contained in the second paragraph of the same article and the one in the first paragraph of Article 222-18 are punished by five years of imprisonment and 75 000 euro fine, and those provided in the second paragraph of article 222-18 are punished by seven years of imprisonment and a 100,000 euros fine. The same penalties are incurred when such threats are made on the basis of real or supposed orientation or gender identity of the victim”.</p>	<p>Partly punished - Only threats to religion seem to be punished (to be confirmed) - art. 165 penal Code - What: (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, shall punished by imprisonment for up to one year. (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>Partly punished - Section 6 of criminal justice act 1994, up to 3 months imprisonment and/or fine up to £500 (summary conviction - conviction on indictment to be confirmed) - What: 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 (the way Courts apply this restriction to be confirmed); Why: any reason (to be confirmed).</p>	

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.6	Public defamation	[common denominator to be identified]	any ways	Intentional conduct (to be confirmed)	Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (to be confirmed)	[Range to be identified]	

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.6			<p>Punished - Art. 32 L 1881 (up to 1 year of imprisonment and/or 45,000 euros fine) - What: defamation towards a person or group of persons; Why: because of their origin, membership or non-membership of a given ethnic group, nation, race or religion, gender, sexual orientation or identity, disability; How: by one of the means set forth in article 23 of the law (see line I.1 for France) Non-public defamation is also punished - - art. R624-3 penal Code, first class contravention: 750€ of fee - What: non-public defamation of a person or group of persons; Why: 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>Punished - at least partially <i>(to be confirmed)</i> - Defamation act of 2009 - Sanction: action for damages, it is a civil tort, not a penal infringement; moreover a class action is possible - see "Section 10" below - What/Why/How: libel and slander are not covered [<i>definition to be developed, as well as the circumstances in which it is punished</i>];</p> <p>(Section 10): "10.— Where a person publishes a defamatory statement concerning a class of persons, a member of that class shall have a cause of action under this Act against that person if— (a) by reason of the number of persons who are members of that class, or (b) by virtue of the circumstances in which the statement is published, the statement could reasonably be understood to refer, in particular, to the member concerned."</p>	

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			
1.7	<p>Motivation (in column B) is an aggravating circumstance of certain infringements [<i>common infringements to be identified</i>]</p> <p>3 out of 6 countries: <i>aggravating circumstance in any crime, and motivations taken into account are wider.</i></p>	[common denominator to be identified]	Same as the baseline infringement (<i>to be confirmed</i>)	Same as the baseline infringement (<i>to be confirmed</i>)	Same as the baseline infringement (<i>to be confirmed</i>)	[range to be identified]	Council Framework Decision 2008/913/JHA

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.7	<p>Art. 8 L 134(I)2011 Cyprus: What: aggravating circumstance in all crimes and <i>[to be confirmed]</i> offenses (courts, when calculating the penalties of any penal infringement, shall take into consideration as an aggravating circumstance racist motivation and illegal hatred motivation; Why: 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 <i>(to be confirmed)</i>).</p>	<p>Art. 79§3 Penal Code - which determines the criteria to be taken into account when determining a sentence-, provides for that committing a crime on the basis of hatred induced due to several criteria (see "Why below"), constitutes an aggravating circumstance and the sentence shall not be suspended. Thus, although illegal hatred is not sanctioned with the exception of hate speech, the motive of hatred is recognized as an aggravating circumstance in any given crime and perpetrators are given a harsher sentence; Why: race, colour, religion, descent, national or racial origin, sexual orientation or gender of the victim.</p>	<p>Art. 132-76 and 132-77 penal Code: What: where specific penal provisions provide for it, penalties incurred for a crime or an offense is aggravated when the offense is committed for certain reasons; the aggravating circumstance so defined is constituted where the offense is preceded, accompanied or followed about, writing, images, objects or acts of any kind affecting the honour or reputation of the victim or group people which includes the victim; Why: because of the victim membership or non-membership, real or supposed, to a given ethnic group, nation, race or religion; because of their sexual orientation or gender identity, real or supposed. Crimes and offences for which penal law provides for such aggravating circumstance: destruction, degradation or deterioration of property belonging to others (322-1 to 322-8 Penal Code); extortion (312-2), torture and acts of barbarism (222-1 to 222-3 penal Code), violence (222-7 to 222-13), threats (222-17 to 222-18-1 penal Code); infringements to the memory of dead peoples (225-17 to 225-18).</p>	<p>Art. 162 penal Code: Anyone who uses violence against another person or damages his/her property because of the person's race, nationality, ethnic origin, religion or political convictions, shall be punishable by imprisonment from one to four years and a fine from BGN 5,000 to 10,000, as well as public censure;</p> <p>Art 131 penal Code: For inflicting bodily injury (...) out of hooligan, racist or xenophobic motives the punishment shall be imprisonment: for three to fifteen years for severe bodily injury; from two to ten years for medium bodily injury; for up to three years for trivial bodily injury under Article 130, paragraph (1), and for up to one year or corrective labour under Article 130, paragraph (2);</p> <p>Art. 163 penal Code: (I) persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national, ethnic or racial affiliation, shall be punished: (1) the abettors and leaders - by imprisonment for up to five years; (2) all others - by imprisonment for up to one year or by probation; (II) If the crowd or some of the participants are armed, the punishment shall be: (1) for the abettors and leaders - imprisonment for one to six years; (2) for all others - imprisonment for up to three years.</p> <p>(III) If an assault has been made which has resulted in severe bodily injury or death, the abettors and leaders shall be punished by imprisonment for three to fifteen years, and all others - by imprisonment for up to five years, if they are not liable to more severe punishment.</p> <p>Art. 165 (3) penal Code: For the acts under Article 163, committed against groups of the population, individual citizens or their property, in connection with their religious affiliation, the punishments provided (art. 165 (1) and (2) - see line I.5) shall be applied.</p>	<p>No provision <i>(to be confirmed)</i></p>	<p>No provision <i>(to be confirmed)</i></p>

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>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 ... (see column B), 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>Race, colour, religion, descent or national or ethnic origin</p>	<p>Any way (by default, not expressly mentioned - <i>to be confirmed</i>)</p>	<p>Intentional conduct (<i>to be confirmed</i>)</p>	<p>Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (<i>to be confirmed</i>)</p> <p>Special liability regimes do exist in case of Press offense (including the press or service editor)</p>	<p><i>[Range to be identified]</i></p>	<p>2008/913/JHA, art. 1 ; Additional protocol to the Convention on cybercrime (ex. Cyprus, art. 7)</p>

N	Countries' particularities						
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands	
I.8	<p>Punished (same extent - art.2 L134(I)/2011) - up to 5 years imprisonment and/or a fine up to 20000 pounds. What: 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. Art.7 of L.2004 also punishes 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, through a computer system.</p>	<p>Punished - Art. 2 Law 929/1979 amended - What: condoning, trivialising or maliciously denying the existence or severity of some crimes: genocide, war crimes, crimes against humanity, (and, additionally:) the holocaust, Nazism crimes; Covers crime that have been recognised as such by a decision of an international court, but also crimes that have been recognised as such by the Greek Parliament; Also punished when the conduct "involves threatening or abusive character of the referred group or its members" (<i>to be confirmed</i>), in addition to its likeliness to incite to violence or hatred); Why: additional motivations are sexual orientation, gender identity and disability; How: orally or through the press, the Internet or by any other means or way.</p>	<p>Punished - art. 24L1881, up to 5 years imprisonment and/or 45,000 euros fine- What: public apology (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) or of crimes of collaboration with the enemy; 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; Why: any ground; How: any means (the exact list is the same as line I.1).</p>				<p>Not punished (<i>to be confirmed</i>) but Courts punish the denial of holocaust on the basis of art. 137d of the penal Code (see I-1). (HR 27 March 2017).</p>

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			
1.9	<p>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 [Crimes against peace, War crimes, Crimes against humanity], directed against a group of persons or a member of such a group defined by reference to ... (see column B) 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>Race, colour, religion, descent or national or ethnic origin</p>	<p>Any way (by default, not expressly mentioned)</p>	<p>Intentional conduct (<i>to be confirmed</i>)</p>	<p>Author ; instigator, accomplice (aiding and abetting) ; natural and legal persons (<i>to be confirmed</i>)</p>	<p><i>[Range to be identified]</i></p>	<p>2008/913/JHA, art. 1</p>

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I.9	<p>Punished - art.2 L134(I)/2011 - 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.</p>	<p>Punished in relation with war crime and genocide through the provision referred to line I.8, not punished in relation with crime against peace (to be confirmed).</p>	<p>Punished - art. 24bis L1881, up to 1 year imprisonment and/or 45,000 euros fine- What: publicly contesting (not condoning and grossly trivialising) 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 organization declared criminal under Article 9 of the Statute, either by a person convicted of such crimes by a French or international court. 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; Why: any ground; How: any means (the exact list is the same as line I.1)</p>			<p>Not punished (<i>to be confirmed</i>) but Courts punish the denial of holocaust on the basis of art. 137d of the penal Code (see I-1). (HR 27 March 2017).</p>

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

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>Direct or indirect discrimination (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>Harassment is a form of discrimination 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>An instruction to discriminate against persons 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. However discrimination or harassment must be committed in one of the following area: conditions for access to employment, to self-employment and to occupation; access to vocational guidance and training; employment and working conditions; involvement in in a professional organisation; social protection and advantages; education; access to and supply of goods and services which are available to the public, including housing.</p>	<p>Intentional (civil, penal, administrative), negligence (civil, administrative) <i>(to be confirmed)</i>.</p> <p>Cyprus: administrative tort;</p> <p>Greece: civil tort;</p> <p>Netherlands: civil tort;</p> <p>France: civil tort; penal provisions also punish a part of the illegal behaviour;</p> <p>Ireland: penal provisions, intention and negligence <i>(to be confirmed)</i></p>	<p>All private and public entities;</p> <p>Natural persons: Cyprus, Ireland, Greece, Netherlands, France ;</p> <p>Legal persons: Cyprus, Ireland, Greece, Netherlands, France;</p> <p>authors only: Cyprus, Ireland, Greece, Netherlands;</p> <p>Instigators/Complices: France (author/complices may be a representative of public authority= art. 432-7 pen. code) - <i>[entire column to be confirmed]</i></p>	<p>Fine up to 35,000 euros and/or imprisonment up to 3 years - depending on the country.</p>	<p>Council Directive 2000/43/EC (possible exceptions: 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>Note: 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.</p>

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N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
I . 1	<p>Punished - Law 42(I)/2004, fine up to 350 pounds pronounced by the Commissioner for the promotion of equal treatment if no criminal provisions punishes the conduct - What/Why/How: same extent, Possible exception: same as the Directive¹</p>	<p>Punished - Act N° 3304/2005 - No penalty as such but 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 damages (<i>to be confirmed</i>); - What: 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; Why: additional grounds are gender, civil status, family status, sexual orientation, religion, age, disability, membership of the traveller community. Possible exceptions: discrimination allowed to bona fide promote equality of opportunity or accommodate people with different needs (positive discrimination).</p>	<p>Punished - law 2008-496 amended; art. 225-1 to 225-2 of the penal Code for penal provisions, sanction: CIVIL: termination of the damage and compensation/damages; PENAL: up to 3 years of imprisonment and/or a fine up to 45000 euros. CIVIL LAW: What and how: same as the Directive. Is also especially punished the fact of enjoining any person to engage in this prohibited behaviour; Why: same as the directive; in addition, discrimination is prohibited in relation with 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), based on additional grounds: gender, religion or beliefs, disability, age, sexual orientation or identity, home place; Possible exceptions (only in the professional/occupational field): where exceptions satisfy an essential and critical professional requirement and to the extent that the objective is legitimate and the requirement proportionate. In addition, direct and indirect discrimination is prohibited on ground of pregnancy and motherhood (measures taken to the benefit of women for the same reasons are however allowed); Moreover, direct and indirect discrimination based on gender is prohibited in relation with the access to and the delivery of goods and services, with three exceptions: (1) where a good or a service is totally or mainly addressed to a gender which must be justified by a legitimate aim and means to reach the aim must be necessary and proportionate; (2) for the calculation of insurance premium and the payment of insurance benefits within the conditions set out in the Insurance Code; (3) the organisation of training by grouping students according to their gender. Finally, where facts are presumed, there is a reversal of the burden of proof. PENAL LAW: What: 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; Why: reg. natural persons, based on their origin, gender, family situation, pregnancy, physical appearance, surname, place of residence, state of health, disability, genetic characteristics, way of living/moral, sexual identity or orientation, age, political opinions, union activities, or their membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion, and based on the fact that they suffer or refused to suffer sexual harassment (as defined by the penal Code) or that they testified about such facts; reg. legal persons: same grounds at the exclusion of pregnancy, in relation with a member or some members of the legal person; some exceptions listed art. 225-3 penal Code. IN ADDITION, explicit prohibition of the public incitement to commit such discriminations (up to 1 year imprisonment and 45,000 euros fine - art. 24 L1881): Why: based on person's gender, sexual orientation or identity, or disability; How: same means as line I.1 ; the non-public incitement to commit such discrimination, by any means, is also punished (art. R.625-7 penal Code, fine up to 1500 euros - 5th class); Finally, the public incitement to (all forms of) discrimination based on origins, ethnicity, nation, race or religion is specially punished (same penalty and legal basis - see infringement n°3, line I.1.); the non-public incitement to (all forms of) discrimination based on the same grounds is punished by art. 625-7 of the penal Code (fine up to 1500 euros - 5th class).</p>		<p>Punished - Equal Status Acts 2000-2012 - fine up to €1,500 and/or imprisonment up to 1 year on summary conviction; fine up to €25,000 and/or imprisonment up to 2 years on conviction on indictment; What: differences of treatment (<i>it seems to cover direct and indirect discrimination as defined by the Directive - to be confirmed</i>) and harassment (including sexual are punished - An instruction to discriminate against persons on the same grounds is not explicitly deemed to be discrimination (<i>to be confirmed</i>); Why: grounds include gender, marital status, family status, sexual orientation, religion, age, disability, race (including colour, nationality or ethnic or national origins), traveller community; How: <i>to be confirmed</i>; Possible exceptions: positive discrimination only (<i>to be confirmed</i>).</p>	<p>Punished - Act on equal treatment - AWGB, civil law actions (<i>provision which serves as a basis and the way they apply to be confirmed</i>) - Courts' practice is to grant material damages up to 20000 €; administrative proceedings also possible: a special committee on equal treatment may give an opinion on the violation, (<i>+ order cessation and Grant damages to be confirmed</i>), on the basis of a complaint or on its own initiative; What: direct and indirect discrimination in the same terms of the Directive (<i>harassment to be confirmed</i>); Why: 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; How: <i>to be confirmed</i>; Possible exceptions: positive discrimination mainly (<i>same as the Directive to be confirmed</i>). Finally, where facts are presumed, there is a reversal of the burden of proof.</p>

¹ In July 2006, the Cypriot Constitution was amended to give supremacy to EU laws. The amendment adds a new article to the Constitution providing that nothing therein stated shall nullify laws, acts or measures rendered necessary as a result of Cyprus' obligations as an EU member state, or to prevent Regulations or Directives or other binding legal measures enacted by the EU or its bodies from having force in Cyprus. This development is significant vis-à-vis the national anti-discrimination legislative framework because, prior to its enactment, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that any positive measures taken in favour of vulnerable groups were violating the Constitution's equality principle (art. 27). The new amendment renders the positive measure provisions of EU directives superior to the Constitution and thus unchallengeable on the basis of Article 28.

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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	<p>a: refusing to supply goods or services to people by reason of their (see column B)</p> <p>b: refusing to supply goods or services to people by reason of their (see column B), or making such supply subject to a condition relating to the (see column B) of a person, committed by any person who supplies goods or services by profession</p>	Racial or ethnic origin or religion	Any way <i>(to be confirmed)</i>	<i>[To be identified]</i>	<i>[To be identified]</i>	Fine up to 75,000 euros and/or imprisonment up to 5 years - depending on the country and exact circumstances <i>[to be confirmed]</i>	<p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Council Directive 2000/43/EC (goods or services which are available to the public; on grounds of racial or ethnic origin);</p> <p>Proposal for a Council Directive (2008) on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation</p>

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
II.2	<p>a. Punished -same extent - Article 2A (3) of law 12/1967<i>(to be confirmed)</i> - Sanction mentioned line II.1 for Cyprus.</p> <p>What: <i>(exceptions to be confirmed)</i>; How: orally, or in writing, or by the press or by the use of images or in any other way.</p> <p>b. Punished (same extent - Article 2A (4) of the law 12/1967, up to 1 year and/or fine up to 400 pounds.</p>		<p>Punished <i>(a. and b. to be confirmed)</i>- covered by the provisions referred to above line II.1. Sanction up to 5 years/75000 fine where the refusal to provide a good or service is committed in a place welcoming the public or in order to prohibit the access of such a place.</p>		<p>a. and b. Punished - Equal Status Acts 2000-2012, sanction mentioned line II.1.</p> <p>What: see above; no distinction between persons who supply goods or services by profession or not <i>(to be confirmed)</i>.</p>	

4.3 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					[Range to be identified]	2008/913/JHA, art. 1 ; Additional protocol to the Convention on cybercrime (ex. Cyprus, art. 7)

N	Countries' particularities					
	Cyprus	Greece	France	Bulgaria	Ireland	Netherlands
III. 2	The Cypriot Torts law (Cap 148) does not provide for a cause of action in case of illegal hatred / discrimination. However the Supreme Court of Cyprus recognised the possibility of grounding civil liability 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 no significant case law). <i>(conditions of civil liability to be confirmed).</i>	Art. 57 of the Greek 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 damages, but only in case of infringement of non-discrimination rules (line II-1 above) (to be confirmed as well as <i>conditions of civil liability</i>).	1382, 1383 and 1384 or the civil Code. 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), as long as they cannot be punished on the basis of L1881.	<i>To be confirmed that general rules of civil liability cannot be used in order to punish some hatred behaviours.</i>	Civil liability might be pronounced in case of violation of the Employment equal quality Acts and the Equal status Acts (<i>conditions to be confirmed</i>).	

4.4 Less or more generic texts reported by some countries, to be deeper investigated (content and extent)

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	Country
	Illegal material conduct (what)	Illegal motivations (why)	Illegal ways (how)	Criminal Intent			
IV.1	Sending of grossly offensive and/or indecent or obscene or menacing character messages or whatever other content	Any but aggravating circ. where committed with an illegal hatred motivation	By the use of a public communications network			Fine up to 1700 euros	Cyprus, art. 149 (6) L112(I)/2004
IV.2	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	Any but aggravating circ. where committed with an illegal hatred motivation	By the use of a public communications network			Fine up to 1700 euros	Cyprus, art. 149 (6) L112(I)/2004
IV.3	Behaviours which threaten the life, health of persons	Any, or specified in the relevant provision. Aggravating circ. where committed with an illegal hatred motivation.					Cyprus, 226 to 235 A and 242-244 penal code

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IV.4	Direct public incitement to commit any offence or crime if the incitement has led to the commission of this offence or the crime, or to its attempt.	Any reason	Any means (France: 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)			Same as accomplice - who incurs the same penalty as the author (France).	France, art. 24L1881 Ireland: (1) the intentional incitement, causing or inducement to damages or destruction of material objects with the same means and in the manner described line I.1 is also punished, with the same penalty (including more severity in case it leads to the commission of a crime),
IV.5	Direct public provocation to commit a limited list of offences or crimes where the provocation did not drive to the commission of the offence/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).	Any reason	Any means (see line III-4).			Up to 5 years imprisonment and/or fine up to 45,000 euros (France)	France, art. 24L1881 Ireland: see line III-4

5 Annex 2 - First questionnaire that has been sent to MANDOLA partners

I - Definition of illegal hatred / illegal discrimination

1. What is the definition of illegal hatred in your country? (please specify if this definition is provided by Constitutional law, penal law, civil law or another specific legal text; please give the several definitions if illegal hatred is defined differently under Constitutional, penal, civil law and any other legal area).
2. What are the definitions of the right to non-discrimination and/or of illegal discrimination in your country, and how do they relate to the notion of illegal hatred? (please specify if these definitions are provided by Constitutional law, penal law, civil law or another specific legal text; please give the several definitions if the right to non-discrimination and illegal discrimination are defined differently under Constitutional, penal, civil law and any other legal area; please specify, regarding the relation between non-discrimination and illegal hatred (if a link can be made under your law), if your answer comes from your analysis or the analysis of someone else - legal author, Court...).

II - Legal provisions prohibiting illegal hatred and protecting persons against discrimination

3. Which are the potential Constitutional rules that prohibit illegal hatred and/or illegal discrimination and/or that state the right to non-discrimination, and/or that protect another civil liberty that bases the prohibition of illegal hatred (please specify the relating provisions, provide an English version of their content if possible; and mention potential important court cases of your supreme Court or Constitutional Council on this topic).
4. Did your country implement the Council of Europe's European Convention on Human Rights and its additional protocols, particularly in relation with non-discrimination? (Please specify the legal force of the European Convention on Human Rights and of its additional protocols in your country, and the basis - such as a law where needed - which allows to give legal force to these Council of Europe provisions in your country).
5. The EU Charter of Fundamental Rights is supposed to have a binding legal effect equal to the Treaties in your country, from December 2009. What is the Treaties legal force in your country? (in other word, under which conditions is the EU Charter binding in your country?). This question is more particularly relating to articles 21, 22 and 23 of the EU Charter that enshrine the right to non-discrimination, to cultural, religious and linguistic diversity, and to equality between women and men.
6. Which are the consequences of these constitutional and/or CoE and/or EU protection on internal law? (ex. : obligation of the legislator to adopt appropriate measures - and which ones if specified - , including penal ones, in order to enforce the principle of non-discrimination and/or the right to non be subject of illegal hatred; particular obligations of data controllers - including LEAs- when they process personal data that mention peoples' origins; prohibition for LEAs to interrogate / control the identity of a person on the solely basis of his or her supposed origin...). Please list to the utmost extent the provisions, of a penal, civil, and administrative

nature (including penal and civil procedures and specific law such as telecommunication laws) that specifically protect or prohibit the collection, storage or/and use of sensitive data (such as origin, religion views, gender, health...) and more generally of data that may be used in order to discriminate people or that may have such effect. As a minimum please specify the article and the general idea of the provision. Any English translation will be welcome. Please take into account that these provisions may be used in Mandola (and are of interest for both these reasons) in order to determine the contents that we will handled, but also, on the opposite, to analyse the care that must surround the processing of reports (for example, handling a report of illegal hatred may imply to process personal data involving person's origin, which may be in turn illegal).

7. Which are the penal provisions (if any) that prohibit illegal hatred or/and illegal discrimination (please specify the relating provision(s) and the incurred sanction, provide an English version of their content if possible; and mention potential important court cases on this topic).
8. Which are the civil provisions (if any) that prohibit illegal hatred or/and illegal discrimination (please specify the relating provision(s) and the incurred sanction, provide an English version of their content if possible; and mention potential important court cases on this topic; please also consider the general rules of civil liability which may enable to sanction racial hatred, for example if a hate speech is considered as being a fault that causes a damage).
9. Which are the other provisions, if any, (in administrative law, telecommunication law...) that prohibit illegal hatred or/and illegal discrimination (please specify the relating provision(s) and the incurred sanction, provide an English version of their content if possible; and mention potential important court cases on this topic).
10. Does your penal code, civil code or another law prohibit other behaviours that may be reported as illegal hatred (facts of physical or moral violence not necessarily committed because of the origins, religion, etc. of the victim, but which may be committed against a person because of his or her origin, religion, gender, etc.)? For example, the French penal code prohibits (i) the recording and the broadcasting of images of violence; (ii) the threatening of committing a crime or an offence [the punishment is increased in case the threatening is motivated by the origin, religion... of the victim]], and (iii) the publication of an arrangement made with the image of a person without his or her consent, without specifying that it is an arrangement and not the real original image).

III - Presumption of innocence and handling of potential illegal hatred

11. Which constitutional, penal, civil and administrative rules protect the presumption of innocence in your country? What may be the consequences of these provisions on the collection, storage, and transmission between private entities or by a private entity to a LEA of reports of alleged illegal hatred that has not been ascertained by a judge in the last resort? (which means that the reported fact might be legal and is presumed to be legal).
12. Under your national law, in case a legal content is reported as illegal to LEAs, does the author of the content have a judicial remedy against the person who has made the report? (for example on the basis of an offence of abusive denunciation, or of illegitimate processing of personal data, or of privacy infringement, or even civil liability in general)? Please specify.

13. Is there in your country a penalty for the consultation / visit of online illegal hatred or for holding such content?

14. If you answered yes to one of the two previous questions, which precautions should be taken in order to ensure that a hotline that will handle such content might not be punishable for its action?

IV - Procedure in order to enforce illegal hatred / discrimination prohibition

15. Is the legal procedure (or procedures, if both a penal and a civil law suit is possible, for example) to be followed in order to punish illegal hatred or/and illegal discrimination is the same as the one to be followed in order to punish offences of the same kind? Are there particularities of procedure? If not, please specify.

16. Under your national penal and civil laws, who are the persons entitled to initiate legal proceedings against the author of an illegal (hatred / discrimination) content? (for example: the victim of the illegal content, the public prosecutor, some associations specialised in the fight against illegal hatred...).

17. Within the framework of penal proceedings and of civil proceedings, what are the requirements in terms of evidence to bring before the court in order to prove the offence?