

Rights, Equality and Citizenship (REC)
Programme of the EU Commission
(2014-2020)



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 ten E.U. countries that have been compared, despite the existence of European and International instruments aiming at harmonising legislations. However, three categories of potentially illegal behaviours may be identified, and enable to issue some first conclusions on the contents to be taken into account within the MANDOLA framework.

Contractual Date of Delivery	31 March 2016
Actual Date of Delivery	20 July 2016 (updated Feb. 2017)
Deliverable Security Class	Public
Editor	Estelle De Marco
Contributors	All <i>MANDOLA</i> partners
Quality Assurance	Ioannis Iglezakis, Aristotle University / FORTH

The *MANDOLA* consortium consists of:

FORTH	Coordinator	Greece
ACONITE	Principal Contractor	Ireland
ICITA	Principal Contractor	Bulgaria
INTHEMIS	Principal Contractor	France
UAM	Principal Contractor	Spain
UCY	Principal Contractor	Cyprus
UMO	Principal Contractor	France

Document Revisions & Quality Assurance

Internal Reviewer:

Ioannis Iglezakis, Associate Professor, Faculty of Law, Aristotle University (FORTH).

Revisions

Version	Date	By	Overview
v.2.1.0	30/3/2016	Inthemis (FR) Estelle De Marco as editor	First consolidated draft.
v2.1.1	31/3/2016	Inthemis (FR) Estelle De Marco as editor	Second version taking into account comments from partners (UCY, UMO) and reviews (Maria Podeva, UCY, and Tatiani Synodinou, UCY).
v2.1.2	29/06/2016	Inthemis (FR) Estelle De Marco as editor	New Annex integrating additional information from MANDOLA partners and information from three external experts (from Belgium, Germany, and Romania).
v2.1.3	11/07/2016	Inthemis (FR) Estelle De Marco as editor	Final draft.
v2.1.4	18/07/2016	Inthemis (FR) Estelle De Marco as editor	New version including additional information from partners (UCY, ICITA, UMO); additional information from contributing experts for Belgium, Germany and Romania; and comments from Ioannis Iglezakis (Aristotle University / FORTH).
v2.1.5	20/07/2016	Inthemis (FR) Estelle De Marco as editor	Final version, including additional comments from Ioannis Iglezakis in relation with Greek law (Aristotle University / FORTH).
v2.1.6	20/02/2017	Inthemis (FR) Estelle De Marco as editor	Modification of a firm's name page 112.

Table of Contents

DOCUMENT REVISIONS & QUALITY ASSURANCE.....	3
TABLE OF CONTENTS.....	5
1 INTRODUCTION.....	6
1.1 INTRODUCTION TO TASK 2.1	6
1.2 INTRODUCTION TO THE CURRENT INTERMEDIATE REPORT	6
2 WORKING METHOD AND EXTENT OF THE INTERMEDIATE STUDY.....	8
3 FIRST OUTCOMES OF THE STUDY.....	9
3.1 IMPORTANT DISPARITY BETWEEN LEGISLATIONS.....	9
3.2 LACK OF PROPER TRANSPOSITIONS OF INTERNATIONAL AND EUROPEAN LEGAL INSTRUMENTS	11
3.3 COEXISTENCE, AT THE DOMESTIC LEVELS, BETWEEN DIFFERENT PROVISIONS TARGETING CLOSE BEHAVIOURS	12
3.4 ILLEGAL HATRED-RELATING BEHAVIOURS IN TEN STUDIED E.U. COUNTRIES	13
3.4.1 <i>Behaviours that are illegal in all or almost all the studied E.U. Member States</i>	14
3.4.2 <i>Behaviours that are illegal or partially illegal in a majority of the studied E.U. Member States:</i>	17
3.4.3 <i>Behaviours that are illegal in a minority of the studied E.U. Member States</i>	20
3.5 FIRST CONCLUSIONS ON THE CONTENTS TO BE TAKEN INTO ACCOUNT WITHIN THE FRAMEWORK OF THE MANDOLA PROJECT	21
4 ANNEX 1 - TABLE OF PROHIBITED BEHAVIOURS	23
4.1 TEXTS THAT APPEAR TO BE PARTICULARLY APPROPRIATE TO SANCTION HATRED-RELATED CONTENTS, AND THAT ARE OR SHOULD BE COVERED IN ALL COUNTRIES	31
4.1.1 - PUBLIC INCITEMENT TO VIOLENCE, HATRED OR DISCRIMINATION.....	31
4.1.2 - MAKING AVAILABLE XENOPHOBIC OR RACIST MATERIAL WHICH INCITES OR PROMOTES HATRED OR VIOLENCE	36
4.1.3 - ESTABLISHING OR PARTICIPATING IN ORGANISATIONS THAT PROMOTE DISCRIMINATION, VIOLENCE OR HATRED	40
4.1.4 - PUBLICLY INSULTING PERSONS FOR ILLEGAL HATRED RELATING REASONS	44
4.1.5 - PUBLIC DEFAMATION	51
4.1.6 - THREATENING A NATURAL PERSON, MOTIVATED BY RACISM OR XENOPHOBIA	59
4.1.7 - ILLEGAL HATRED AS AN AGGRAVATING CIRCUMSTANCE	66
4.1.8 - PUBLIC DENIAL, CONDONING OR TRIVIALISING WAR CRIMES, CRIMES AGAINST HUMANITY, GENOCIDE AND CRIMES AGAINST PEACE.....	69
4.2 TEXTS THAT MIGHT ENABLE TO COMBAT ONLINE DISCRIMINATION EVEN THOUGH THEIR MAIN OBJECTIVE IS TO COMBAT DISCRIMINATION OFFLINE	74
4.2.1 - DIRECT OR INDIRECT DISCRIMINATION (INCL. HARASSMENT) IN SOME SPECIFIC AREAS	74
4.2.2 - REFUSING TO SUPPLY GOODS OR SERVICES FOR ILLEGAL MOTIVATIONS.....	82
4.3 CIVIL LIABILITY.....	86
4.4 ADDITIONAL TEXTS, LESS OR MORE GENERIC, OR PROHIBITED IN SOME COUNTRIES ONLY	91
4.4.1 - SENDING OF GROSSLY OFFENSIVE AND/OR INDECENT OR OBSCENE OR MENACING CONTENT	91
4.4.2 - SENDING A MESSAGE THAT WHICH CAN CAUSE ANNOYANCE, HARASSMENT AND / OR NEEDLESS ANXIETY	94
4.4.3 - DIRECT PUBLIC INCITEMENT TO COMMIT A PENAL INFRINGEMENT	96
4.4.4 - PROMOTION OR PUBLIC INCITEMENT TO HOSTILITY OR VIOLENCE BETWEEN COMMUNITIES.....	100
4.4.5 - INSULT TO RELIGION	102
4.4.6 - RECORDING OF IMAGES OF THE COMMISSION OF A CRIME OR OFFENCE	106
4.4.7 - REALISING A MONTAGE WITH THE TALK OR THE IMAGES OF A THIRD PARTY WITHOUT HIS OR HER CONSENT	108
4.4.8 - TO MISUSE / USURP SOMEONE ELSE'S IDENTITY	110
5 ANNEX 2 - LIST OF EXPERTS WHO CONTRIBUTED TO THE STUDY	112

1 Introduction

1.1 Introduction to task 2.1

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

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

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.

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

1.2 Introduction to the current intermediate report

The current intermediate report consists of a preliminary study of the definition of illegal hatred and of the implications of such a definition, based on the description of the legal frameworks of ten E.U. Member States. It focuses on the behaviours, relevant to the MANDOLA topic, that are prohibited by the legislation of these countries.

The collection of information relating to these legislations show that if, legally speaking, hate speech is very easy to define, as the speech that is prohibited by the law which applies to the situation, this clear and simple definition hides a very complex situation in practice, even within the E.U. Indeed, although several International and European legal instruments have

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

been adopted with the aim of harmonising national legislations², transpositions into domestic laws have not been done the same way, where they are not partial. Moreover, these instruments follow a similar approach on what should be at least illegal³, but show small differences, and transpositions of each of them have not always been included into a global reflection aiming at harmonising the internal penal law. As a result, the E.U. Member States' legislations show huge disparities.

Therefore, the choice has been made to present the behaviours that are illegal, depending on the precise circumstances that surround the offence and depending on the country, into three categories, namely (1) behaviours that are illegal in all or almost all the studied E.U. Member States, (2) behaviours that are illegal or partially illegal in a majority of these countries; and (3) behaviours that are illegal in a minority of these countries.

On the basis of these outcomes, first conclusions have been issued on the contents to be taken into account within the framework of the MANDOLA project.

These intermediate results will be refined within the framework of the final report, which will also include a study of the issues relating to the presumption of innocence and to the freedom of expression, notably in relation with the handling of potentially illegal contents.

² See for example the preamble of the additional protocol to the Convention on cybercrime and the preamble of the Council Framework Decision 2008/913/JHA, § 3 and 4.

³ Especially the additional protocol to the Convention on cybercrime and the E.U. Council Framework Decision 2008/913/JHA.

2 Working method and extent of the intermediate study

In order to investigate the national legislations of studied countries, a questionnaire has been first prepared and sent to MANDOLA partners. On the basis of the answers that have been received, a second questionnaire has been created and sent to three additional experts in Belgium, Germany and Romania, where there are no MANDOLA partner. Additional research has also been performed by the editor of this document, and tables have been created in order to be able to compare legislations efficiently.

These tables, which are available in Annex 1 below, propose some definitions of illegal behaviours in their most common definition where found possible and relevant (which means where the common elements of illegality are sufficiently consistent in order to sanction hatred-related contents), and highlight the particularities of each studied country in relation with these general definitions (where possible and relevant, elements which extend the scope of the prohibition are written in blue colour, and elements which reduce this scope are written in green colour). Although most of these so defined illegal conducts are penally punished, they might for some of them or in certain countries be sanctioned under penal, civil or administrative law. Therefore, the sanctions and their nature are always specified in cells targeting the specificities of each country.

This table might be refined within the framework of the final report, in case next steps of the comparative analysis show such a need.

Moreover, although we attempted to highlight all the provisions that might be used to sanction hate-speech, in order to obtain a consistent overview of what can be declared potentially illegal in the ten studied E.U. countries, 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, which will moreover be regulated by the E.U. Regulation 2016/679, once it enters into force), or because they are not lying exactly inside the core of the study (such as the legislation relating to audiovisual i.e. Directive 2010/13/EU - Audiovisual Media Services Directive). Some of these provisions might also be added within the framework of the final report.

3 First outcomes of the study

First outcomes of the study show a huge disparity between legislations (1), notably due to a lack of proper transposition of International and European legal instruments (2), and to the differences that exist between International and European provisions, differences that are sometimes maintained at the domestic level, along with pre-existing national provisions (3). From this situation it has been found appropriate to classify illegal behaviours into three categories according as to whether they are mostly, partly or barely shared by the studied E.U. Members States (4), which enables in turn to issue first conclusions in relation with the contents that must be taken into account within the framework of the MANDOLA project (5).

3.1 Important disparity between legislations

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

Despite the existence of these instruments, which aim at harmonising legislations⁴, a huge disparity is noticed between countries. Indeed, these legal instruments are not directly applicable in countries that must comply with them (the binding effect depends on the accession to or ratification of the related international treaty or convention⁵, or on the E.U. membership of the country, in relation with Directives and Council framework decisions⁶), at the exception of some treaties that may in some countries have such a direct effect, such as the E. Conv. H.R.⁷. As a result, the application of these instruments implies most of the time

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

⁵ See for example Council of Europe, "About Treaties", "About Conventions in the Council of Europe Treaty Series (CETS)", <http://www.coe.int/en/web/conventions/about-treaties> (last accessed on 01/07/2016).

⁶ See for example European Union, "Regulations, Directives and other acts", http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm (last accessed on 01/07/2016).

⁷ The direct effect depends on the status given to the treaty by each national Constitution. See for ex. Marc J. Bossuyt, *The direct applicability of International instruments on Human rights*, RBDI 1980.2, pp. 317 to 344, available at <http://rbdi.bruylant.be/public/modele/rbdi/content/files/RBDI%201980/RBDI%201980-2/Etudes/RBDI%201980.2%20-%20pp.%20317%20%C3%A0%20344%20-%20Marc%20Bossuyt.pdf> and at http://www.academia.edu/633695/The_Application_of_the_ECHR_in_the_Domestic_Systems (last accessed on 01/07/2016). In relation with the E. Conv. H. R., See Estelle De Marco and Cormac Callanan, in C. Callanan, M. Gercke, E. De

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

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

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

- 10 countries criminalise the incitement to hatred, but only 8 of them criminalise the incitement to violence;
- 8 countries only additionally criminalise the incitement to discrimination, which is not mentioned in the Council Framework Decision, but mentioned in the International Convention on the elimination of all forms of racial discrimination, and in the additional protocol to the Convention on cybercrime, where committed through a computer system;
- Only 2 countries criminalise the incitement to hatred based on peoples' "colour", and only 4 of them criminalise the incitement to hatred based on their "descent" or "origin" (even if these grounds might be implicitly covered in certain other countries, in practice, by other grounds such as "race"). In addition, 1 country does criminalise the incitement to hatred based on any ground. Besides this, numerous other grounds may be taken into account to declare the behaviour as illegal in some countries but not others, such as nationality; language; ideologies or beliefs other than religion (sometime reduced to philosophical and political beliefs); familiar situation; ethnic, racial or national belonging of family members; gender and/or sex⁸; sexual identity; sexual orientation or preference; age; civil status; birth; fortune; illnesses (or state of health); disability; physical or genetic characteristics, and social origins.
- Only 3 countries impose an additional condition, and therefore only prohibit the public incitement to hatred if it is either carried out in a manner likely to disturb public order (*2 countries*), or public peace (*1 country*), or if it is threatening, abusive or insulting (*1 country, alternatively to the disturbing of public order*).

The afore-mentioned example shows the huge disparity that exists between different texts that are transposing a provision which aim was to harmonise legislations across Europe, provision which is moreover belonging to those that have been the most correctly transposed. Same examples of disparity could be given as illustration for all the behaviours

Marco and H. Dries-Ziekenheiner, Internet blocking - balancing cybercrime responses in democratic societies, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>), n° 6.5.2.2.

⁸ Regarding the difference between sex and gender, see for example MONASH University, "What is the difference between sex and gender?", available at <http://www.med.monash.edu.au/gendermed/sexandgender.html> (last accessed on 8 July 2016), according to which "Sex refers to biological differences; chromosomes, hormonal profiles, internal and external sex organs", whereas "Gender describes the characteristics that a society or culture delineates as masculine or feminine".

studied in the Annex below, perhaps at the exception of direct and indirect discrimination. However, this prohibition of discrimination does mostly concern off-line behaviours, and has only been studied in this report for its potential to serve as a basis, in some countries, to sanction certain online statements of discrimination or instructions to discriminate.

This disparity between legislation is due, amongst other, to the fact that International and European instruments have not always been transposed as they should have been.

3.2 Lack of proper transpositions of International and European legal instruments

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

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

For example, as seen in the previous section, 8 countries out of 10 do not expressly criminalise the public incitement to hatred when it is based on the colour of the victim, and 6 countries out of 10 do not criminalise the public incitement to hatred when it is based on the descent of the victim, while it is requested by the Council Framework Decision 2008/913/JHA. In addition, 2 countries do not criminalise the public incitement to discrimination, whereas such prohibition is requested by the International Convention on the elimination of all forms of racial discrimination, to which all the studied countries are parties.

As a last example (even though numerous of them could be given), only 1 country (Cyprus) out of 10 fully criminalises the public condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes as defined by relevant international instruments, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group. Despite the fact that such prohibition is requested by the Council Framework Decision 2008/913/JHA, only 2 countries criminalise the public condoning, denying or grossly trivialising crimes against peace, only 4 countries criminalise the public condoning, denying or grossly trivialising crimes against humanity (one additional country, France, criminalises the public apology of such crimes, and their public contesting in the extent they are defined by article 6 of the Charter of the International military tribunal annexed to the London agreement of 8 August 1945; the gross trivialisation of such crimes is

only covered by courts⁹), and only 3 countries criminalise the public condoning, denying or grossly trivialising genocide and war crimes.

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

3.3 Coexistence, at the domestic levels, between different provisions targeting close behaviours

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

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

The transposition of both texts into domestic law, where sometimes some provisions relating to hatred do already exist, without prior overall reflection aiming at creating a coherent and harmonised legal framework, may lead to the co-existence of several provisions criminalising very close behaviours, but maintaining some differences between each of them. As a result, one legal text or another may apply, depending on the precise circumstances or on the illegal motivation that is noticed by the judge (for example race, colour, or gender... some being punishable and other not).

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

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

⁹ Art. 24bis of the Law of 1881 only prohibits the contestation of crimes against humanity. However, and despite the principle that criminal law has to be interpreted by the letter, the French courts also sanction, on the basis of this provision, the gross trivialisation of such crimes (such as "the excessive understatement of the number of victims of the policy of extermination in concentration camps": Crim. 29 January 1998 n°96-82.731, Gaz. Pal. 1, chron. crim. 87; Crim. 17 June 1997 n° 94-85.126, Bull. Crim. n°236). For an example of the sanction of the denying of such crimes see CA Paris, 27 May 1992, Gaz. Pal. 1992. 2. Somm. 321; Crim. 12 sept. 2000 n°98-88.200, Dr. pénal 2001. 4 (2nd decision).

- Publicly inciting acts which are likely to cause discrimination, hatred or violence, in any way, on the grounds of race, ethnic origin, or religion (imprisonment up to 2 years and/or fine up to 1 700 € - Art. 2A of the law 12/1967);
- Distributing or making available (publicly or non-publicly), through a computer system, xenophobic or racist material which incites or promotes racial differences (which covers discrimination - see Section 4.1.2) hatred or violence, on grounds of race, national or ethnic origin, religion, colour and descent (imprisonment up to 5 years and/or fine up to 34 000 € - Art. 4 of law 26(III)/2004).
- Public expression of ideas which insult persons based on their racial or ethnic origin or religion (national origins are missing), committed orally or in writing or by the press or by the use of images or in any other way (imprisonment up to 1 year or a fine up to 850 € - art. 2A(c) Law 12/1967 - see section 4.1.4);
- Racist and xenophobic insult with an effect that the insulted person is exposed to hatred, contempt or ridicule, based on the race, or national or ethnic origins or colour, descent or religion of this person, through a computer system (imprisonment up to 5 years or a fine up to 34 000 € - Art. 6 of Law of 2004 - - see section 4.1.4);
- Insult committed in a way that may result in an attack against a person who is present, for whatever ground, in a public place or in a place that is not public in such a manner or under conditions that may be heard by any person in a public place (imprisonment up to 1 month and/or a fine up to 128 € - Art. 99 of the penal Code - see section 4.1.4).

This example shows that, for example, in Cyprus, inciting discrimination is more easily punished (acts must be likely to cause discrimination, there is no need for a proper incitement, and no need of a public disorder), but never as strongly as incitement can be, unless it is committed through a computer system (and in that case, a public disorder is not needed as well). The promotion of discrimination, as well as the promotion of hatred - notably based on colour or descent, is punished where committed through a computer system, but not punished if committed through any other means (whereas States Parties condemn such acts in Art.4 of the International Convention on the elimination of all forms of racial discrimination). An insult motivated by ethnic origins might be sanctioned under two legal bases (depending on whether the action exposes the victim to hatred, contempt or ridicule, or not - Art. 2A(c) of the Law 12/1967 and Art. 6 of the Law of 2004), as well as an insult motivated by the nationality, the descent or the colour of the victim (sanctioned under Art. 99 of the penal Code in case the action does result in an attack against a person who is present, and under Art. 6 of the Law of 2004 in case a computer system is used and the person is exposed this way to hatred, contempt or ridicule, in compliance with the additional protocol to the Convention on cybercrime which enables to provide for such an additional condition).

3.4 Illegal hatred-relating behaviours in ten studied E.U. countries

A consequence of the differences that exist, on the one hand, between several texts that target close behaviours in certain countries, and on the second hand, between each of these texts and those adopted in the other E.U. countries, is that a comparative analysis becomes very complex as soon as one tries to get into details. Notably, this situation makes it very difficult to provide a list of behaviours that are prohibited in all the European Union (unless

reducing this list to a very limited number of illegal acts), and to give a precise picture of their legal bases and incurred sanctions. The best approach in order to give a comprehensive comparative overview of hatred-related illegal behaviours in the ten E.U. countries that have been studied (Belgium, Bulgaria, Cyprus, France, Germany, Greece, Ireland, Netherland, Romania, and Spain), has been found, at least in a first step, to be a classification into three categories, namely (1) behaviours that are illegal in all or almost all the studied E.U. Member States, (2) behaviours that are illegal or partially illegal in a majority of these countries; and (3) behaviours that are illegal in a minority of these countries.

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

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

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

1. Publicly inciting hatred (in 10 countries) or violence or discrimination (in 8 countries) directed against a group of persons or a member of such a group,

- determined on the basis/grounds of their race, national or ethnic origin, and (if used as a pretext for any of the other factors) religion,
- if (3 countries impose in addition one of the following conditions) the incitement is either carried out in a manner likely to disturb public order (2 countries), or public peace (1 country), or which is threatening, abusive or insulting (1 country, alternatively to the 1st condition).

An important number of countries add additional illegal grounds, which are (all taken together) the following: sexual preferences or orientation (5 countries) or hetero or homosexuality (1 country); disability (4 countries) or bodily, psychological or mental handicap (1 country); sex (2 countries) or sex and gender motives (1 country) or gender (1 country); sexual identity (2 countries) or gender identity (1 country); national or ethnical ancestry (1 country) or genealogical origin (1 country) or descent (1 country) or ethnic, racial or national belonging of family members (1 country); origins (2 countries) or social origins (1 country); nationality (2 countries); skin colour (2 countries); ideology or beliefs (2 countries) or political or philosophical beliefs (1 country); familiar situation (1 country); age (1 country); civil status (1 country); birth (1 country); fortune (1 country); language (1 country); state of health (1 country); illness (1 country); physical or genetic characteristics (1 country); membership of the travelling community (1 country).

In addition, some countries prohibit the motivations where they target the belonging as well as the non-belonging of the victim to the afore-mentioned categories. Other countries prohibit some of these grounds whatever the characteristics of the victim that motivate the prohibited act are real or supposed. The list above must in any case be interpreted with care, since a lot of the grounds it includes are not common or only partially common to the studied E.U. Member States.

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

of racial discrimination, as well as (according to the latter Treaty) the "dissemination of ideas based on racial superiority" (which is only covered by law in Cyprus and Romania) and the incitement to discrimination. Statistics mentioned above **do not include** one country in which the prohibited behaviour is illegal whatever the motivation.

- 2. Making available to the public xenophobic or racist material which incites hatred (10 countries) or violence (9 countries) or discrimination (fully covered in 8 countries), or which promotes hatred (fully covered in 5 countries), discrimination (fully covered in 4 countries), or violence (fully covered in 4 countries), through a computer system,** for the same illegal grounds as mentioned above (all countries provide here for the same illegal grounds at the exception of Cyprus, which does not punish here the motivation of "sexual orientation" - which is however punished, with a lower sanction, within the framework of the first behaviour, and of Romania, which does not any more punish the behaviour whatever the ground, but only in case of distribution of *"flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines"*).

Similar comments as above can be done. Firstly, "colour" and "descent", which are not explicitly illegal grounds in every countries, should be commonly illegal according to the additional protocol to the convention on Cybercrime, as well as (according to the latter Convention) "advocating" and "promoting" hatred, violence and discrimination, which are sanctioned in five countries (for the promotion of hatred) or in a minority of countries only (for the other).

- 3. Publicly insulting a person or a group of persons by reason of their race, or their national or ethnic origin or (if used as a pretext for any of the other factors) religion (prohibited or covered in 10 countries but only 6 of them accept one person or a group as a victim), by any means (unless in one country - Cyprus - where the ground of nationality, as well as colour and descent, are only taken into account where committed through a computer system), if it has the effect that this person or group of persons is exposed to hatred, contempt or ridicule (only 1 country - Cyprus - adds this additional requirement, only in relation with "nationality", "colour" and "descent") or if the perpetrator has the intent to provoke a breach of the peace or is reckless as to whether a breach of the peace may be occasioned (only 1 country - Ireland - adds this requirement).**

Despite the fact that this prohibition is required by the additional protocol to the Convention on cybercrime, which enables the States to add the above-mentioned condition relating to exposure to hatred, contempt, or ridicule¹⁰ (only one country does provide for it, partially), 4 countries only prohibit insult where it is directed against a person (and not a group of persons). In addition, 1 country (Netherlands) does prohibit hatred-related insult where it is committed against a group only, and prohibits the insult against a person separately, on another legal basis, whatever the motivations.

¹⁰ As well as the possibility to not apply, in whole or in part, the requirement to criminalise this act of insult (art. 5, 2 b).

In a majority of countries, the behaviour is illegal whatever the grounds, but some of the illegal grounds mentioned in relation with the incitement to hatred may be taken into account as aggravating circumstances (in Belgium, France¹¹ and Bulgaria¹²).

4. Public defamation (prohibited in 10 countries, penally in 8 of them), **on any ground** (8 countries) **or at least on the grounds of race, nation, ethnicity, religion or other beliefs/convictions¹³, sex or gender¹⁴, sexual orientation** (common to the 2 remaining countries). Two countries prohibiting defamation whatever the grounds provide for aggravating circumstances in case the action is motivated by specific grounds, and for a higher sanction in such cases (Belgium, France¹⁵), and in an additional one these specific grounds may be taken into account as aggravating circumstances based on a Courts' practice, even if law does not provide for it (Bulgaria).

5. Direct or indirect discrimination, including harassment, in certain specified areas (fully covered in 6 countries, partly covered in the 4 other; 7 countries provide for penal provisions, the 3 other provide for civil and/or administrative ones).

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

Common illegal grounds are racial or ethnic origins but a lot of additional ones may be taken into account. Compared to the list of grounds already provided in relation with incitement to hatred (see the first illegal behaviour above), additional grounds may be, in certain countries, the membership in a trade union (Bulgaria, or the support of such organisation in Spain, or Union activities in France) or another type of organisation, political party, organisation, movement or coalition with political objective; the next-of-kin political convictions (Bulgaria); the community or special needs (Cyprus), home place, pregnancy, physical appearance, surname, way of living/moral, fact to have suffered or refused to suffer sexual harassment (as defined by the penal Code) or to have testified about such facts (France, which also prohibits the ground of motherhood, but not in the

¹¹ The French provisions aggravate the sanctions of insult and of defamation in case the offence is committed against a person or a group of persons with illegal motivations. This can be seen as an aggravating circumstance, but alternatively as an autonomous offence since the mention of "a group of persons" is interpreted by the French judge as enabling an action from a victim which is not particularly identified in the insulting or defamatory speech (see Cass. crim., 12 Sept. 2000, available at <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007587343>), whereas a complaint of the victim is necessary in order to institute criminal proceedings within the framework of the other provisions that sanction insult and defamation. It can also be seen as an autonomous infringement since the jurisprudence (but not the law) considers that establishing the truth of the assertions in order to not be sanctioned is impossible in case of defamation for illegal motivation, whereas it is possible in the other cases (except where a person's private life is involved): see for example Cass. crim. 11/07/1972, Bull. n° 236, and Cass. crim. 16/03/2004, pourvoi n° 03-82.828. These latter court cases are referred to in Sylvie Menotti, La preuve de la vérité du fait diffamatoire, Court of cassation, report 2004,I, C, available at https://www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2004_173/deuxieme_partie_tudes_documents_176/tudes_theme_verite_178/fait_diffamatoire_6395.html (last accessed on 15 July 2016).

¹² In Bulgaria it is not based on a legal text but on a courts' practice.

¹³ Spain evokes "beliefs", and Romania "a specific social or unprivileged category or their conviction".

¹⁴ Spain evokes "gender and reasons of gender", Romania evokes "sex".

¹⁵ See footnote n°11.

general penal provision), marital status, family status (Ireland), social category or unprivileged category (Romania), kinship with other workers in the company (Spain).

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

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

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

- 1. Establishing** (mentioned or covered in 6 countries) **or participating** (mentioned or covered in 8 countries) **in organisations that:**
 - **promote discrimination** (mentioned or fully covered in 9 countries) **or violence** (mentioned or fully covered in 7 countries) **or hatred** (mentioned or fully covered in 6 countries), **or**
 - **Incite discrimination** (mentioned or fully covered in 8 countries) **or hatred** (idem) **or violence** (idem).

Illegal motivations that are common to all the countries that prohibit at least partly the behaviour are race, or national or ethnic origin (covered in 9 countries out of 9¹⁶). Moreover, religion is fully covered in 7 countries. For the rest, motivations listed in relation with incitement to hatred (see 3.4.1, 1) may apply in certain countries. In addition, other illegal grounds may apply 1 country (Romania): social category, non-transmissible chronic disease, HIV infection, belonging to a disadvantaged category, as well as any criterion which would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by law, in the politic, economic, social and cultural field or in any other field of the public life.

Penal sanctions are provided in 8 countries; 1 country (France) provides for disband only; 1 country (Ireland) does not especially prohibit such groups. Moreover, some countries require an additional condition in order to sanction the behaviour, such as the compromission of public order (statistics above include these countries). This condition is not requested by the International Convention on the elimination of all forms of racial discrimination, which bases at the national level the prohibition. The convention is also not followed in relation with grounds (religion, colour and descent should be illegal grounds), and in relation which material acts (establishing or participating in organisations that promote or incite hatred, discrimination of violence, at least where this promotion or incitement is punished by law, should be prohibited).

¹⁶ One country does not prohibit this behaviour.

2. Publicly condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes¹⁷.

This behaviour is fully prohibited or covered in 1 country (Cyprus); mainly or partly prohibited/covered in 5 countries; limited to the holocaust / National Socialism in 3 countries, and not prohibited in 1 country (Ireland).

Common illegal motivations are race, national or ethnic origin, religion, and (missing in only 1 country out of the 9 that cover at least partially the infringement) colour and descent.

All the above-mentioned motivations¹⁸, as well as the definition of the behaviour as it is proposed in this sub-section, are required by the Council Framework Decision 2008/913/JHA. As regards the additional protocol to the Convention on cybercrime, it requires to punish the denial, gross minimisation, approval or justification of genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of relevant international courts, without requiring that the action is motivated by any particular ground¹⁹. In addition, these instruments authorise States to provide for additional conditions in order to criminalise the behaviour²⁰.

3. Sending of grossly offensive and/or indecent or obscene or menacing character messages or whatever other content.

The behaviour, labelled as above, is prohibited in 1 country only. However, 5 other countries prohibit it partly, and the exact nature of the contents that are prohibited vary widely. Indeed, might be prohibited contents that are indecent (3 countries), obscene (2 countries), menacing (2 countries), offensive (1 country), infringing a person's dignity (1 country), offending human dignity (1 country), abusive (1 country), insulting (1 country), defaming (1 country), violent (1 country), or inciting terrorism (1 country). Some countries may require an additional condition (such as the intent to provoke a breach of the peace) in order to punish the behaviour. These results do not take into account neither the precise infringements of threat, insult, and defamation which are studied above and below in these sections, nor infringements targeting the sending of child-pornography or pornography-related materials, which are clearly outside the scope of the study.

This behaviour, where penally sanctioned at least partly, is punished whatever the ground, except in Spain where motivations must be one of the following: religion or

¹⁷ As they are defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, and in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945.

¹⁸ As always, religion may only be an illegal ground where it is used as a pretext for any of the other factors, according to the Council Framework Decision 2008/913/JHA and the additional protocol to the Convention on cybercrime.

¹⁹ However, the additional protocol to the Convention on cybercrime states that Member States may require that the denial or the gross is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise.

²⁰ According to the Council Framework Decision 2008/913/JHA, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting, and may restrict some material elements of the offence to the condition that the crimes (whose apology / deny / trivialisation takes place) have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court. According to the additional protocol to the Convention on cybercrime, a party may reserve the right not to apply, in whole or in part, the provision requiring to criminalise this behaviour.

beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, reasons of gender, illness or disability.

4. Direct public incitement to commit any offence or crime, for any ground.

This behaviour is fully prohibited or covered in 6 countries, and partly prohibited in 2 additional countries. 5 countries prohibit the behaviour even if no infringement has resulted from the incitement, without any other condition. 2 countries (France and Spain) restrict the prohibition to a limited list of infringements, whereas 2 countries (France - alternatively to the restriction of liability to a list of acts, with different sanctions, and Belgium) do not restrict the prohibition to a limited list of infringements but prohibit this behaviour only where the incited offence has been at least attempted. These results do not take into account the infringement of threat, which is analysed below.

5. Threatening a natural person, motivated by racism or xenophobia, through a computer system.

This behaviour is fully prohibited in only 2 countries, despite the fact that its prohibition is required by the additional protocol to the Convention on cybercrime. Illegal grounds that are common to these two countries are, according to the additional protocol to the Convention on cybercrime, race, national or ethnic origin, religion if used as a pretext for any of these factors, colour and descent.

The eight other countries prohibit the threat of harm, of violence, of attack or of committing a crime against persons and sometimes their property (only one country, Ireland, does prohibits threats more generally), with or without additional conditions (such as the order to fulfil a condition, the effect to cause to a person fright or anxiety, or, in Ireland, the intent to provoke a breach of the peace or being reckless that such break could be occasioned). In these countries, the behaviour is prohibited whatever the ground. Therefore, the common denominator is the threat to commit a penal offence, for whatever reason, under some potential additional conditions.

6. In addition, an illegal motivation might be an aggravating circumstance in 5 countries.

Some hatred-related motivations are an aggravating circumstance in relation with all the penal infringements in 5 countries out of 10 (Germany, Cyprus, Greece, Romania, Spain), as it is requested by the Council Framework Decision 2008/913/JHA. This means that in relation to all the other infringements studied in this report, where no special motivation is requested in these countries in order to sanction the perpetrator, an illegal motivation should drive to a higher penalty.

In 3 other countries, some hatred-related motivations are an aggravating circumstance in relation with certain offences only, which has already been taken into account, in this report, within the framework of the presentation of each concerned infringement. It does concern insult and defamation in Belgium, Bulgaria²¹ and France²², and harassment in

²¹ In Bulgaria, these specific grounds may be taken into account as aggravating circumstances based on a Courts' practice, the law does not provide for it in relation with insult and defamation.

²² See footnote n°11.

Belgium (beyond a certain list of acts which go beyond the scope of this report such as some forms of violence in France, Belgium and Bulgaria).

Illegal hatred-related motivations are mainly race, national origin / nationality; ethnic origin (covered in 8 countries); religion (7 countries); gender and sexual orientation (6 countries); political beliefs and handicap (5 countries); age, philosophical beliefs (4 countries). Other grounds belonging to those highlighted in Section 3.4.1, 1 above might be taken into account depending on the country, as well as additional ones which are the following (outside motivations specific to bodily injury which are out of the scope of the study): racist, xenophobic or other inhuman (Germany); wealth, chronic non-contagious disease or HIV/AIDS infection, social category, inclusion in an unflavoured category, or any other criterion (Romania, in relation with harassment). We can notice that some of these grounds are widely open to interpretation.

7. Insult to religion

This infringement is fully covered in 4 countries, and partly covered in 3 additional countries (including one case of prohibition of defamation of religion - in Germany).

3.4.3 Behaviours that are illegal in a minority of the studied E.U. Member States

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

1. Sending a message, or whatever content, which can cause annoyance, harassment and / or needless anxiety to another person, which the sender knows to be false, for any ground).

This behaviour is fully prohibited in 1 country only (Cyprus). Moreover, it might be covered by civil provisions in 1 additional country (Romania). In all the other countries, this behaviour might be more or less covered by provisions relating to harassment, threat, insult, and defamation already studied.

2. Promotion or public incitement to hostility or violence between communities.

This behaviour is prohibited or covered in 2 countries (Belgium in relation with a list of motivations, and Cyprus whatever the ground), and not prohibited in 4 countries. Experts who contributed to the study in relation with the 4 remaining countries consider that some aspects of the behaviour might be sanctioned under some provisions of the penal Code relating to certain forms of attacks against persons or their property (see Section 4.4.4 below), under the provisions that prohibit the incitement to hatred (see Section 4.1.1 below), the public incitement to commit a crime (see Section 4.4.3 below) or the condoning of certain categories of crimes (See Section 4.4.8 below).

3. Recording of images of the commission of a crime or offence against a person, for any ground and by any means.

This behaviour is prohibited in 1 country (France), and might be partly covered in 3 additional countries (2 penal prohibitions and 1 civil one). These results do not take into account infringements targeting child-pornography or pornography-related materials, which are clearly outside the scope of the study.

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

This behaviour is prohibited or covered in 2 countries (France and Spain). These results do not take into account infringements targeting privacy or personal data violations, falsification of technical records for the purpose of misleading judicial authorities, copyright and related rights, insults.

5. To misuse / usurp someone else's identity, for any ground.

This behaviour is prohibited in 2 countries (Spain and France). In some other countries and in some situations, the infringement of forgery may cover this behaviour.

3.5 First conclusions on the contents to be taken into account within the framework of the MANDOLA project

At the beginning of the comparative study, the idea was to establish the list of behaviours that are illegal in all the E.U. Member States, in addition to present some additional particularities in these States. The contents to be included in the MANDOLA project would have covered at least this list, and potentially certain other particularities, depending on the exact findings of the comparative study.

However, as explained in the previous sections, the huge disparity that has been noticed between the legislations of the ten E.U. Member States that have been studied would have reduced this list to a very limited number of offences. We would have obtained a picture of the behaviours that are prohibited within this part of the E.U., but not a picture of the behaviours that should be illegal according to International or European instruments, and not a picture of the behaviours that are prohibited in some countries but not in the others.

This category of behaviours that are prohibited in some countries but not all (whatever the number of States that share them, since our study only covers partially the E.U.) are however of the utmost interest for victims and for the MANDOLA project, for the following reasons:

- They will often serve as a basis to sanction hatred-related behaviours, since they are quite numerous.
- They show a non-equal treatment between victims that appear to have to be included in the MANDOLA research and conclusions, at least in order to issue some recommendations, where feasible, in that field.

Indeed, a consequence of the lack of harmony between legislations, and, sometimes, between local provisions in one given country, is a possible non-equal treatment between victims within the European Union, and even a legal insecurity for these victims. These differences in legislation may lead to the non-punishment or to the lower punishment of certain behaviours or of certain grounds motivating the behaviour, depending on the precise circumstances that surround the potential offence, even in one single country, and depending on the country that will be competent to judge the case. As an example, "race" is an illegal motivation in ten countries out of ten, despite the fact that this notion does not have any meaning in genetics in relation with the

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

- More widely, some of these prohibited behaviours seem particularly interesting to study, since they question the border between the behaviours that should be prohibited and those that should remain allowed, in order to ensure the best possible balance and the good health of a democratic society. This debate will have to be covered within the framework of the final report. Falls within this debate the prohibition of insult to religion or to the divine (and not only believers, strictly), since this prohibition may have consequences on the freedom to criticise ideas and opinions, which is in turn one of the pillars of a democratic society. Falls also within this debate the prohibition, in most countries, of the public incitement to hatred for some illegal grounds, and not always the same grounds, while other countries (such as Romania) prohibit the behaviour whatever its motivations are. Indeed, this variation of prohibitions poses the question of the legitimacy of the discrimination that is done this way between the victims in terms of protection against hatred, depending on their particular characteristics.

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

To the question of whether this definition should also serve as a basis of the other MANDOLA activities, such as the development of a dashboard demonstrating the trends in spread and penetration of on-line hate-related speech, and the development of reporting mechanisms, the first approach of the question seems to opt for a positive answer, as soon as the aim of the consortium is to assist citizens and States in the combat of all on-line hate-related speech that **might** be illegal in a territory or in another, within the E.U.

This, knowing that the MANDOLA consortium can only handle the issue of potentially illegal contents, since only the decision of a Court can assess a content as formally illegal.

These considerations will be completed and refined within the framework of the final report on the task.

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.

The first table in each sub-section constitutes an attempt of a definition of each given prohibited action, on the lowest common denominator (where ten countries out of ten prohibit this behaviour and where it is practicable). The particularities of each country are presented in a second table. In blue colour is highlighted what comes in addition to the common definition, and in green colour is highlighted what is missing and therefore restricts the scope of the penal infringement, civil or administrative tort.

For each of the contents listed in this annex, the criminal intent and responsible persons are following the rules mentioned below.

- **Criminal intent (*mens rea*)**

In all the countries where the behaviours described below are penally sanctioned, the criminal intent required from the perpetrator(s) is in principle a (direct²³) intention to commit the infringement²⁴. Where a lower criminal intent or negligence is enough, it is specified in the relating cell.

- **Liability of natural persons**

In all the studied countries, the persons who are potentially liable of a penal infringement are, in principle and in practice²⁵, at least the author, accomplices, and (expressly or not) instigators.

²³ The criminal intent may be defined differently according to the country. However, "intent" (such as in France) or "direct intent" (such as in Romania) refers to the intent to violate the law in the expectation of causing the outcomes of the action, or at least with the conscience that the outcome of the action may occur. National provisions may additionally provide for the possibility to sanction certain kind of infringements in case the perpetrator has a "lower" criminal intent (called for example "basic" or "oblique" intent in Romania, or "fault of negligence, of imprudence, or failure to discharge a duty of care or of safety provided for by the law or an administrative act" in France). Most of the infringements referred to in the Annex require an "intent" (where a lower intent is enough, this particularity is specified in the table).

²⁴ In Ireland the intent required by the Prohibition of incitement to hatred act, 1989, is unclear. Indeed, the act covers cases where a person "distributes" material, or "uses words", or have a behaviour that "having regard to all the circumstances are likely to stir up hatred". This means it is not the intent of the person but the likely effect that is judged. However, It is a defence for the accused to prove that he or she had no intent to stir up hatred, by proving that he/she was not aware of the content and that he/she had no reason to suspect that the material or recording was threatening, abusive or insulting. Lack of intent, in other words, is a defence, and therefore intent could be assumed as a requirement.

²⁵ In some countries the distinction between author and accomplice is not formulated with these terms or does not allocate prohibited acts the same way under these categories. However, in practice, principal commission, complicity and instigation are covered.

The notion of accomplice includes or covers in any case aiding and abetting. In some countries, the definition of complicity covers the instigation as well (France, Belgium, Netherlands²⁶, and Ireland²⁷). In one country, the notion of instigation is covered by the definition of the author (Spain²⁸). In the other countries, instigation is separately and expressly punished (Germany, Romania, Greece, Cyprus²⁹, Bulgaria).

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

The first exception is Ireland, where accomplices³⁰ are only punishable for indictable offences³¹. Indictable offences are offences that "*may or must be tried on indictment before a judge and jury*", which is the case in practice for many offences³², but not all. Therefore, these four actions are punishable in relation with most of the infringements mentioned in the annex, including those provided for by the Prohibition of incitement to hatred act, 1989³³, but not in all cases, for example in situation of threatening or insulting behaviours that is not particularly motivated by illegal grounds³⁴. The indictable nature of the offence will be mentioned for each infringement in the Annex below.

The second exception is Spain, where a special media liability regime applies in relation with online contents³⁵. Indeed, the liability of accomplices and of those who have personally or actually favoured the infringement is expressly excluded in felonies and

²⁶ Section 48 of the Dutch penal Code: accomplices are persons who intentionally aid and abet the commission of the serious offence, or persons who intentionally provide opportunity, means or information for the commission of the serious offence.

²⁷ In Ireland there is no notion and definition of "complicity", but there is a provision that punishes aiding, abetting, counselling and procurement (which may be considered as covering the instigation, at least some of the instigator's actions).

²⁸ Art. 28 of the penal Code: those who induce the author to commit the crime and those who co-operate in the commission of the crime by an act without which this crime could not have been committed are defined and liable as principal authors. According to art. 29 of the penal Code, accomplices are those who, not being considered as principal authors, co-operate in carrying out the offence with prior or simultaneous acts.

²⁹ Cyprus punishes more exactly the act of counselling another person to commit an offence (art. 22 of the penal Code).

³⁰ More exactly those who aid, abet, counsel and procure (complicity is not mentioned as such).

³¹ Subsection 7 (1) of the 1997 Criminal Law ACT, <http://www.irishstatutebook.ie/eli/1997/act/14/section/7/enacted/en/html#sec7> (last accessed on 3 June 2016).

³² See "Citizens Information", http://www.citizensinformation.ie/en/justice/criminal_law/criminal_offences/classification_of_crimes_in_criminal_cases.html (last accessed on 3 June 2016).

³³ The act provides for sanctions "on conviction on indictment", see section 6, <http://www.irishstatutebook.ie/eli/1989/act/19/section/6/enacted/en/html#sec6> (last accessed on 3 June 2016).

³⁴ Section 6 of the Criminal Justice (Public Order) Act, 1994, <http://www.irishstatutebook.ie/eli/1994/act/2/enacted/en/html> (last accessed on 3 June 2016).

³⁵ In Ireland there is also a special liability regime in case of broadcasting and distribution of hatred-related images and sounds, but it does not exclude the liability of authors and accomplices. In this regime, are (all potentially) liable (without any imperative order) the person providing the broadcasting service, any person by whom the item is produced or directed, and any person whose words or behaviour in the item are threatening, abusive or insulting (Section 3 of the Prohibition of incitement to hatred act, 1989). Broadcasters can be asked to remove material if

misdeemeanours that are committed using media or supports of mechanical diffusion³⁶. In such case (and therefore in all the cases handled in this report), principal authors are the only ones to be accountable, in a progressive, excluding and subsidiary manner, in the following order³⁷:

- 1º. Those who materially drafted the text or produced the sign concerned and those who induced others to perpetrate the act;
- 2º. The directors of the publication or programme in which it is disseminated;
- 3º. The directors of the printing, broadcasting or distribution company;
- 4º. The directors of the recording, playing or printing company.

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

The third exception is France, where a special press liability regime applies to some online contents, more exactly to infringements considered as "press offences"³⁸ (pointed out in the Annex in this regard). Within the framework of this special liability regime³⁹ (applicable to Internet websites), the "publication director"⁴⁰ is being prosecuted first as he were the author. If there is no publication director, is liable the author, and if there is no author, the producer. Where the publication director is prosecuted, the author may be also prosecuted as accomplice. This special liability regime excludes the liability of legal persons⁴¹.

practicable, and broadcasters, directors and producers have a defence consisting of lacking knowledge of the nature of the material concerned, if they had no intent. This list of stakeholders covers all material acts that might be accomplished by a "traditional" author. Accomplices can be liable in addition since the infringement is indictable and their liability is not excluded.

³⁶ Article 30 of the penal Code.

³⁷ When, for any reason other than extinction of criminal accountability, or for declaration of contempt of court or not residing in Spain, any of the persons included in any of the Sub-Sections of the preceding Section may be prosecuted, proceedings shall be taken against those mentioned in the Sub-Section immediately following (article 30, 3 of the penal Code).

³⁸ Because they are provided for in Law of 29 July 1881 on the freedom of Press.

³⁹ The special liability regime applicable to electronic communication to the public (including websites) is provided for in art. 93-3 of the law n° 82-652 of 29 July 1982 on audio-visual communication (despite the name of the law).

⁴⁰ Any electronic communications editor (even non-professional) must designate a so-called "publication director": art. 6,III, 1 of the law n°2004-575 on the digital economy (called "LCEN").

⁴¹ Article 93-4 of the law n° 82-652 of 29 July 1982.

- **Liability of legal persons**

In five countries out of ten, legal persons might always be penally liable and therefore sanctioned in case of infringement committed by one of their representative and/or committed in their benefit. It is especially the case in Belgium⁴², Germany⁴³, and Romania⁴⁴. In Netherlands, legal persons might also always be liable, but in a similar way to that for natural persons (without particular conditions such as the necessity that the infringement is committed by one representative or in their benefit)⁴⁵.

In a fifth country, namely Greece, legal persons (through their representative) might be declared liable of certain penal infringements, but not in case of hatred-related infringement, and more concretely not in the situations referred to in the table below. However, in relation with hatred-related behaviours that are prohibited by the law 979/1979, legal persons systematically incur administrative sanctions where acts are committed for their benefit or in their name by a natural person acting either individually or as part of an organ of the legal person which it represents⁴⁶.

⁴² Art.5 of the penal Code: any legal person is penally liable of the infringements that are intrinsically tied to its corporate objects or to the defence of its interests, or of the infringements of which concrete facts show that the infringement has been committed on its behalf. (...) Are deemed equivalent to legal persons the following: (1) temporary partnership and joint-ventures; (2) companies referred to in article 2, § 3, of the coordinated laws on commercial companies, as well as societies pending recognition and admission; (3) civil entities that have not taken the form of a commercial company. Cannot be deemed equivalent to legal persons penally liable the following persons: the Belgian Federal State and some of its listed subsections (such as Region, Communities, and Provinces).

l'Etat fédéral, les régions, les communautés, les provinces, [1 les zones de secours,]1 [2 les prézones]2 l'agglomération bruxelloise, les communes, (les zones pluricommunales,) les organes territoriaux intra-communaux, la Commission communautaire française, la Commission communautaire flamande, la Commission communautaire commune et les centres publics d'aide sociale.

⁴³ Section 30 of the Act on Regulatory Offences: Where someone acting (1) as an entity authorised to represent a legal person or as a member of such an entity, (2) as chairman of the executive committee of an association without legal capacity or as a member of such committee, (3) as a partner authorised to represent a partnership with legal capacity, or (4) as the authorised representative with full power of attorney or in a managerial position as proxy-holder or the authorised representative with a commercial power of attorney of a legal person or of an association of persons referred to in numbers 2 or 3, (5) as another person responsible on behalf of the management of the operation or enterprise forming part of a legal person, or of an association of persons referred to in numbers 2 or 3, also covering supervision of the conduct of business or other exercise of controlling powers in a managerial position, has committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person or on the association of persons have been violated, or where the legal person or the association of persons has been enriched or was intended to be enriched, a regulatory fine may be imposed on such person or association.

⁴⁴ Article 135 paragraph 1 of the penal Code: Legal persons shall have liability for offenses committed in the performance of the object of activity of legal entities or in their interest or behalf. Exceptions: State and public authorities.

⁴⁵ Section 51 of the penal Code. The unincorporated company, the partnership, the shipping company and the special purpose fund are considered as equivalent to the legal person.

⁴⁶ Article 4 of Law 979/1979 as amended by act no 4285/2014: (1) If any of the above acts were committed for the benefit or in the name of a legal person or group of legal persons, by a natural person acting either individually or as part of an organ of the legal person which it represents, on this legal person or group of legal persons, then the following administrative sanctions shall be imposed with a Joint Decision of the Minister of Justice, Transparency and Human Rights and of any other competent minister, cumulatively or alternatively, after final submission of the individual to trial: a) a fine of ten thousand (10 000) up to one hundred thousand (100 000) euros, b) exclusion from entitlement to public benefits, subsidies, aid, subsidies or awards of works and services, supplies, advertising and public competitions or competitions held by legal persons of the public sector lasting from one to six months. The administrative

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

In Ireland and Spain⁴⁷, legal persons might also be declared liable of certain penal infringements, but only where the law provides for it. In Ireland, it is for example the case of the Prohibition of incitement to hatred act, 1989⁴⁸, of the Defamation Act 2009, and of the Equal Status Act, 2000. In Spain, it is for example the case of Art. 510 of the penal Code that prohibits *inter alia* incitement to hatred⁴⁹.

In Bulgaria the system is quite the same, since legal persons might in principle be declared liable of the penal infringements expressly referred to in Art. 83a of the Administrative Violations and Sanctions Act⁵⁰.

penalty in (a) will be always imposed, regardless of other penalties. In case of recurrence the penalties in (b) may be increased up to the double. (2) When the lack of supervision or control by a natural person referred to in paragraph 1 made possible the commission of any of the offenses of this Act by a person under its authority for the benefit of the legal person or association of persons, then the legal person or association of persons will be imposed, cumulatively or alternatively, after the final referral under the authority or supervision proceedings, the following administrative sanctions: a) a fine of five thousand (5 000) to fifty thousand (50 000) euro b) provided for in point b of the preceding paragraph, for up to six months. (3) No penalty shall be imposed without prior summons of the legal person or persons to give explanations. The call is communicated at least ten days before the day of the hearing. Moreover, the provisions of paragraphs 1 and 2 of Article 6 of the Administrative Procedure Code shall be applied. (4) The Public Prosecutors shall inform the Minister of Justice, Transparency and Human Rights after the irrevocable referral for cases where there is a natural person involved in the sense of paragraphs 1 and 2 and shall notify the judicial rulings that have been issued. (5) If the act was committed in a radio or TV show, the penalties provided by this Article shall be imposed by the National Radio and Television Council, to whom the file shall be forwarded by the Minister of Justice, Transparency and Human Rights. (6) In case of acquittal of the defendant, the above administrative decisions shall be withdrawn. (7) The preceding paragraphs do not apply to the State, legal entities of public law, public legal persons in the exercise of public authority, and the public international organisations.

⁴⁷ Articles 31 *bis* of the penal Code. The Spanish penal Code is available in Spanish language at the following address http://www.wipo.int/wipolex/en/text.jsp?file_id=379477 (last acceded on 25 may 2016).

⁴⁸ According to Section 7 of the Prohibition of incitement to hatred act, 1989, legal persons (bodies corporate) are held liable (1) if the offence "*is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity*". In such case "*that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence*". In addition, "*where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate*".

⁴⁹ The liability of legal persons is specified in art. 510 bis of the penal Code in relation to infringements punished in article 510 (including public incitement to violence and hatred), and organisations or groups without legal identity are included in this group according to case law. The sanctions that are applicable to legal persons in relation with art. 510 are provided for in article 33, section 7, b to g, as stipulated in art. 66 bis.

⁵⁰ Article 83a of the Administrative Violations and Sanctions Act states that is liable the legal person which has enriched itself or would enrich itself from a crime under Articles 108a, 109, 110 (preparations for terrorism), Articles 142 - 143a, 152(3) item 4, Articles 153, 154a, 155, 155a, 156, 158a, 159 - 159d, 162 (1) and (2), 164 (1), 172a-174, 209 - 212a, 213a, 214, 215, 225c, 227 (1) - (5), 242, 243, 244, 244a, 246 (3), 248a, 250, 252, 253, 254b, 255, 255a, 255b, 256, 278c - 278e, 280, 281, 282, 283, 301 - 307, 307b, 307c, 307d, 308 (3), 319a - 319f, 320 - 321a, 327, 352, 352a, 353b - 353f, 354a - 354c, 356j and 419a of the Criminal Code, as well as from all crimes, committed under orders of or for implementation of a decision of an organised criminal group, when they have been committed by certain listed persons (an individual, authorized to formulate the will of the legal person; OR an individual, representing the legal person; OR an individual, elected to a control or supervisory body of the legal person, OR an employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection

In France, legal persons may be declared liable of all the penal infringements unless a special law excludes their liability⁵¹. But a large part of the infringements relating to hatred are foreseen by Law of 29 July 1881 on the freedom of Press, which precisely excludes such liability⁵².

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

Therefore, the liability of legal persons will be specified in relation with each infringement considered in the Annex below.

Main sanctions⁵³ incurred by legal persons for crimes and misdemeanours (the following outcomes include Greece, where the liability is administrative and not penal) are a fine (Belgium⁵⁴, Germany⁵⁵, Romania⁵⁶, France⁵⁷, Spain⁵⁸, Netherlands⁵⁹, Ireland⁶⁰, Bulgaria⁶¹, Greece⁶²), dissolution (Spain, Belgium except for public persons, Romania, France), the confiscation of specific property (Belgium, France), the prohibition of the exercise of specific activities (Belgium, Spain for max. 5 years, France definitively or for max. 5 years, Romania), the suspension of the

with the performance of such task). In addition, the legal person is also liable where the persons referred to above "have abetted or assisted the commission of the (infringement), as well as when the (prohibited action was) stopped at the stage of attempt".

⁵¹ Article 121-2 of the penal Code. The maximum fine amount is five times higher than the amount foreseen for natural person in the text that describes the behaviour penally sanctioned.

⁵² Liability of legal persons is excluded art. 44 of this law for traditional press, and by art. 93-4 of the law n° 82-652 of 29 July 1982 in relation with online media.

⁵³ This list is not totally exhaustive. Some sanctions incurred in certain countries are not mentioned, such as banking prohibition in France and to enjoy tax or Social Security benefits and incentive in Spain (and Greece, with the possible exclusion from public aids and subsidies).

⁵⁴ Article 7bis of the penal Code.

⁵⁵ Section 17, in conjunction with Section 30, of the Act on Regulatory Offences.

⁵⁶ Articles 135 to 151 of the penal Code.

⁵⁷ Art. 131-37 et seq. of the penal Code.

⁵⁸ Art. 33, 7 of the penal Code.

⁵⁹ In Netherlands sanctions for legal persons are the same sanctions as those applicable to natural persons (Section 51 of the penal Code).

⁶⁰ In Ireland, sanctions for legal persons are defined in the act that organises their liability. Generally, they are the same as those applicable to natural persons. This is the case in the Prohibition of incitement to hatred act, 1989 (Section 7), and in the Defamation Act 2009 (Section 12).

⁶¹ In Bulgaria a financial penalty (up to BGN 1,000,000) is the only one sanction that is foreseen by the Administrative Violations and Sanctions Act, along with the confiscation of the direct or indirect benefit derived by the legal person from the crime (if not subject to return or restitution, and if they are missing or have been expropriated, their BGN equivalent shall be adjudged). However, financial penalties cannot be imposed on states, state bodies and local self-government bodies, as well as on international organisations.

⁶² See footnote n°46.

persons' activities (Spain for max. 5 years), closures of one or several establishments (Belgium, Spain max. 5 years, France definitively or for max. 5 years, Romania), the publication or dissemination of the court decision (Belgium, France, Romania), the prohibition to participate in public procurement procedures (for a term between one and three years in Romania; definitively or for a maximum period of five years in France; for a maximum period of fifteen years in Spain; from one to six months in Greece); the placement under judicial supervision (Romania, France); the prohibition to receive public aids (Spain, France).

- **Liability of intermediaries of the Information Society**

Liability of intermediaries is not handled in this report, but will be studied in the final report. The reason is that the special liability regimes relating to these stakeholders have been created in order to secure their activities, which are necessary to the functioning of the Information Society and involve freedom to trade, in addition to ensure that, in case an infringement is committed, mechanisms are in place in order to bring the infringement to an end and to find perpetrators. The liability and obligations of intermediaries will therefore be studied along with the other procedures that may be followed in order to legally combat online hatred.

Legend:

1. *Countries lines and cells show differences that exist compared with the first line which presents the characteristics of the prohibited behaviour. "Same extent" means "same extent than the first line which presents the characteristics of the prohibited behaviour".*
2. *Where possible and relevant, in blue colour is highlighted what comes in addition to the common definition, and in green colour is highlighted what is missing and therefore restricts the scope of the penal infringement, civil or administrative tort.*
3. *Fine in Germany: the maximum amount of the incurred fine is not mentioned in the criminal provision that criminalises each given behaviour, because it is regulated by a general provision of the criminal Code (Section 40) in relation with natural persons and by Section 30 (2) of the Act on Regulatory Offences in relation with legal persons. Moreover, infringements for which the penal Code does not mention the sanction of fine (and even if the offence is a felony - the difference between felony and misdemeanour is regulated in Section 12 of the penal Code), a fine can be pronounced in the course of the sentencing according to Section 12 (1) of the Implementation Law of the German penal Code. According to Section 40 of the penal Code applicable to natural persons only, (1) fines are imposed in so called daily units. The minimum fine shall consist of five and, unless the law provides otherwise, the maximum shall consist of three hundred and sixty full daily units. (2) The court shall determine the amount of the daily unit taking into consideration the personal and financial circumstances of the offender. In doing so, it shall typically base its calculation on the actual average one-day net income of the offender or the average income he could achieve in one day. A daily unit shall not be set at less than one and not at more than thirty thousand euros. (3) The income of the offender, his assets and other relevant assessment factors may be estimated when setting the amount of a daily unit. (4) The number and amount of the daily units shall be indicated in the decision. According to Section 30 (2) of the Act on Regulatory Offences, regulatory fines incurred by legal persons shall amount in the case of a criminal offence committed with intent, to not more than ten million euros and in the case of a criminal offence committed negligently, to not more than five million euros.*
4. *Fine in Romania: the maximum amount of the incurred fine is not mentioned in the criminal provision because it is regulated by a general article (Art. 61) of the penal Code. According to this provision, (2) the amount of the fine is established in the system of fine-days. The amount for one fine-day ranges from 10 RON (approximately 2.22 euro) and 500 RON (approximately 111 euro), and will be multiplied by the number of fine-days, which ranges from 30 and 400. (3) Courts shall establish the number of fine-days according to the general criteria for customization of sentencing. The amount that corresponds to one fine-day shall be*

calculated on the basis of the financial status of the convicted defendant and their legal obligations towards persons they are supporting. (4) The special thresholds for fine-days range between (a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offense; (b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years; and (c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years. (5) If the committed offense was intended to provide a material gain, and the penalty stipulated by law is only a fine or the court chooses to only sentence to that penalty, the special thresholds for fine-days can be increased by one-third. (6) Increments established by law for mitigating or aggravating circumstances shall apply to the special thresholds for fine-days stipulated at par. (4) and par. (5).

5. *Fine in Spain: Art. 50.2 of the Spanish penal Code states that the fines are imposed according to a day-fine system, unless the law provides otherwise. This system is characterized by two parameters to be distinguished in setting the amount of a fine. Firstly, the extent or duration of the fine, expressed in "days" or "months". Secondly, the amount of each fine day. In response to both the court decision must be adequately motivated.*

- Regarding the amount per day, it must be comprised between 2 € and 400 € for natural persons, and between 30 € and 5 000 € for legal persons. The amount of each fee or daily fine must be determined according to the economic situation of the defendant deducted from its assets, income, and family obligations and other personal circumstances loads (art. 50.5 CP), all at in order to safeguard the principle of equality.

- Regarding the number of days or months, it must be comprised between a minimum and a maximum set out in the provision that describes the penal infringement, expressed in "days" or "months" fine (when determining the minimum and the maximum period of fine, the legislator must take into account Art. 50.3 of the penal Code which states that the minimum length is 10 days and the maximum length is 2 years - or 5 years for legal persons). The court must determine the number of days, in each case, within those limits and according to a general criteria (stated Chapter II of Title III, applicable to imprisonment as well), which imposes to take into account the extenuating circumstances or concurrence of defences, the degree of execution of the crime and participation in it, the gravity of the offense and the personal circumstances of the author. The computation must follow the rules set out in Art. 50.4 of the penal Code, according to which a "month" corresponds to 30 days and a "year" corresponds to 360 days.

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

4.1.1 - Public incitement to violence, hatred or discrimination

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

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

		discrimination is missing but covered (with a lower sanction) by another provision (inciting acts which are likely to cause discrimination is separately punished - see "other particularities").			
France	Prohibited - Art. 24§7 and §8 of the Law of 1881: up to 1 year imprisonment and/or fine up to 45 000 €.	Art.24§7: <i>a priori</i> same extent [1] ("provocation to discrimination, hatred or violence"). The condition does not apply. Art. 24§8: In addition the public incitement to discriminations punished by the penal Code based on person's gender, sexual orientation or identity, or disability is also punished (same penalty and legal basis);	The list is covered. Additional grounds are - the membership or non-membership of an ethnic group, nation, race or religion, in addition to origins (for discrimination, hatred or violence); - the gender, sexual orientation or identity, or disability (only for hatred and violence, and for discriminations sanctioned by the penal Code - see Section 4.2.1).	Same extent [1] (whether through speeches, shouting or threats uttered in public places or meetings, or by written or printed matter, drawings, engravings, paintings, emblems, images or other form of written media, speech or images sold or distributed, offered for sale or displayed in public places or meetings, or by posters or notices displayed for public view, or by any public communication through electronical means).	IN ADDITION, non-public incitement to hatred is penally punished . Art. R.625-7 penal Code - Sanction: 5 th class fine - up to 1 500 €; up to 3 000 € in case of recidivism) - What: the non-public incitement to discrimination, hatred or violence against a person or group of persons; Why: (for discrimination, hatred or violence) because of their origin, membership or non-membership, real or supposed, of a given ethnic group, nation, race or religion; or (for hatred or violence only) because of their gender, sexual orientation, disability. This provision moreover punishes non-public incitement to commit discriminations punished by the penal Code based on gender, sexual orientation or identity and disability (same sanction).
Germany	Mostly prohibited - Section 130 subsection (1) of the penal Code (Incitement to hatred): 3 months to 5 years of imprisonment. Despite it is not mentioned in this provision, a fine between (theoretically) 5 and 10 800 000 € may (alternatively to imprisonment) be pronounced (in practice; 9 600 € is one of the higher financial penalties pronounced for incitement to hatred) [3].	To incite hatred or call for violent or arbitrary measures against a ... (see why"). The condition applies ("in a manner capable of disturbing the public peace"). Therefore incitement to violence is missing but covered by the "call for violence" (which has a broader meaning). Is also punished the call for arbitrary measures. Incitement to discrimination is missing but might be covered as well by the "call for arbitrary measures", where measures are discriminating and in conflict with elementary principles of	Same extent [1] (national, racial, religious group or a group defined by their ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population).	Same extent [1].	In addition, Art. 4 of the Interstate Treaty on the protection of minors (JMStV) prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: content that (3.) incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups.

		<p>humanity (definition of "arbitrary measure according to jurisprudence). Therefore discrimination must be "qualified", for instance where it contains elements of a threat or force (<i>for example, the pure slogan "foreigners out" ("Ausländer raus") is not seen as an arbitrary measure, while the call "Jews out" combined with a reference to the national socialism is considered as such</i>).</p>			
Greece	<p>Prohibited - Art. 1 Law 929/1979 amended by Act n°4285/2014 (3 months to 3 years of imprisonment and fine from 5 000 € to 20 000 €; at least 6 months and a fine if the action has led to the commission of a crime).</p>	<p>The condition applies ("in a manner that compromises public order or poses a threat to life, liberty or physical integrity" of the victims"). It is prohibited to incite, to "cause" or to "induce"; to incite acts or activities which can lead to; discrimination, violence or hatred.</p>	<p>Additional grounds are descent, sexual orientation, gender identity and disability;</p>	<p>Same extent [1] (orally or through the press, the Internet or by any other means or way).</p>	<p>In addition: the intentional incitement, causing or inducement to damages or destruction of material objects with the same grounds and in the manner described in the third and fourth columns is also punished, with the same penalty (including more severity in case it leads to the commission of a crime).</p>
Ireland	<p>Partly prohibited - Prohibition of incitement to hatred act, 1989 (on summary conviction, up to 6 months of imprisonment and/or fine up to £1 000 (1 250 €); on conviction on indictment, up to 2 years of imprisonment and/or fine up to £10 000 (12 500 €).</p>	<p>The condition applies (the conduct is punishable only if contents are "threatening, abusive or insulting"). Ireland does not punish properly the "incitement" (despite the name of the law) but contents that are "intended" or are "likely" to "stir up" hatred (<i>it seems that the scope of the text is wider (intended / likely to); but difficult to apply since "stir up" is an unclear term</i>). Inciting violence and discrimination are missing.</p>	<p>Additional grounds are nationality and membership of the travelling community.</p>	<p>Same extent [1] (publication, distribution or display of written material; use of words, behaviours; distribution, show or play of images or sounds). Using words, behave or display written material is legal in a private residence if it cannot be seen or heard outside; other ways mentioned above are illegal even in private.</p>	<p>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>
Netherlands	<p>Prohibited - Art. 137d of the penal Code - up to 1</p>	<p>137d: publicly encouraging ("aanzetten" - which covers the</p>	<p>137d: national /ethnic origins are missing in the text but</p>	<p>Same extent (1) ("orally, in a scripture or drawing", which</p>	<p>No other particularity.</p>

	year imprisonment or a fine of the 2nd class (max. amount 4 200 €), with an exception for discrimination: up to 6 months imprisonment or a fine of the 3 rd category (max. amount 8 200 €).	notion of "incitement") hatred or discrimination against persons or violence against persons or property.	covered by the term "race". Additional grounds are beliefs, sex, hetero or homosexuality, and bodily, psychological or mental handicap.	in practice includes any ways.	
Romania	Partly prohibited - Article 369 penal Code: imprisonment between 6 months and 3 years or a fine between 400 € and 33 333 € [4].	The condition does not apply. The infringement is punishable where committed "against a category of people" which refers to one person or a group of a certain category. Publicly inciting to violence is missing.	Any ground.	Same extent [1].	Specific provisions of the penal Code do protect religion. Art. 382 (Desecration of places or objects of worship): The desecration of a place or object of worship belonging to a religious denomination which is organized and operates according to the law, shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine. Art. 383 (Desecration of corpses or graves): (1) The theft, removal, destruction or desecration of a corpse or of the ashes resulting from its cremation shall be punishable by no less than 6 months and no more than 3 years of imprisonment; (2) The desecration, by any means, of a grave, of a funeral urn or of a funereal monument shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.
Spain	Prohibited - Art. 510.1 of the penal Code (Law 10/2015): 1 to 4 years of imprisonment and a fine between 6 to 12 month (between 360 € and 144 000 €) [5].	The condition does not apply. Those who publicly directly or indirectly foment, encourage or incite hatred, hostility, discrimination or violence against a group, part of it, or a certain individual	Race and religion are covered by "racist motives, anti-Semitic motives or other motives concerning ideology, religion or beliefs"; national or ethnic origins are covered by "their origins"; Additional grounds are "familiar situation, the ethnic, racial or national belonging of its members" (covering "descent"); sex, sexual identity or orientation, or due to gender motives, illnesses or disabilities. Colour is missing but clearly covered by the other grounds.	Art. 510.3: via the media, the Internet or through IT usage; so that it would be accessible to a high number of people.	No other particularity.

4.1.2 - Making available xenophobic or racist material which incites or promotes hatred or violence

°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.2	Making available to the public xenophobic or racist material which incites hatred (<i>10 countries out of 10</i>) or incites violence (<i>9 countries out of 10</i>) or incites discrimination (<i>fully covered in 8 countries out of 10</i>) or promotes hatred (<i>fully covered in 5 countries out of 10</i>), discrimination (<i>fully covered in 4 countries out of 10</i>), or violence (<i>fully covered in 4 countries out of 10</i>), against a person or a group of persons.	Race, national or ethnic origin, as well as religion (eventually, if used as a pretext for one of the other factors).	Through a computer system.	Intentional conduct, without right.	<p>In principle: author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> - France, Spain: special press or media liability regimes; - France, Cyprus and Greece exclude the penal liability of legal persons (Greece provides however for an administrative liability of legal persons). 	<p>Imprisonment up to 5 years and/or a fine up to 45 000 € - depending on the country.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]) and Spain (up to 144 000 €).</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p>Additional protocol to the Convention on cybercrime.</p> <p>What: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system; racist and xenophobic material means any written material, any image or any other representation of ideas or theories, which advocates [<i>0 country out of 10</i>], promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on ...</p> <p>Why: race, colour [<i>2 countries out of 10 expressly include it; 4 other countries cover it under another terminology</i>], descent [<i>1 country out of 10 expressly include it; 3 other countries cover it under another terminology</i>] or national or ethnic origin, as well as religion (if used as a pretext for any of these factors)</p> <p>http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no</p> <p>Signed and ratified by: Cyprus, France, Germany, Netherland, Romania, Spain</p> <p>Signed but not ratified by: Belgium, Greece</p> <p>Not signed by: Bulgaria, Ireland.</p>

I.2 - Countries' particularities					
Country	Provision, sanction	What	Why	How	Other particularities
Belgium	Partly prohibited through -Art. 21 Moureaux Act, imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000€.	Express ideas that promote illegal hatred - promotion of discrimination and of violence is missing ; Public incitement to violence, hatred or discrimination are covered by Articles 20.1 and 20.2 (<i>line 4.1.1</i>).	Same as Section 4.1.1 therefore same extent [1]. Additional grounds are supposed race, skin colour , and sex , age , sexual preference , civil status , birth ,	Any means , including through a computer system.	No other particularity.

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

	-Art. 20.1 and 20.2° Moureaux Act. - same sanctions <i>[see 4.1.1]</i> .		fortune, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.		
Bulgaria	Partly prohibited through Section 4.1.1 (art. 162 penal Code): 1 to four years imprisonment and a fine from 2 500 € to 5 000 € (BGN 5 000 to 10 000) and public censure.	"Making available" is punished through the notion of "propagation". Therefore making available contents that promote or incite discrimination, violence or hatred is covered by the wider prohibition of propagation of or incitement to discrimination, violence or hatred.	Same as Section 4.1.1 therefore same extent <i>[1]</i> . Religion is missing but handled in another text <i>[see "other particularities" in Section 4.1.1]</i> .	Any means , including through a computer system.	Making available non-publicly is covered.
Cyprus	Prohibited - art. 4 of law 26(III)/2004: up to 5 years imprisonment and/or a fine up to 20 000 pounds (34 000 €).	To, deliberately without right, distribute or in any other way make available xenophobic or racist material which incites or promotes racial differences, hatred or violence. Therefore the notion of "discrimination" is replaced in the penal text by the notion of "racial differences", which does not appear to be exactly the same. However, discrimination is covered, since the law refers to Art. 2 of the Additional Protocol to the Convention on Cybercrime (which includes discrimination), in respect of the definition of xenophobic or racist material.	Same extent as the additional protocol to the Convention. Therefore additional grounds are colour and descent .	Same extent <i>[1]</i> .	Making available non-publicly is covered.
France	Partly prohibited through Section 4.1.1 (art. 24§7 of Law of 1881): up to 1 year imprisonment and/or fine up to 45 000 €). Apology/condoning of violence may be punished through Art. 24 §5, L. 1881 (same sanctions).	Art. 24§7 (see Section 4.1.1): public incitement ("provocation") to discrimination, violence or hatred is covered; Art. 24§5: publicly condoning of wilful attacks on life and the physical integrity of the person, and condoning of sexual assaults are covered; therefore, promotion of discrimination, of violence (forms of violence referred to above where promotion is not considered as condoning, and other forms of violence) and promotion of hatred are missing.	Art. 24§7: same as Section 4.1.1 therefore same extent <i>[1]</i> . Additional grounds are the gender, sexual orientation or identity, or disability . Art. 24§5: any ground therefore wider extent.	Any means , including through a computer system.	No other particularity.
Germany	Prohibited if materials are accessible to a person under 18 years - Section 130, subsection (2) of the penal Code: imprisonment up to three years or a fine between (theoretically) 5 € and 10 800 000 € (In practice pronounced fines are lower than this maximum) <i>[3]</i> .	S.130 (2): dissemination of materials covered in Section 4.1.1 (which incite to hatred against a group, segments of the population or individuals, or which call for violent or arbitrary measures against them) or public display, post, presentation or otherwise making them accessible; or offer, supply or making accessible to a person under eighteen , in addition to other operations such as (inter alia) producing, supplying, or exporting such materials . Incitement to hatred and the call for violence are more generally covered by Section 130 (1) <i>[See Section 4.1.1]</i> but only where public peace is disturbed . Therefore incitement to hatred is covered. Incitement to	Same as Section 4.1.1. Therefore same extent <i>[1]</i> .	Any means , including through a computer system ("Written materials" include any kind of audio-visual media, data storage media, illustrations and other depictions - see section 11(3) of the penal Code). The making available through electronic communication services to persons under	Making available non-publicly is covered if recipients are under 18 years. According to subsection 7 of section 130, the behaviour is not punishable if the materials or the act is meant to

		violence is missing but covered by the "call for violence" (which has a broader meaning). Incitement to discrimination is missing but might be covered as well by the "call for arbitrary measures", where measures are discriminating and in conflict with elementary principles of humanity (discrimination must be "qualified", for instance where it contains elements of a threat or force - see Section 4.1.1). Promotion of hatred is missing. Promotion of violence and of qualified discrimination is missing and might only be covered if the perpetrator exercises a specific influence on another person in terms of a mobilisation (a pure endorsement or approval is not enough).		18 is additionally expressly punished. Offering, supplying or making such materials accessible to a person under eighteen years is also punished.	serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes
Greece	Partly prohibited through Section 4.1.1 (art. 1 Law 929/1979 amended by Act n°4285/2014 (3 months to 3 years of imprisonment and fine from 5 000 € to 20 000 €; at least 6 months and a fine if the action has led to the commission of a crime).	"Promotion" might be punished in several situations through the prohibited actions "cause", "induce", "incites acts or activities which can lead to". Incitement is separately punished. Prohibitions are illegal if the action "compromises public order or poses a threat to life, liberty or physical integrity of such persons". Therefore promotion of discrimination, violence or hatred is covered only if the material induces, causes or incites acts that can lead to discrimination, hatred or violence; in any case, the behaviour is only prohibited if public order is compromised or if there is a threat to life, liberty or physical integrity.	Same as Section 4.1.1 therefore same extent [1]. Additional grounds are sexual orientation, gender identity and disability;	Any means, including through a computer system ("orally or through the press, the Internet or by any other means or way").	No other particularity.
Ireland	Partly prohibited through Section 4.1.1 - Prohibition of incitement to hatred act, 1989 (on summary conviction, up to 6 months of imprisonment and/or fine up to £1 000 (1 200 €); on conviction on indictment, up to 2 years of imprisonment and/or fine up to £12 500.	"Promotion" might be punished in certain situations where the published / distributed content is "intended" or "likely to stir up hatred." However, the content must in addition have a "threatening, abusive or insulting" character. Therefore promotion of discrimination and of violence are missing, promotion of hatred may be covered where it may be assimilated to a content "intended" or "likely to stir up hatred" and where it has a "threatening, abusive or insulting" character"; incitement to discrimination and to violence are missing.	Same as Section 4.1.1 therefore same extent [1]. Additional grounds are nationality and membership of the travelling community.	Any means, including through a computer system (publication, distribution or display of written material; use of words, behaviours; distribution, show or play of images or sounds; Using words, behave or display written material is legal in a private residence if it cannot be seen or heard outside.	Making available non-publicly is covered.
Netherlands	Partly prohibited through: - Section 4.1.1 - Art. 137d of the penal Code: up to 1 year	137d: publicly encouraging ("aanzetten" - which covers the notion of "incitement", and covers promotion in so far as it is objectively effective) hatred or discrimination against	Same as Section 4.1.1 therefore same extent [1]. Additional grounds are beliefs, sex, hetero	Publication covers computer systems.	No other particularity.

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

	<p>imprisonment or a fine of the 2nd category (max. amount 4 200 €), with an exception for discrimination: up to 6 months imprisonment or a fine of the 3rd category (max. amount 8 200 €).</p> <p>-art. 137 e of the penal Code - Imprisonment up to six months or a fine of the 3rd category (up to 8 200 €).</p>	<p>persons or violence against persons or property.</p> <p>137e: knowingly publishing a statement /distributing an object that encourages hatred, discrimination or violence against persons or violence against property.</p> <p>Therefore incitement to hatred, discrimination and violence is covered (137d, e); promotion of discrimination, violence and hatred might be covered by the notion of "encouraging"(137d,e).</p>	<p>or homosexuality, and bodily, psychological or mental handicap.</p>		
Romania	<p>Prohibited - Article 4 § 3 of the Government Emergency Ordinance no. 31/2002 regarding the prohibition of organisations and symbols with a fascist, racist or xenophobic character and the promotion of cult of persons guilty of committing offenses against peace and the human race - imprisonment between 1 and 5 years.</p>	<p>Distribution is also illegal and there is no condition that the material "incites or promotes discrimination, hatred or violence" - Non-inciting or non-promotional materials are only legal if made in the interest of art, science, research, education or for the purpose of debating a public interest.</p>	<p>Flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines. The ordinance does not specifically define racist and xenophobic material; therefore the interpretation can be very broad. Therefore race, colour, descent or national or ethnic origin, as well as religion, might be covered.</p>	<p>Same extent (through a computer system) [1].</p>	<p>No other particularity.</p>
Spain	<p>Prohibited - Art. 510.1 b) penal Code (Law 10/2015): imprisonment sentence of a year to four years and a fine of between 6 up to 12 months (between 360 € and 144 000 €) [5].</p>	<p>The production, elaboration, and possession with the aim of distributing, facilitation the access of third parties, distribution, diffusion or selling:</p> <ul style="list-style-type: none"> -of contents which directly or indirectly foment, encourage or incite hatred, hostility, discrimination or violence against a group, a part of it or a certain individual, -or of any other material which, due to its content, being suitable for directly or indirectly fomenting, encouraging or inciting hatred, hostility, discrimination or violence against a group, part of it, or a certain individual because of his/her belonging to the group <p>Therefore promotion of discrimination, violence and hatred are covered; incitement to discrimination, hatred and violence are covered.</p>	<p>Same as Section 4.1.1 therefore race and religion are covered by "racist motives, anti-Semite motives or other motives concerning ideology, religion or beliefs"; national or ethnic origins are covered by "their origins"; Additional grounds are "familiar situation, the ethnic, racial or national belonging of its members" (covering "descent"); sex, sexual identity or orientation, or due to gender motives, illnesses or disabilities. Colour is missing but clearly covered by the other grounds.</p>	<p>Via the media, the Internet or through IT usage; so that it would be accessible to a high number of people (art. 510.3).</p>	<p>Making available non-publicly is covered.</p>

4.1.3 - Establishing or participating in organisations that promote discrimination, violence or hatred

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

I.2 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	Partly prohibited - Article 22 Moureaux Act: 1 month to 1 year of imprisonment and/or a fine between 50 and 1 000 €.	Is prohibited the fact to be a member of OR to provide assistance to a group promoting discrimination or segregation directed against a person". Therefore establishing is not covered . Incitement to hatred, discrimination and violence are missing ; promotion of violence and hatred is missing .	The list is covered (national or ethnic origins are missing but covered by other notions such as "nationality", "the national or the ethnical ancestry"; religious beliefs are included). Additional grounds are: supposed race, skin colour , and (following the Constitution, two Acts of 10 th May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins .	Same extent [1] .	No other particularity.
Bulgaria	Prohibited - Art. 162 (3) penal Code: imprisonment for 1 to 6 years and a fine from BGN 10 000 to 30 000 (5 000 to 15 000 €) and by public censure; (4) imprisonment for up to 3 years and public censure.	(3) A person who forms or leads an organisation or group which has set itself the objective of committing acts referred to Section 4.1.1 rel. to Bulgaria (therefore promotion - through the wider term of propagation- and incitement to discrimination, hatred or violence are covered) and acts of violence against a person or his/her property for illegal hatred reasons or systematically allows the performance of such acts; (4) A person who is a member of such an organisation or group.	The list is covered except religion ("race nationality, ethnic origins"). Religion or political convictions are also covered but only in relation with acts of violence, and not in relation with incitement or promotion to hatred, discrimination or violence .	Same extent [1] .	No other particularity.
Cyprus	Partly prohibited - Article 2A (2) of the law 12/1967: imprisonment up to 2 years or fine up to 1 700 € or both.	Establishing or participating in organisations that promote propaganda aiming at racial discrimination. Therefore promotion and incitement to discrimination seem to be covered. On the opposite incitement and promotion of violence and hatred are not covered .	Racial discrimination. Refers to the meaning of the International Convention on the elimination of all forms of racial discrimination (therefore religion is missing and colour and descent are additionally covered).	Same extent [1] .	No other particularity.
France	Not penally sanctioned but disband is partly organised - - Art. L212-1 Internal security Code - Sanction: disband by decree of the Council of Ministers). -Art. 450-1 of the penal Code (criminal association) - up to 10 years of imprisonment and 150 000 € of fine.	- "any associations or groups of people: (...) that, either incite to discrimination, hatred or violence against a person or group of persons, or disseminate ideas or theories (which is wider than promotion)" which attempt to justify or encourage such discrimination, hatred or violence". -Art. 450-1 punishes the participation in a criminal association which is defined as a group established with the aim of preparing one or several infringements punished by at least 5 years of imprisonment (therefore not applicable to incitement to hatred, which is lower	The list is covered (because of their origin, membership or non-membership of a given ethnic group, nation, race or religion).	Same extent [1] .	No other particularity.

		<p>punished).</p> <p>Therefore establishing or participating in such associations is not especially punished. Other elements are covered.</p>			
Germany	<p>Prohibited - Section 129 of the penal Code (forming criminal organisations): imprisonment up to five years or a fine [3].</p>	<p>Whoever forms an organisation the aims or activities of which are directed at the commission of offences or whosoever participates in such an organisation as a member, recruits members or supporters for it or supports it. Therefore incitement to hatred is covered, as well as incitement to violence (see Sections 4.1.1 and 4.1.2). Incitement to discrimination is missing but might be covered as well by the "call for arbitrary measures", where measures are discriminating and in conflict with elementary principles of humanity (or "qualified" - see Section 4.1.1). Promotion of hatred is missing. Promotion of violence and of qualified discrimination is missing and might only be covered if the perpetrator exercises a specific influence in terms of a mobilisation see Section 4.1.2).</p>	<p>Same grounds as Sections 4.1.1 and 4.1.2, therefore same extent [1].</p>	<p>Same extent [1].</p>	<p>No other particularity.</p>
Greece	<p>Partly prohibited (Art. 1 (4) Law 929/1979 amended by Act n°4285/2014: 3 months to 3 years of imprisonment and fine from 5 000 to 20 000 €).</p>	<p>Whoever establishes or participates in an organisation or group of any kind that systematically seeks to carry out acts described in Section 4.1.1 above.</p> <p>Therefore a systematic seeking is required; promotion of discrimination, violence or hatred is covered if the material induces, causes or incites acts that can lead to discrimination, hatred or violence; in any case, the behaviour is only prohibited if public order is compromised or if there is a threat to life, liberty or physical integrity.</p>	<p>The list is covered. Additional grounds are colour, descent, sexual orientation, gender identity or disability.</p>	<p>Same extent [1].</p>	<p>No other particularity.</p>
Ireland	<p>Not prohibited.</p>	-	-	-	-
Netherlands	<p>Partly prohibited.</p> <p>-Art. 137f penal Code - imprisonment up to 3 months or a fine of the 2nd category (4 200 €).</p> <p>-Art. 137c, d and e of the penal Code, §2 - - imprisonment up to 2 years or a fine of the 4th category (20 500 €).</p>	<p>-Art. 137f: any person who takes part in, or who extends financial or other material support to activities, aimed at discrimination against persons because of their ... (see "Why").</p> <p>-137c,d & e: if the offence (c: insulting statement about a group of persons because of their...; d: encouraging hatred, discrimination or violence against persons or violence against property because of their...; e: publishing/distributing a statement or object that encourages hatred violence or discrimination for the same grounds) is committed by a person who makes a profession or habit of it or by two or more persons in</p>	<p>The list is partly covered, national and ethnic origins are missing (only "race" and "religion" are mentioned). Additional grounds are colour, beliefs, gender, hetero- or homosexual orientation or physical, mental or intellectual disability.</p>	<p>Same extent [1].</p>	<p>No other particularity.</p>

		concert. Therefore establishing is missing; participating is covered in relation with incitement and might be covered in relation with promotion (of violence, hatred and discrimination) - (see 4.1.2).			
Romania	<p>Prohibited</p> <p>-Article 3 of Government Emergency Ordinance no. 31/2002 - between 3 to 10 years of imprisonment and denial of some rights.</p> <p>- Article 3 of Law 14/2003 on political parties - sanction: dissolution by decision of the Constitutional Court.</p>	<p>- Art.3 GEO 31/2002: initiating or establishing an organisation with a fascist, racist or xenophobic character or adhering or supporting, in any way, such a group is a crime.</p> <p>- Art.3 of Law 14/2003: it is forbidden to establish a party which violates Article 30 (7) of the Constitution. (art. 30 §7 of the Constitution: "Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law".</p> <p>Therefore promotion and incitement to hatred, violence or discrimination should be covered by this very broad formulation (see in conjunction with the column on the right).</p>	<p>The list is covered and additional grounds are included:</p> <p>-GEO 31/2002: refers to "flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promotes fascist, racist or xenophobic ideas, conceptions or doctrines", which are not more precisely defined, therefore the interpretation can be very broad.</p> <p>-Government Ordinance 137/2000 defines in Article 2 discrimination as any difference/distinction, exclusion or preference on basis of race, nationality, ethnicity, language, religion, social category, conviction, sex, sexual orientation, age, handicap, non-transmissible chronic disease, HIV infection, belonging to a disadvantaged category, as well as any criterion which would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by law, in the politic, economic, social and cultural field or in any other field of the public life may be seen as prohibited behaviour.</p>	Same extent [1].	No other particularity.
Spain	<p>Prohibited - Art. 515.4 of the penal Code (sanctions: Art. 517): imprisonment of 1 to 3 years (active members) or 2 to 4 years (founders, directors and chairpersons) and a fine of 12 to 24 months (between 720 € and 288 000 €).</p> <p>Art. 514 of the penal Code: imprisonment of 1 to 3 years and a fine of 12 to 24 months (720 € and 288 000 €) [5].</p>	<p>Art. 515.4: are punishable unlawful associations that encourage, promote or incite directly or indirectly to hatred, hostility, discrimination or violence against persons, groups or associations because of their ... (see why).</p> <p>Art 514: the promoters or directors of any meeting or demonstration held in order to commit an offence, who have not tried to prevent by all means at their disposal this circumstance.</p>	<p>515.4: the list is covered (membership of its members or any of them to an ethnic group, race or nation; religion). Additional grounds are ideology, beliefs, sex, sexual orientation, family situation, illness or disability.</p> <p>514: any ground.</p>	Same extent [1].	No other particularity.

4.1.4 - Publicly insulting persons for illegal hatred relating reasons

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/European basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.4	Publicly insulting persons by reason of their (<i>see "Why"</i>) <i>Fully prohibited or covered in 8 countries out of 10; 1 additional country does include the ground of "nationality" only if the if the insult exposes the victim to "contempt, hatred or ridicule"; 1 additional country requires an intent to provoke a breach of the peace or to be reckless as to whether a breach of the peace may be occasioned.</i>	Race, national ethnic origin or (if used as a pretext for any of these factors) religion.	Any way (<i>only through a computer system, in 1 country, in relation with the grounds of nationality, colour and descent</i>).	Intentional conduct .	<p>In principle: author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p>Exceptions: - Ireland: accomplices; - France, Spain: special press or media liability regimes; - Cyprus, Greece, France, Spain, Bulgaria and Ireland exclude the liability of legal persons.</p>	<p>Imprisonment up to 1 years (5 years in two countries if other conditions are met) and/or a fine up to 22 500 € (34 000 in one country if other conditions are met) - depending on the country.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 168 000 €).</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p>Additional protocol to the Convention on cybercrime, Article 5 – Racist and xenophobic motivated insult</p> <p>1 (...) insulting publicly, <i>through a computer system</i>, (i) persons for the reason that they belong to a group distinguished by race, <i>colour, descent</i> or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.</p> <p>2 A Party may either: (a) require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to <i>hatred, contempt or ridicule</i>; or (b) reserve the right not to apply, in whole or in part, paragraph 1 of this article.</p> <p>http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no</p> <p>Signed and ratified by: Cyprus, France, Germany, Netherland, Romania, Spain Signed but not ratified by: Belgium, Greece Not signed by: Bulgaria, Ireland.</p> <p>International Convention on the elimination of all forms of racial discrimination</p> <p>http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx - Signature + ratification or accession (http://indicators.ohchr.org/): all studied countries.</p>

I.4 - Countries' particularities

Country	Provisions, sanctions	What	Why	How	Other particularities
Belgium	<p>Prohibited.</p> <ul style="list-style-type: none"> - Art. 448 of the penal Code: imprisonment between 8 days and 2 months and/or a fine between 26 € and 500 €. - Art. 453bis of the penal Code: the minimum penalty set up in Art. 448 might be doubled, where one of the motives to carry out the infringement is hatred, contempt or hostility directed towards a person on the basis of one of the ground referred to in the third column. - Might also prohibited in certain situations by applying provisions referred to Sections 4.1.1 and 4.1.2. 	<p>Art. 448: (1) to insult a person either with facts, or in writing, images or emblems; (2) to verbally insult a person in a position of public authority, by reason of his position or duties.</p>	<p>Any ground.</p> <p>Higher sanction if the motive is one of the following: alleged race; skin colour; ancestry; national or ethnic origin; nationality, gender; sexual preference; civil status; birth; age; fortune; religious; political; trade-union or philosophical beliefs; language; current or future state of health; disability; physical or genetic characteristics; and social origins.</p>	<p>Public meetings or places; OR in the presence of several individuals in a non-public place opened to a certain number of people who are granted to access it or to meet there; OR in any place in the presence of both the offended person and witnesses; OR in writing printed or not, images or emblems displayed, distributed or sold, offered for sale or exposed to public view; OR by writing not made publics but addressed or communicated to several persons (art. 444). Includes electronic contents.</p>	<p>Prosecution: Art.450 - insult can only be prosecuted on the basis of a complaint of the victim.</p>
Bulgaria	<p>Covered by the general provisions relating to insult - Art. 146 of the penal Code: (1) fine between 500 € to 1500 € (BGN 1000 and 3000) and eventually public censure; (2) if the insulted person has responded at once with an insult, the court may exempt both of them from punishment.</p> <p>Art. 148 of the penal Code: fine between 1 500 € and 5 000 € and public censure. §(2) of Article 146 also apply here.</p>	<p>Art. 146: to say or do something degrading to the honour and dignity of another person in the presence of the latter is an insult.</p> <p>Art. 148: insult of and by an official or a representative of the public during or in connection with the fulfilment of his duties or function.</p>	<p>Any ground.</p> <p>If insulting words and / or actions are motivated by hatred, and this is proved in court, the offender the motive may be accepted as an aggravating circumstance (this is not based on a legal text but on a</p>	<p>Art.146: any means but the insulted person must be present. This is applicable to online contents.</p> <p>Art.148: insult must be inflicted publicly and spread through printed matter or in some other way.</p>	<p>Prosecution: an insult can only be prosecuted on the basis of a complaint of the victim.</p>

			courts' practice).		
Cyprus	<p>Mostly covered</p> <ul style="list-style-type: none"> - Article 2A (c) of the law 12/1967: up to 1 years of imprisonment or fine of 500 pounds (850 €) or both. - Art. 6 of law 26(III)/2004: up to 5 years imprisonment or a fine up to 20 000 pounds (34 000 €). - May also be prohibited through the general provisions relating to insult - Art. 99 of the penal Code: imprisonment up to 1 month and/or a fine not exceeding 75 pounds (128 €). 	<p>Art. 2A (c): publicly express ideas which insult persons by reason of their ... [see "Why"]</p> <p>Art. 6 of law 2004: racist and xenophobic insult with an effect that the insulted person is exposed to hatred, contempt or ridicule.</p> <p>Art. 99: to insult another in a way that may result in an attack against a person who is present.</p>	<p>Art. 2A (c): racial or ethnic origin or religion (national origins are missing).</p> <p>Art. 6 L2004: the list is covered; colour and descent are in addition covered.</p> <p>Art. 99: Any ground.</p>	<p>Art. 2A (c): same extent [1] (orally or in writing or by the press or by the use of images or in any other way).</p> <p>Art. 6 of law 2004: through a computer system</p> <p>Art. 99: in a public place or in a place that is not public in such a manner or under conditions that may be heard by any person in a public place.</p>	No other particularity.
France	<p>Prohibited</p> <ul style="list-style-type: none"> - Art. 33§2 L 1881: fine up to 12 000 €. - Art. 33 L 1881: imprisonment up to 6 months and a fine up to 22 500 €. 	<p>Art. 29 L. 1881: an insult is any offensive expression, term of contempt or invective, which does not include any attribution of a fact.</p> <p>Art.33 §2: an insult committed against a citizen, if it has not followed a provocation; or committed against certain institutions (for ex. courts, army, and public administration) or certain persons (for ex. the President of the Republic, a public agent or a jury).</p> <p>Art.33 §3, §4: an insult committed against a person or group of persons for illegal grounds (see "why").</p>	<p>Art.33 §2: any ground.</p> <p>Art.33 §3, §4: the list is covered. Additional grounds are (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.</p>	<p>Same extent [1]. (means set forth in Article 23 of the same law - see <i>Section 4.1.1</i>).</p>	<p>Non-public insult is also punished (R624-4 penal Code - 4th class contravention - 750 € fine - common liability regime) - What: non-public insult directed towards a person or group of persons; Why: same grounds but "real or supposed" is added to "membership or non-membership to a given ...".</p> <p>Prosecution: Art. 48 L 1881: in case of insult committed against citizens, the victim must fill a complaint in order to enable the prosecution (excluding the case where it is committed for one of the illegal grounds described in Art. 33§3 and §4, where any person feeling insulted can fill a complaint - see Cass. crim., 12 Sept. 2000, available at https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007587343).</p>

Germany	<p>Covered by the general provisions relating to insult and, partly, by other more specific provisions.</p> <p>Section 185 of the penal Code: imprisonment up to one years or a fine (up to 2 years or a fine if the insult is committed by means of an assault) [3].</p> <p>Section 130 of the penal Code: imprisonment from 3 months to 5 years (which may be turned into a fine [3]).</p> <p>Section 130 (2) of the penal Code: imprisonment up to 3 years or a fine [3].</p>	<p>S. 185: insult committed against a person or a group consisting of a limited number of persons that is clearly defined (protects the personal honor). Basic rights such as the freedom of speech and the artistic freedom have to be taken into account within the interpretation of the provision.</p> <p>S.130: assaulting the human dignity of others by insulting, maliciously maligning a group, segments of the population or individuals, in a manner capable of disturbing the public peace.</p> <p>S.130 (2): making available written materials which assault the human dignity of such a group or segment of the population by insulting, maliciously maligning or defaming them (not punishable if meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes).</p>	<p>185: any ground.</p> <p>130 and 130 (2): the list is covered (including the belonging to a national group).</p>	<p>130: same extent [1].</p> <p>130 (2): any means [see section 4.1.2 for details].</p>	<p>Section 199 (Mutual insults): if an insult is immediately reciprocated the court may order a discharge for one or both of the offenders.</p> <p>Section 194 (Request to prosecute): (1) an insult may only be prosecuted upon request, unless (in case of dissemination of "written materials" - see "How" line 4.1.2-or presentation in a meeting or by broadcast) if the victim was persecuted as a member of a group under the National Socialist or another authoritarian regime, if this group is a part of the population and the insult is connected to this persecution (in that case a request is not required). The offence may not be prosecuted ex officio if the victim objects. The objection may not be withdrawn. (...).</p> <p>In addition, Art. 4 of the Interstate Treaty on the protection of minors (JMStv) prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: content that (3) incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups.</p>
Greece	<p>Covered by the general provisions relating to insult</p> <p>- art. 361 of the penal Code: imprisonment up to 1 year or/and</p>	<p>Art. 361: to injure another's reputation.</p> <p>Art. 361 A: to commit an insult through an act if it was unprovoked by the victim.</p>	<p>Art. 361, 361A: any ground.</p>	<p>Art. 361: any means including the Internet ("by words or by deeds or by any other</p>	<p>Art. 308 § 3 Penal Code (applicable to art. 361): the perpetrator may be acquitted if he carried out the act because of his frustration that was</p>

	<p>pecuniary penalty; (2) if the injury to reputation is not severe, considering the circumstances and the person injured, the offender shall be punished by jailing or fine; (3) The provision of § 3 of Article 308 apply here [see "other particularities"].</p> <p>- art. 361 A of the penal Code: imprisonment of at least 3 months; imprisonment of at least 6 months if committed by two or more persons.</p>			means").	<p>caused by a previous act committed by the victim against him or before him and which was particularly cruel or brutal.</p> <p>Prosecution: insult can only be prosecuted if there is no criminal complaint by the victim (unless the injured party is a public official [police officer, port officer, or fire and health officer] and the criminal act took place in the exercise of his duties).</p>
Ireland	<p>Partly covered by the general provisions relating to insult - Section 6 of criminal justice (Public Order) act 1994, up to 3 months imprisonment and/or fine up to £ 500 (625 €) - summary conviction.</p>	<p>Public use or engagement in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.</p>	Any ground.	Same extent [1].	No other particularity.
Netherlands	<p>Prohibited</p> <p>- Section 137 c of the penal Code: imprisonment up to 1 year or a fine of the 3rd category (up to 8 200 €).</p> <p>- Section 137 e of the penal Code - imprisonment up to six months or a fine of the 3rd category (up to 8 200 €).</p> <p>- Section 137 c, e: sanctions are increased if the offence is committed by habit or profession or by several persons - see Section 4.1.3.</p> <p>- Section 266: imprisonment up to three months or a fine of the 2nd category (up to 4 200 €).</p> <p>- Section 271: imprisonment up to 3 months or a fine of the 2nd category.</p>	<p>S.137c: to make an insulting statement about a group of persons because of their... [see "why"].</p> <p>S.137e: (1) to make public (for any reason other than the provision of factual information) a statement which the publisher knows or should reasonably suspect to be insulting to a group of person because of their [see "why"]...; (2) to send or distribute, without request, an object which the author knows or should reasonably suspect to contain such a statement to another person, or has such object in store for public disclosure or distribution.</p> <p>Therefore the insult directed against a single person cannot be punished under 137 c and e.</p> <p>S.266: (1) any insult, which is not of a slanderous or libellous nature [see Section 4.1.5], intentionally expressed, shall constitute simple defamation. (2) Acts which are intended to express an opinion about the protection of public interests and which are not at the same time designed to cause any more offence or cause offence in any other way than follows from that intent, shall not be punishable as simple defamation.</p> <p>S.271: (1) any person who distributes, publicly displays or posts, or has in store to be distributed, publicly</p>	<p>137c and e: same as Section 4.1.1 - Therefore national and ethnic origins are missing in the text but covered in practice by the term "race"; religion is included; Additional grounds are beliefs, sex, hetero or homosexuality, and bodily, psychological or mental handicap.</p> <p>266: Any ground.</p> <p>271: Any ground.</p>	<p>137c: same extent [1]. (orally, in a scripture or drawing", which in practice includes any means).</p> <p>266: expressed either in public verbally or in writing or by means of an image, or verbally against a person in his presence or by other acts</p> <p>271: Any means..</p>	<p>Regarding religion specifically, in the spirit of 2008/913/JHA, a Court did not punish an insulting speech that addressed a religion. Since the speech addressed only the religion and not its followers, and the provision specifically speaks of "persons" the feelings of these persons about this speech alone were not enough to fulfil the criteria for 137c (High Court, March 2009 (HR 10 march 2009 nr 01509/07, ECLI:NL:HR:2009:BF0655, See http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2009:BF0655))</p> <p>Prosecution: defamation (Sections 269, 270 - in rel. with Section 266) or the serious offence (Section 271 (4)) shall be prosecuted only on complaint filed by the person against whom the serious offence has been committed (or some listed relatives if the person is deceased), except where it is made in regard of (1) the</p>

		<p>displayed or posted, written matter or an image whose contents are insulting (...) if he knows or has serious reason to suspect that the written matter or the image contains such; (2) Any person who, with the same knowledge or reason to suspect such, publicly utters the contents of such written matter.</p> <p>Concerning insults, a three step test was developed by courts, according to which the incriminated speech or content is considered insulting if (1) it is of an insulting nature, (2) the context does not take away the insulting character, and (3) where the context does take away the insulting character, the speech or content is not otherwise unnecessarily grievous.</p>			<p>public authorities, a public body or a public institution; or (2) a civil servant during or in connection with the lawful performance of his office.</p>
Romania	<p>Covered - Section V, Article 15 of the Government Ordinance no. 137/2002 on preventing and sanctioning all forms of discrimination - contravention, fine between 1 000 to 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person and with a fine between 2 000 to 100 000 RON (approximately 444 to 22 222 €) if it discriminates a group of people or a community.</p> <p>A civil action might also be based on Art. 253 of the Civil Code, which introduces tort remedies in case of personality rights violations such as the right to dignity, and on Art. 72 of the Civil Code which enshrines the right to dignity.</p>	<p>Art.15 (right to dignity): any publicly expressed behaviour with a nationalist-chauvinist propaganda character, instigating to racial or nationalistic hatred or if that behaviour has the scope or aims at affecting dignity or creating a hostile, degrading, humiliating, offensive or an environment of intimidation targeted against a person, a group of people or community and it is connected to ... [see "Why"].</p>	<p>Art.15: the list is covered (race, ethnicity, religion, nationality). Additional grounds are belonging to a specific social or unprivileged category; conviction, sex or sexual orientation</p> <p>Art.253, 72: any ground.</p>	Same extent [1].	No other particularity.
Spain	<p>Covered - Art. 208 and 209 of the penal Code - fine from 6 to 14 months (between 360 € and 168 000 € [5]) if perpetrated with publicity; fine from 3 to 7 months (between 180 € and 84 000 € [5]) otherwise.</p>	<p>Art. 208: an injury is the action or expression that harms the dignity of another person, undermining his or her reputation or attacking his or her self-esteem.</p> <p><i>Only injury that, due to its nature, effects and circumstances, is considered serious by the public at large, shall be deemed to constitute a felony (without prejudice to Art. 173, §4, which punishes non-serious injury directed against persons bound to the author by certain emotional relation).</i></p> <p>Injury consisting of attributing acts to another shall not be deemed serious, except when this has been carried</p>	Any ground.	Same extent [1].	No other particularity.

		<p>out knowingly of the falsehood thereof or with recklessly disregards of the truth.</p> <p>Exception: the accused of an insult shall be exempt from liability by proving the truth of the allegations when they are directed against public officials on facts concerning the performance of their duties or referred to the commission of administrative offenses (art. 210 of the penal Code).</p>			
--	--	--	--	--	--

4.1.5 - Public defamation

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

I.2 - Countries' particularities

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

			convictions, physical or genetic characteristics or social origin.	or not, images or emblems displayed, distributed or sold, offered for sale or exposed to public view; OR by writing not made publics but addressed or communicated to several persons).	
Bulgaria	<p>Prohibited.</p> <p>Art. 147 of the penal Code: fine from 1 500 € to 3 500 €, and public censure.</p> <p>Art. 148 (2) of the penal Code: fine between BGN 5 000 to 15 000 (2 500 € and 7 500 €) and public censure).</p>	<p>Art. 147: (1) to make public a disgraceful fact about someone or ascribes to him a crime is a defamation. (2) The perpetrator is not punished if the truth of the divulged circumstances or of the ascribed crimes is proved.</p> <p>Art 148 (2): defamation or slander from which serious consequences have set in, of and by an official or a representative of the public during or in connection with the fulfilment of his duties or function.</p>	<p>Any ground.</p> <p>If insulting words and / or actions are motivated by hatred, and this is proved in court, the offender the motive may be accepted as an aggravating circumstance. (this is not based on a legal text but on a courts' practice).</p>	<p>Art.147: any means</p> <p>Art.148 (2): defamation must be inflicted publicly and spread through printed matter or in some other way.</p>	<p>Prosecution: defamation can only be prosecuted on the basis of a complaint of the victim.</p>
Cyprus	<p>Prohibited, but not penally sanctioned (civil tort). Art. 17 of Cap 148.</p> <p>Defamation and slander are not punished under criminal law in Cyprus. Nonetheless, tort law applies (civil liability on the grounds of Articles of Cap 148). Pursuant to Article 17 of Cap 148.</p>	<p>(17) - (1) defamation consists of a publication by any person, which</p> <p>(A) imputes to any other person a crime,</p> <p>(B) imputes to any other person misconduct in any public office or,</p> <p>(C) naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office,</p> <p>(D) or is likely to expose another person to general hatred, contempt or ridicule or,</p> <p>(E) is likely to cause any other person to be shunned or avoided by other persons.</p>	Any ground.	By means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy.	No other particularity.
France	<p>Prohibited -</p> <p>Art. 29 L 1881: fine up to 12 000€ (art.32L1881).</p> <p>Art. 30 L 1881: fine up to 45 000 € if committed against certain institutions (for ex. courts, army, and public administration) or certain persons (for</p>	<p>Art. 29: defamation is any allegation or attribution of a fact which touch upon the honour or the reputation (consideration) of the person of the entity (corps) to which the fact is attributed. Direct publication or reproduction of</p>	<p>Art. 29: Any ground.</p> <p>Art. 32: Because of their origin, membership or</p>	<p>Art.29, Art.32: any means (means set forth in Article 23 of the law -see <i>Section 4.1.1 for details</i>).</p>	<p>Non-public defamation is also punished - Art. R624-3 penal Code, first class contravention: 750 € of fee (common liability regime) - What: non-public defamation of a</p>

	<p>ex. the President of the Republic, a public agent or a jury).</p> <p>Art. 32 L 1881: up to 1 year of imprisonment and/or 45 000 € of fine. In both cases, display or dissemination of the Court decision may be pronounced in addition.</p>	<p>this allegation or attribution is punishable, even where it is expressed in a way that leaves room for doubt or where it is directed at a person or entity (corps) not expressly named, but identifiable by the terms used in the concerned speeches, cries, threats, writings and prints, posters and notices.</p> <p>Art. 32: defamation towards a person or group of persons.</p> <p>Art.35: the truth of defamatory facts may always be proven, unless where the allegations concern private life (and are not related to a rape or sexual assault committed against a minor, or to an infringement of endangering of minors). For the purposes of his defence, the accused can produce information coming from a breach of the secrecy of the investigation or of the inquiry, or from a breach of any other professional secrecy, if these elements are capable of establishing his good faith or the truth of defamatory facts. In such a situation, the accused cannot be prosecuted for handling confidential information. In addition, despite the law does not provide for it, French courts consider that the truth of the defamatory act cannot be proven in case of defamation for illegal motivation (see for example Cass. crim. 11/07/1972, Bull. n° 236, and Cass. crim. 16/03/2004, appeal n° 03-82.828⁶³).</p>	<p>non-membership of a given ethnic group, nation, race or religion, gender, sexual orientation or identity, disability.</p>		<p>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>Prosecution: Art. 48 L 1881: In case of defamation committed against citizens, the victim must fill a complaint in order to enable the prosecution (excluding the case where it is committed for one of the illegal grounds described in Art. 32, where any person feeling defamed can fill a complaint - see Cass. crim., 12 Sept. 2000, available at https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007587343).</p>
Germany	<p>Prohibited -</p> <p>- Section 186 of the penal Code: imprisonment up to 2 years or a fine [3] where committed publicly or through the dissemination of written materials as defined in section 11(3) (<i>see line 4.1.2, "How"</i>). Imprisonment up to 1 year or a fine [3] otherwise.</p>	<p>Section 186 (Defamation): whosoever asserts or disseminates a fact related to another person which may defame him or negatively affect public opinion about him, unless this fact can be proven to be true.</p> <p>Section 187 (Intentional defamation): whosoever intentionally and knowingly asserts</p>	<p>Any ground.</p>	<p>186: any means. Higher sanctions are incurred where the offence is committed publicly or through the dissemination of written materials as</p>	<p>In addition, Section 4 of the Interstate Treaty on the protection of minors (JMStV) prohibits the following content in electronic information and communication media, 1. without prejudice to any liability under the German Criminal</p>

⁶³ These latter court cases are referred to in Sylvie Menotti, "La preuve de la vérité du fait diffamatoire", Court of Cassation, report 2004,I, C, available at https://www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2004_173/deuxieme_partie_tudes_documents_176/tudes_theme_verite_178/fait_diffamatoire_6395.html (last acceded on 15 July 2016).

	<p>- Section 187 of the penal Code: imprisonment up to 5 years or a fine [3] where committed publicly or through the dissemination of written materials as defined in section 11(3) (see line 4.1.2, "How"). Imprisonment up to 2 years or a fine [3] otherwise.</p>	<p>or disseminates an untrue fact related to another person, which may defame him or negatively affect public opinion about him or endanger his creditworthiness.</p>		<p>defined in section 11(3) (see Section 4.1.2, "How").</p> <p>187: any means. Higher sanctions are incurred where the offence is committed publicly, in a meeting or through the dissemination of written materials as defined in section 11(3) (see Section 4.1.2, "How").</p>	<p>Code: content that (3.) incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups.</p> <p>Prosecution - Section 194 (Request to prosecute): (1) An insult may only be prosecuted upon request, unless (in case of dissemination of "written materials" -see "How" line 4.1.2-or presentation in a meeting or by broadcast) if the victim was persecuted as a member of a group under the National Socialist or another authoritarian regime, if this group is a part of the population and the insult is connected to this persecution (in that case a request is not required). The offence may not be prosecuted ex officio if the victim objects. The objection may not be withdrawn. (...).</p>
Greece	<p>Prohibited.</p> <p>Article 362 of the penal Code (defamation): imprisonment up to 2 years or/and a pecuniary penalty.</p> <p>Article 363 of the penal Code (aggravated defamation [libel]): imprisonment for not less than 3 months, and, in addition, a pecuniary penalty may be imposed and deprivation of civil rights under Article 63 may be decreed.</p>	<p>Art. 362: one who asserts or disseminates information before a third party concerning another which may damage his character or reputation.</p> <p>Article 363: if in a case under Article 362, the information is false and the offender was aware of the falsity thereof.</p> <p>Article 366 of the penal Code: if the information described under Article 362 is true, the act shall not be punished, but proof of truth shall not be admitted if the information concerns solely family or personal relationships which do not</p>	Any ground.	<p>362: by any means.</p> <p>363: any means.</p>	<p>Article 367 of the penal Code: unless it constitutes the essential elements of an offense under Art. 363 or unless an intent to insult is apparent from the circumstances, are not unjustified the disapproving criticisms of scientific, artistic or occupational developments, or such criticisms which appear in a public document issued by an authority concerning the activities of such authority, or such criticisms for the purpose of fulfilling lawful</p>

		affect the public interest and if the assertion or dissemination was done malevolently.			<p>duties, the exercise of lawful authority or protecting a right or some other justified interest, or such criticisms in similar cases.</p> <p>Prosecution: defamation can only be prosecuted if there is no criminal complaint by the victim (unless the injured party is a public official [police officer, port officer, or fire and health officer] and the criminal act took place in the exercise of his duties).</p>
Ireland	<p>Prohibited - Civil tort, penal offence only if case of falseness - Defamation act of 2009.</p> <p>- Section 6: action for damages, as a civil tort (Sections 29, 31); (5) the tort of defamation is actionable without proof of special damage.</p> <p>- Section 8: imprisonment up to 6 months or/and fine up to 3 000 € on summary conviction; imprisonment up to 5 years or/and fine up to 50 000 € on summary conviction.</p>	<p>Section 2: "defamatory statement" means a statement that tends to injure a person's reputation in the eyes of reasonable members of society; and "defamatory" shall be construed accordingly.</p> <p>Section 6: (2) the tort of defamation consists of the publication of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person);. (3) A defamatory statement concerns a person if it could reasonably be understood as referring to him or her.</p> <p>Section 8: in case the defendant or the plaintiff serves on the other one any pleading containing assertions or allegations of facts, he or she must swear an affidavit verifying those assertions or allegations. If a person makes a statement in an affidavit that is false or misleading in any material respect, and if this person knows it is false or misleading, he or she is guilty of an offence.</p> <p>Section 16: (1) it is a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought is true in all material respects; (2) In respect of a statement containing 2 or more distinct allegations against the plaintiff, the defence of truth shall not fail by reason only of the truth of every allegation not being proved, if</p>	Any ground.	<p>Section 2 : "statement" includes (a) a statement made orally or in writing; (b) visual images, sounds, gestures and any other method of signifying meaning; (c) a statement—(i) broadcast on the radio or television, or (ii) published on the internet, and (d) an electronic communication.</p> <p>Section 6 (2): the defamatory statement may be published "by any means".</p> <p>Section 6 (4): there is no "publication" if the defamatory statement is published to the person to whom it relates and to another person where—(a) it was not</p>	No other particularity.

		the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining allegations.		intended or (b) it was not reasonably foreseeable, that the statement would be published to the second-mentioned person.	
Netherlands	<p>Prohibited.</p> <p>Section 261 (1) of the penal Code (slander): imprisonment up to 6 months or a fine of the 3rd category (8 200 €).</p> <p>Section 261 (2) of the penal Code (slander): imprisonment up to 1 year or a fine of the 3rd category (8 200 €).</p> <p>Section 262 of the penal Code (aggravated defamation): imprisonment up to 2 years or a fine of the 4th category (20 500 €). . Disqualification from some rights might be additionally imposed.</p> <p>Section 267 of the penal Code: terms of imprisonment may be increased by one third, if the defamation is made in regard of (1) the public authorities, a public body or a public institution; (2) a civil servant during or in connection with the lawful performance of his office; (3) the head or a member of the government of a friendly nation.</p> <p>- Section 271: imprisonment up to 3 months or a fine of the 2nd category (4 200 €).</p>	<p>261 (1): any person who, by alleging a particular fact, intentionally injures the honour or reputation of another person, with the evident intention of giving publicity to the allegation (slander).</p> <p>261 (2): a libel is a slander committed by particular means (see "How").</p> <p>261 (3): neither slander nor libel shall exist if the offender's act was necessary in defence of his own or another person's interests or if he could have believed in good faith that the allegation was true and was required in the public interest.</p> <p>262: to commit the serious offence of slander or of libel, knowing that the allegation is untrue, is an aggravated defamation.</p> <p>271: (1) any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or posted, written matter or an image whose contents are (...), with regard to a deceased person, slanderous or libellous, if he knows or has serious reason to suspect that the written matter or the image contains such; (2) Any person who, with the same knowledge or reason to suspect such, publicly utters the contents of such written matter.</p>	Any ground	<p>261 (1) slander: any means.</p> <p>261 (2): if a slander is committed by means of written material, or images, which are either distributed, publicly displayed or posted, or by means of written material the contents of which are publicly uttered, the offender shall be guilty of libel.</p> <p>271 (1) slander: any means.</p>	<p>Prosecution - Defamation (Sections 269, 270 - in rel. with Art. 261 & 262) or the serious offence (Section 271 (4)) shall be prosecuted only on complaint filed by the person against whom the offence has been committed (or some listed relatives if the person is deceased), except where it is made in regard of (1) the public authorities, a public body or a public institution; or (2) a civil servant during or in connection with the lawful performance of his office.</p>
Romania	<p>No specific provision but might be punished</p> <p>- By the National Council Combating Discrimination, which decides on public defamation cases based on specific legislation, such as, for example, Article 15 of Government Ordinance no. 137/2000 providing for the right to dignity - contravention - fine between 1 000 and 3 000 RON (approximately 222 to 666 €) if it</p>	<p>Article 15 of Government Ordinance no. 137/2000: any publicly expressed behaviour with a nationalist-chauvinist propaganda character, instigating to racial or nationalistic hatred or if that behaviour has the scope or aims at affecting dignity or creating a hostile, degrading, humiliating, offensive or an environment of intimidation targeted against a person, a group</p>	Art.15: racial, national, ethnic, religious, to a specific social or unprivileged category or to their conviction, sex or sexual orientation.	Any means.	Article 30 (6) of the Constitution provides that freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image. For recent cases against Romania, see <i>Morar v. Romania</i> (*) where ECHR delivered

	<p>discriminates a natural person; fine between 2 000 and 100 000 RON (approximately 444 and 22 222 euro) if it discriminates a group of people or a community.</p> <p>- Under Article 371 on disturbance of public order and peace: imprisonment between 3 months and 2 years or a fine [4].”</p> <p>- Art.72 of the Civil Code (on the right to dignity): civil sanctions.</p>	<p>of people or community and it is connected to their...</p> <p>- Article 371 on disturbance of public order and peace: The act of the individual who, in public, by violent acts committed against persons or property or by threats or serious violations of human dignity, disturbs public order and peace.</p> <p>- Article 72 on the right to dignity: (1) Any person has the right to respect of his/her dignity; (2) Any prejudice to the honour and reputation of a person without his/her consent or without the compliance with the limitations specified in Article 75 is forbidden.</p>	Art. 371: any grounds.		<p>a ruling on the relation between defamation and freedom of expression⁶⁴.</p> <p>(*)[2015, ECHR 668] http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&query=%28[2015]%29+AND+%28ECHR%29+AND+%28668%29</p>
Spain	<p>Prohibited.</p> <p>Art. 510.2 of the Spanish penal Code: imprisonment between 6 months and 2 years and a fine between 6 to 12 months (360 € and 144 000 €) [5].</p> <p>Art. 510.2, §3 of the Spanish penal Code: the offense is punished with a sentence of one to four years in prison and a fine of six to twelve months when it thereby promote or encourage a climate of violence, hostility, hatred or discrimination against these groups.</p> <p>Art. 510.3: these penalties are imposed in the upper half when the facts have been carried out through a means of social communication, via the Internet or by using information technology, so that, that is made accessible to a large number of people.</p> <p>Art. 510 bis: fine between 2 to 5 years (21 600 € to 9 000 000 €) if the author is a legal person.</p> <p>Art. 510.5: in all cases above shall also be imposed the penalty of disqualification from profession or educational profession, in teaching, sports and leisure area, for a 3 to 10 years more than the duration of the deprivation</p>	<p>510.2 (a):</p> <p>- to infringe the dignity of people through actions involving humiliation, contempt or discredit a group, a part of it, or any particular person by reason of their membership to (see "why"), for racist, anti-Semitic or other related ideology;</p> <p>- to produce, create, possess in order to distribute, provide third parties access, distribute, disseminate or sell written or any other material or supports which content is appropriate in order to injure the dignity to represent a serious humiliation, contempt or discredit any of the above groups, a part thereof, or any particular person because of their belonging to them.</p> <p>Art. 205: slander involves accusing another person of a felony while knowing it is false or recklessly disregarding the truth.</p> <p>Art. 207: whoever is accused of the offence of slander shall be exempt from all punishment by proving the criminal act of which he has accused the other person.</p>	<p>510.2: religion or beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, for reasons of gender, illness or disability.</p>	<p>Art.510: any means, but the use of electronic communications is an aggravating circumstance.</p> <p>Art. 206: any means, but the public commission is higher punished.</p>	<p>Art.215: (1) Nobody shall be convicted of slander or defamation other than by means of a suit filed by the person offended by the felony or his legal representative. Prosecution shall be effected on the Court's own motion when the offence is against a civil servant, authority or agent thereof, over events related to exercise of his duties of office.</p> <p>(2) Nobody may bring action for slander or defamation arising during a trial, without prior leave from the Judge or Court of Law in which the proceedings are heard or have been heard.</p> <p>(3) Forgiveness of the victim or his legal representative, as appropriate, extinguishes the penal action without prejudice to what is set forth in Art. 130, 1 (5) §2 (which states that in felonies or misdemeanours against minors or the incapacitated, Judges or Courts</p>

⁶⁴ [2015, ECHR 668] [http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&query=%28\[2015\]%29+AND+%28ECHR%29+AND+%28668%29](http://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2015/668.html&query=%28[2015]%29+AND+%28ECHR%29+AND+%28668%29)

	<p>of liberty imposed in the judgement where appropriate, in proportionate response to the seriousness of the offense, the number of tasks and the circumstances surrounding the offender.</p> <p>Art. 206 (in rel. with Art. 205): imprisonment between 6 months and 2 years or a fine between 12 and 24 months (720 € and 288 000 €) [5] if propagated with publicity; in other cases, fine between 6 and 12 months (360 € and 144 000 €) [5].</p>				<p>of Law, having heard the Public Prosecutor, may reject the effectiveness of the forgiveness granted by their representatives, ordering proceedings to continue, with intervention by the Public Prosecutor, or the serving of the sentence).</p> <p>Prosecution - Art. 215: a suit filed by the offended person is necessary and forgiveness extinguishes the action (<i>see "other particularities" for the extended provision</i>).</p>
--	---	--	--	--	---

4.1.6 - Threatening a natural person, motivated by racism or xenophobia

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/Euro pean basis
	Illegal material conduct (What)	Illegal grounds (Why)	Illegal ways (How)	Criminal Intent			
I.6	Threatening a natural person, motivated by racism or xenophobia <i>Fully covered in 2 countries out of 10 only.</i> <i>Threat to commit a penal infringement is punished in 8 countries out of 10 (among which 4 countries of 8 prohibit more widely the threat of attack even not penally punished).</i> <i>The treat aiming at compelling someone to do or suffer something contrary to his will is punished in 3 countries out of 10.</i>	Racial or ethnic origin or (if used as a pretext for any of these factors), religion.	Through a computer system.	Intentional conduct.	In Principle (<i>10 countries - simple threats with or without conditions and threats to commit a violent act</i>): author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons in only one country. Exceptions: - In the 2 countries prohibiting threats without other conditions but illegal grounds , 1 country (Cyprus) excludes the liability of legal persons. - In the 8 countries prohibiting threats to commit a damage or a penal infringement (or simple threats with an additional condition): -- Spain: special media liability regime; - Ireland: accomplices are not liable in relation with threats with intent to provoke a breach of the peace; -- Greece, Spain (reg. general provisions on threats), Ireland and Bulgaria exclude the liability of legal persons.	In the two countries prohibiting threats without other conditions but illegal grounds: imprisonment up to 3 and 5 years; in one country: fine up to 34 000 €. Threats to commit a damage or a penal infringement: depending on the country, imprisonment up to 5 years and fine up to 75 000 € (outside aggravating circumstances). Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 288 000 €). [*] <i>Such a high amount has never been applied up to now</i>	Additional protocol to the Convention on cybercrime http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=3m6Ey3no Signed and ratified by: Cyprus, France, Germany, Netherlands, Romania, Spain Signed but not ratified by: Belgium, Greece Not signed by: Bulgaria, Ireland.

I.5 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	Not prohibited - Might be in some situations punished by courts applying Art. 442 <i>ter</i> of the penal Code: imprisonment from 30 days to 4 years and/or a fine from 100 € to 600 €. More general provisions of the penal Code punish threats to commit attacks prohibited by the penal	Art. 442 <i>ter</i> : harassment with a special motivation (see "why"). Art. 327§1: the threat of attack against persons or properties, accompanied by an order or a condition, if the attack is punished by a criminal sentence.	Art. 442 <i>ter</i> : Additional grounds are: skin colour, ascendancy, nationality, sex, sexual orientation, civil status, birth, age,	Art. 442 <i>ter</i> : committed using a computer system. Art. 327§1: verbally, or in writing (anonymously or not).	No other particularity.

	<p>law:</p> <p>Art. 327§1: imprisonment between 6 months and 5 years and a fine between 100 and 500 €.</p> <p>Art. 327§2: imprisonment between 3 months and 2 years and a fine between 50 and 300 €.</p> <p>Art. 329: imprisonment between 8 days and 3 months and a fine between 26 and 100 €.</p>	<p>Art. 327§2: the threat of attack against persons or properties, not accompanied by an order or a condition, if the attack is punished by a criminal sentence.</p> <p>Art. 329: the threat of attack against persons, if the attack is punished by a criminal sentence.</p> <p>Art. 330: the threat of attack against persons or properties, if the attack is punished by an imprisonment of at least 3 months.</p>	<p>sex, age, fortune, religious or philosophical or political beliefs, current or future state of health, disability, language, trade-union convictions, physical or genetic characteristics, and social origins.</p> <p>Art. 327, 329, 330: any reason.</p>	<p>Art. 327§2: in writing (anonymously or not).</p> <p>Art. 329: through gestures or emblems.</p> <p>Art. 330: verbally, or in writing (anonymously or not).</p>	
Bulgaria	<p>Not prohibited. Partly covered by more general provisions of the penal Code that punish threats to commit penal infringements against persons or their property, and threats aiming at compelling someone to do or suffer something contrary to his will.</p> <p>Art. 144: (1) imprisonment up to 3 years; (2) imprisonment up to 5 years; (3) imprisonment up to 6 years.</p> <p>Art. 143: (1) imprisonment for up to 6 years; (2) imprisonment between 3 to 10 years; (3) imprisonment from two to eight years, in cases within the scope of Paragraph 1; (4) imprisonment from 5 to 15 years.</p> <p>Art. 213a: (1) imprisonment between 1 and 6 years and a fine between 500 and 1500€; (2) imprisonment between 2 and 8 years and a fine between 1 500 to 2 500 €; (3) imprisonment between 5 to 15 years and a fine between 2 500 to 5 000 €, whereas the court may rule confiscation of up to 1/2 of the property of the perpetrator; (4) imprisonment between 15 to 20 years, or life imprisonment, or life imprisonment without a chance of commuting, whereas the court may rule confiscation of part or of the entire property of the perpetrator.</p> <p>Art. 214 (2): 213a (2) becomes imprisonment</p>	<p>144: (1) to threaten someone to commit a crime against his person or property or against the person or property of his next-of-kin, and where this threat could evoke justified fear of its implementation; Sanctions are higher in case (2) the act is committed towards an official or representative of the public during or in connection with carrying out their duties or functions, or to a person enjoying international protection; OR in case (3) the act is committed by certain categories of persons (listed Art. 142§2, 6 and 8, such as employees of an organisation carrying out security).</p> <p>143: (1) to compel another person to do, to omit or to suffer something contrary to his will, using for that purpose force, threats or abuse of his authority; Sanctions are higher in case (2) the act is committed by certain categories of persons (listed Art. 142§2, 6 and 8) OR (3) / AND in case (4) the act is committed against certain listed persons (judge, prosecutor, examining magistrate, a police body or investigating officer, private enforcement agent, etc.).</p> <p>213a: (1) to threaten a person with violence, with making public some disgraceful circumstances, with inflicting damages on property or some other unlawful actions of grave consequences for</p>	Any reason.	Any means	<p>To hinder a person from practising his or her faith is also punished: art. 165 of the penal Code (imprisonment up to 1 year) -1) A person who, by force or threat hinders the citizens from freely practising their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morality;</p> <p>(2) The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services.</p> <p>Art. 320A refers to the following actions: commission of certain crimes including false calls (art. 108a §1); to set on fire properties (Art. 330 and Art. 333); to cause an inundation (Art. 334); to damage certain vehicles (art. 340); to create a</p>

	<p>between 2 and 10 years and a fine between 2 000 to 3 000 € and possible confiscation of up to 1/2 of the property of the perpetrator; 213a (3) becomes imprisonment between 5 and 15 years and a fine between 2 500 to 5 000 € and confiscation of up to 1/2 of the property of the perpetrator; 213a (4) becomes imprisonment between 15 and 20 years, life imprisonment or life imprisonment without a chance of commuting and confiscation of no less than 1/2 of the perpetrator's property.</p> <p>Art. 214: (1 - sanctioned as blackmail) - imprisonment between 1 and 6 years and a fine between 500 and 1 500 €; the court may impose confiscation of up to 1/2 of the property of the perpetrator; (3) imprisonment between 5 to 15 years and a fine up to 250 €; the court may rule confiscation of up to one half of the property of the culprit.</p> <p>Art. 320A: deprivation of liberty for up to two years</p>	<p>that person or his/her relatives, for the purpose of forcing this person to dispose of an article or a right or to undertake a property obligation; Sanctions are higher in some circumstances described in § (2) (for example: threat of murder or severe bodily injury, or act committed by two or more persons) and § (3) (for example: medium or severe bodily injury inflicted, provided the crime committed is not subject to more severe punishment, or act committed by an organisation or a group) and § (4) (2 cases: act accompanied by severe or medium bodily injury, which has resulted in death; OR by murder or an attempt for murder). Sanctions are also increased in case of blackmail (art. 214 (2)).</p> <p>214: (1) to compel somebody to do, to fail to do or to suffer something contrary to his will, and thereby inflicts material damage to that person or to another, by force or threat, for the purpose of procuring material benefit for himself or for another; (3) the sanction is higher in certain listed cases (severe or medium bodily injury; recidivism).</p> <p>Art. 320A - to threaten to commit a crime under Articles 108a, par. 1, 330, 333, 334, 340, 341a, 341b, 352, paragraph (1), and where such threat might give rise to justified fear of its implementation (<i>see the "other particularities" column</i>).</p>			<p>danger in flights through device or substance (art. 341a); to unlawfully seize an aircraft, (art. 341b); to pollute water sources (art. 352 §1).</p>
Cyprus	<p>Prohibited - Art. 5 of Law 26 (III) 2004- 5 years imprisonment and/or a fine up to 20 000 pounds (34 000 €).</p> <p>More general provisions of the penal Code punish threats to cause damages to a person, his or her property or reputation.</p> <p>Art. 91 of Cap. 154: imprisonment for 3 years.</p>	<p>Art. 5 L 2004: same extent [1].</p> <p>Art. 91: any person who with (A) purpose of intimidation or other harassment, threatens to break or cause damage to house or (B) with horror challenge aimed at another person who is in a house fires full gun or commits any other disturbance of peace or(C) with the purpose to incite any person to carry out an act which has no legal obligation to perform or with the purpose to omit an act which has the legal right to conduct, threatens another person that he may cause damage to the person, reputation, or</p>	<p>Art. 5 L 2004: by reference to the additional protocol to the Convention on cybercrime, additional grounds are colour and descent.</p> <p>Art. 91: any ground.</p>	<p>Art. 5 L 2004: same extent [1].</p> <p>Art. 91: any means.</p>	<p>No other particularity.</p>

		property of that person or to the or reputation of any person for which the person who is targeted with those threats cares.			
France	<p>Not Prohibited. Partly covered by more general provisions of the penal Code that punish threats to commit some infringements.</p> <p>222-17 penal Code (§1) imprisonment up to 6 months and/or a fine up to 7 500 € (2 years and/or 30 000 € in case of illegal motivations); (§2) imprisonment up to 3 years and/or 45 000 € fine (5 years and/or 75 000 € in case of illegal motivations - Art. 222-18-1);</p> <p>222-18 penal Code (§1): imprisonment up to 3 years and/or a fine up to 45 000 € (5 years and/or 75 000 € in case of illegal motivations); (§2) imprisonment up to 5 years and/or a fine up to 75 000 € (7 years and/or 100 000 € in case of illegal motivations - Art. 222-18-1).</p>	<p>222-17 (§1) threats to commit a crime or an offense against persons whose attempt is punishable when they are, either repeated or materialised in writing, picture or any other object; (§2) the penalty is increased if it is a threat of death.</p> <p>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; (§2) the penalty is increased if it is a threat of death.</p>	<p>Any reason. Illegal motivations lead to an aggravation of the incurred sanction (art. 222-18-1): the victim membership or non-membership, real or supposed, to a given ethnic group, nation, race or religion; the real or supposed orientation or gender identity of the victim".</p>	Any means.	No other particularity.
Germany	<p>Not prohibited - Might be partly covered by Section 130, subsection 2 no. 2, of the penal Code (if the threatening through the computer system is publicly available (e.g. on a public webpage) - imprisonment up to 3 years or a fine between (theoretically) 5 and 10 800 000 € [3].</p> <p>In addition, partly covered by more general provisions of the penal Code that punish threats to commit penal infringements against persons, and threats aiming at compelling someone to do or suffer something contrary to his will:</p> <p>Section 240 of the penal Code (where the threat is not public): imprisonment up to 3 years or a fine.</p> <p>Section 241 of the penal Code (threat to commit a felony): imprisonment up to 1 year or a fine.</p>	<p>S.130 (2): publicly making available (or public dissemination) written materials which (c) assault the human dignity of a group, segments of the population or individuals, by insulting, maliciously maligning or defaming them.</p> <p>S.240: unlawfully with force or threat of serious harm to cause a person to commit, suffer or omit an act.</p> <p>S.241: (1) to threaten a person with the commission of a felony against him or a person close to him, or (2) to intentionally and knowingly pretend to another person that the commission of a felony against him or a person close to him is imminent.</p>	<p>130 (2): the list is covered (national, racial, religious group or a group defined by their ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population).</p> <p>240, 241: any ground.</p>	Any means, including through a computer system (130 (2): "Written materials" include any kind of audio-visual media, data storage media, illustrations and other depictions - see section 11(3) of the penal Code). The making available through electronic communication services to persons under 18 is additionally expressly punished. Offering, supplying or making such materials accessible to a person under eighteen years is also punished.	No other particularity.

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

Greece	Not prohibited. Might be partly covered in some situations by Art. 333 of the penal code: imprisonment up to 1 year or a fine up to 15 000 €.	To cause to a person fright or anxiety by threatening him or her with violence or other wrongful act or omission.	Any ground.	Any means.	No other particularity.
Ireland	Not prohibited. Might be partly covered by: - Criminal justice (Public Order) act 1994, Section 6: up to 3 months imprisonment and/or fine up to £ 500 (625 €) - summary conviction only. - Non-fatal offences against the person Act, 1997, Section 5: imprisonment up to 12 months and/or fine up to £ 1 500 (1 875 €) on summary conviction; imprisonment up to 10 years and/or fine up to £ 1 500 (1 875 €) on conviction on indictment.	CJA, Sect.6: 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. NFOAPA, Sect. 5: To, without lawful excuse, make to another a threat, by any means intending the other to believe it will be carried out, to kill or cause serious harm to that other or a third person.	Any ground.	Any means.	No other particularity.
Netherlands	Not prohibited. Might be partly covered by the penal Code: - Section 285: imprisonment up to 2 years or a fine of the 4 th category (up to 20 500 €); Imprisonment up to 4 years or a fine of the 4 th category (up to 20 500 €) in case of writing stating a specific condition. - Section 137e (1): imprisonment up to six months or a fine of the 3 rd category (up to 8 200 €).	285: (1) the threat of public violence jointly committed against persons or property, the threat of violence against an internationally protected person or his protected property or the threat of any serious offence endangering the general safety of persons or property or resulting in general danger for the provision of services, of rape, of indecent assault, of any serious offence against the life of a person, of hostage-taking, of aggravated assault or of arson. 137e: (1) to encourage (for any reason other than the provision of factual information) hatred or discrimination against persons or violence against their person or property because of their [see "why"].	285: any ground. 137e (1): same as Section 4.1.1 - Therefore ethnic and national origins are missing in the text but covered by the term "race"; religion is included; Additional grounds are beliefs, sex, hetero or homosexuality, and bodily, psychological or mental handicap.	285: any means but sanctions are higher in case of writing stating a specific condition. 137e (1): Any means.	No other particularity.
Romania	Prohibited - Article 6 ¹ of Government Emergency Ordinance no. 31/2002: imprisonment between 1 and 3 years. In addition, partly covered by more general provisions of the penal Code that punish threats to commit penal infringements against persons: Article 206 of the penal Code: imprisonment between 3 months and 1 year or fine [4]; however, the applied penalty may not exceed the penalty	Art. 6 ¹ : threatening a person or a group of people. Art. 206: threatening an individual with the commission of an offense or of a prejudicial act against them or other individual, if this is of nature to cause a state of fear.	Art. 6 ¹ : racial and ethnic origins are covered by the terms of "race" and "ethnicity". Religion and national origin are mentioned. Additional grounds are: colour,	Art. 6 ¹ : same extent [1]. Art. 206: any means.	Art. 381 of the penal Code does also punish the act of preventing the freedom to practice religion: see Section 4.4.5. above. Prosecution: Art. 206: the criminal action shall be initiated based on a prior complaint filed by the victim.

	established by law for the offense that was the subject matter of the threat.		ascendancy. Art. 206: any ground.		
Spain	<p>Not prohibited. Partly covered (for ex. threats of harm are covered) by more general provisions of the penal Code that punishes threats.</p> <p>Article 169: (1) imprisonment between 1 and 5 years if the perpetrator has imposed a condition and has achieved what he intended; (2) imprisonment between 6 months and 3 years if not achieved; (3) Penalties imposed in the upper half if the intimidation is made in writing, by telephone or by any means of communication or reproduction, or on behalf of real or supposed entities or groups; (4) imprisonment between 6 months and 2 years, where the intimidation has not been conditional.</p> <p>Article 170: (1) respective higher degree of penalties than those foreseen in the preceding Article; (2) imprisonment between 6 months and 2 years.</p> <p>Article 171: (1) imprisonment between 3 months and 1 year or a fine between 6 and 24 months [5], in view of the severity and circumstances of the facts, when the intimidation is conditional and the condition does not consist in a conduct that is due. Upper half of the punishment if the offender have achieved his purpose; (2) imprisonment between 2 and 4 years, if the perpetrator has obtained delivery of all or part of what has been demanded, and between 4 months and 2 years, if this has not been achieved; (3) the Public Prosecutor may (...) abstain from accusing the person threatened with disclosure of the latter offence, except if punishable with a prison sentence exceeding two years. In the latter case, the Judge or Court of Law may lower the punishment by one or two degrees; (4) imprisonment between 6 months and 1 year or community service from 31 to 80 days and, in all cases, additional listed penalties (such as the possibility to pronounce special barring from exercise of parental rights for up to five years); (5) except if previous sanctions of this article apply, imprisonment between 3 months to 1 year or</p>	<p>Art. 169: to threaten another with causing him, his family or other persons with whom he is intimately related harm consisting of felonies of unlawful killing, bodily harm, abortion, against liberty, torture and against moral integrity, sexual freedom, privacy, honour, property and the social-economic order.</p> <p>Art. 170 (1) threats of a harm which constitutes a misdemeanour and which is intended to terrorise the inhabitants belonging to a population, ethnic, cultural or religious group, or a social or professional group, or any other group of persons, and if serious enough for such harm to be inflicted; (2) With the same purpose and severity, to publicly call for violent actions to be committed by organisations or terrorist groups.</p> <p>Article 171 (1) threats of a harm that does not constitute a misdemeanour; (2) demand of any sum or compensation under the threat of disclosing or broadcasting facts concerning the person's private life or family relations that are not publicly known and that may affect his/her reputation, credit or interest; (3) threat referred to above and that consist of a threat to reveal or report that a felony has been committed; (4) to lightly intimidate his wife or former wife, or woman with whom he has been bound by a similar emotional relation even without cohabitation, or an especially vulnerable person who lives with the offender; (5) to lightly intimidate any of the persons referred to in Article 173.2 (which includes ascendant, descendant, cohabitating partner, and other persons particularly protected) with weapons or other dangerous instruments.</p> <p>Art. 510: prohibits to directly or indirectly foment, encourage or incite hatred, hostility, discrimination or violence against a group, part of it, or a certain individual. A higher sanction is</p>	<p>Art. 169: any ground. Art. 170: any ground (particular population, ethnic, cultural or religious group, or social or professional group, or any other group of persons). Art. 510: list covered and additional grounds are proposed (see Section 4.1.1).</p>	<p>169 - 171: any means, but some of them lead to a higher sanction. 510: Via the media, the Internet or through IT usage; so that it would be accessible to a high number of people (art. 510.3).</p>	No other particularity.

	<p>community service of 31 to 80 days and, in all cases, additional listed penalties; (4) and (5) penalties applied in the upper half in certain situations (for instance where the offence is committed in the presence of minors, or when it takes place in the common dwelling or dwelling of the victim); (6) Notwithstanding what is set forth in Sections 4 and 5, the Judge may, giving the reasons in the judgement, in view of the offender's personal circumstances and those arising in the perpetration of the act, handing down a punishment one degree lower.</p> <p>In addition, might be covered by Art. 510 of the penal Code when it comes in addition to the act of fomenting, encouraging or inciting hatred, hostility, discrimination or violence: Art. 510.4 of the penal code, penalty imposed in its superior half, which could rose up to a superior elevated degree.</p>	<p>incurred (according to Art.510.4) where the offence, in view of its circumstances, prove to be suitable so as to undermine social order or create a profound sentiment of insecurity or fear in the constituents of a group.</p>			
--	---	--	--	--	--

4.1.7 - Illegal hatred as an aggravating circumstance

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.7	Motivation (<i>see "Why"</i>) is an aggravating circumstance of certain infringements <i>In 5 countries out of 10, aggravating circumstance in any crime, and motivations taken into account are wider.</i> <i>In 3 countries out of 10, aggravating circumstance in some infringements only.</i> <i>In 2 countries out of 10, there are no provisions.</i>	Race national origin / nationality; ethnic origin (<i>covered in 8 countries out of 8</i>); religion (<i>7 countries</i>); Gender and sexual orientation (<i>6 countries</i>); political beliefs and handicap (<i>5 countries</i>); age, philosophical beliefs (<i>4 countries</i>).	Same as the baseline infringement.	Same as the baseline infringement.	Same as the baseline infringement.	Highly variable depending on the country.	Council Framework Decision 2008/913/JHA, Art. 4: "For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties".

I.2 - Countries' particularities

Country	Provision, sanction	What	Why
Belgium	Aggravating circumstance in some infringements only (where specific penal provisions provide for it). In all cases but one the rule is that the minimum penalty set up in the provision that punishes the behaviour might be doubled (or raised by two years in case of most serious crimes punished by "confinement") where the motive to carry out the infringement is hatred, contempt or hostility directed towards a person because of his or her... (<i>see "Why"</i>). In one case the penalty is higher and provided by the aggravating provision (Art. 405 <i>quater</i>).	- Voyeurism, indecent assault and rape (chap. V of the penal Code - Art. 371 to 377; aggravation Art. 377 <i>bis</i>). - Deliberate violence or murder (art. 393 to 405bis, aggravation Art. 405 <i>quater</i>); - endangering others or failure to assist a person in danger (Art. 422 <i>bis</i> and <i>ter</i> ; aggravation Art. 422 <i>quater</i>); - Attacks on (physical) freedom and on the inviolability of the home (Art. 434 to 437; aggravation Art. 438 <i>bis</i>); - Harassment (Art. 442 <i>bis</i> ; aggravation Art. 442 <i>ter</i>); - Attacks upon one's honour and esteem - including insult and defamation (Art. 443 to 453; aggravation Art. 453 <i>bis</i>). - Fire (Art. 510 to 514; aggravation Art. 514 <i>bis</i>); - Destruction of constructions, motorised vehicle, steam engines and telegraphic material (Art. 521 to 525; aggravation Art. 525 <i>bis</i>); - Destruction or deterioration of food, goods or other movable	453 bis: supposed race, skin colour, ascendancy, national or ethnic origin, nationality, gender, sexual orientation, civil status, birth, age, wealth, religious or philosophical beliefs, current or future state of health, handicap, tongue, political or trade-union convictions, physical or genetic characteristics or social origin.

		<p>property (Art. 528 to 532; aggravation Art. 532 <i>bis</i>);</p> <p>Graffiti or deterioration of immovable property (Art. 534 <i>bis</i> and <i>ter</i>; aggravation Art. 534 <i>quater</i>);</p>	
Bulgaria	<p>Aggravating circumstance in some infringements only (where specific penal provisions provide for it).</p> <p>Art. 162 (2) penal Code: imprisonment from 1 to 4 years and a fine from BGN 5,000 to 10,000 (2 500 € to 5 000 €), as well as public censure;</p> <p>Art 131 (1) penal Code: imprisonment: for 3 to 15 years for severe bodily injury; from 2 to 10 years for medium bodily injury; for up to 3 years for trivial bodily injury under Article 130, § (1), and for up to 1 year or corrective labour under Article 130, § (2);</p> <p>Art. 163 penal Code: (I) (1) imprisonment for up to 5 years for leaders and abettors; (2) imprisonment for up to 1 year or by probation for all the others; (II) sanctions are increased if the crowd or some participants are armed; (III) sanctions are increased if an assault has been made which has resulted in severe bodily injury or death.</p> <p>Art. 165 (3) penal Code: same punishment as the one provided in Art. 165 (1) and (2) (<i>see Section 4.1.6 in "other particularities"</i>): imprisonment up to 1 year.</p>	<p>Art. 162: to use violence against another person or damages his/her property because of the person's ... (<i>see "why"</i>)</p> <p>Art 131 (1): to inflict bodily injury</p> <p>Art. 163: (I) to take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their... (<i>see "why"</i>)</p> <p>Art. 165 (3): acts under Art. 163 committed against groups of the population, individual citizens or their property, in connection with their... (<i>see "why"</i>)</p>	<p>Art. 162: race, nationality, ethnic origin, religion or political convictions</p> <p>Art 131 (1): (12) out of hooligan, racist or xenophobic motives</p> <p>Art. 163: national, ethnic or racial affiliation</p> <p>Art. 165 (3): religious affiliation</p>
Cyprus	<p>Aggravating circumstance in all crimes and misdemeanours: Art. 8 L 134(I)2011.</p> <p>Courts, when calculating the penalties of any penal infringement, shall take into consideration as an aggravating circumstance racist motivation and illegal hatred motivation.</p>	<p>Notably in relation with behaviours which threaten the life or health of persons (punished Art. 226 to 235 A and 242-244 of the penal Code).</p>	<p>Every case related to special features of the victim, namely: race, community, language, colour, religion, political or other beliefs, national or ethnic origin, origin, sexual orientation, gender, gender identity, handicap, age.</p>
France	<p>Aggravating circumstance in some infringements only (where specific penal provisions provide for it).</p> <p>Art. 132-76 and 132-77 penal Code: the aggravated penalty is mentioned in each relevant provision.</p> <p>Examples of sanctions:</p> <p>Art. 222-18 penal Code (§1 - threat to commit an offence): up to 5 years of imprisonment and/or a fine up to 75 000 € (instead of 3 years and/or 45 000 €); (§2 - Threat of death) up to 7 years of imprisonment and/or a fine up to 100 000 € (instead of 5 years and/or 75 000 €).</p> <p>Art. 32 L 1881, up to 1 year of imprisonment and/or</p>	<p>The aggravating circumstance so defined is constituted where the offense is preceded, accompanied or followed by words, writings, images, objects or acts of any kind affecting the honour or esteem of the victim or of a group of people which includes the victim.</p> <ul style="list-style-type: none"> - destruction, degradation or deterioration of property belonging to others (322-1 to 322-8 PC); - extortion (312-2 PC); - torture and acts of barbarism (222-1 to 222-3 PC); - violence (222-7 to 222-13 PC); - threats (222-17 to 222-18-1 PC); - Infringements to the memory of dead peoples (225-17 to 225-18 	<p>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.</p>

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

	45 000 € of fine (instead of 12 000). Art. 33 L 1881 , up to 22 500 € of fine (instead of 12 000).	PC). - Injury (art. 33 L1881) and Defamation (art. 32 L 1881);	
Germany	Aggravating circumstance in all crimes and misdemeanours : Section 46 (Principles of sentencing) of the penal Code.	Section 46 stipulates that consideration shall in particular be given to the motives and aims of the offender.	Especially when the motives are racist, xenophobic or other inhuman. Although they are not explicitly mentioned, other factors mentioned in this report for Germany can be taken into consideration as aggravating circumstances.
Greece	Aggravating circumstance in all crimes and misdemeanours . Art. 79§3 Penal Code: perpetrators are given a harsher sentence and the sentence shall not be suspended .	Art. 79§3 Penal Code determines the criteria to be taken into account when determining a sentence.	Race, colour, religion, descent, national or racial origin, sexual orientation or gender of the victim.
Ireland	No provision .	Left for the judge at sentencing.	-
Netherlands	No provision .	Left for the judge at sentencing.	-
Romania	Aggravating circumstance in all crimes and misdemeanours . - Art. 78 of the penal Code (in relation with Art.77) : (1) in case the aggravating circumstances exist, sentencing can go up to the special maximum. If the special maximum is not sufficient, in the case of a prison sentence an addition of up to 2 years can be added without exceeding one-third of the maximum, and in the case of a fine one-third of the special maximum can be added at most. (2) Increasing the threshold of the maximum penalty can only be done once, irrespective of the number of aggravating circumstances found. -Harassment, GO n° 137/2000, Art. 2 (6) : if the action is not a crime, administrative fine between 1 000 to 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person, and administrative fine between 2 000 to 100 000 RON (approximately 444 to 22 222 €) if it discriminates a group of people or a community. Art. 282 (1) d); Art. 297 (2) : between 2 and 7 years of imprisonment and a ban on the exercise of certain rights.	- Art. 74 (general criteria for customisation of a sentence) : (1) establishing the length or amount of a penalty shall be made on the basis of the seriousness of the offense and the threat posed by the convict, all of which shall be assessed based on the following criteria: (...) "d) the reason for committing the offense and intended goal". - Art. 77 (aggravating circumstances) : (...) h) the offense was committed for reasons related to (<i>see "why"</i>) In addition, aggravating circumstance where specific penal provisions provide for it. Examples: - Harassment (GO n° 137/2000, Art. 2 (6)) : any difference, exclusion, restriction or preference, on grounds of a criteria (<i>see "Why"</i>) that would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and fundamental liberties or rights acknowledged by the law, in the politic, economic, social and cultural field or in any other field of the public life. - maladministration (abuse of public office), Article 297 (2); - torture from a civil servant based on any form of discrimination Article 282 (1) d).	- Art. 77 : race, nationality, ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals. - Harassment (GO n° 137/2000, Art. 2 (6)) : race, nationality, ethnic group, language, religion, social category, convictions, gender, sexual preferences, age, handicap, non-contagious chronic disease, HIV infection, inclusion in a unflavoured category, or any other criterion. - 297 (2) : race, nationality, ethnic origin, language, religion, gender, sexual orientation, political membership, wealth, age, disability, chronic non-transmissible disease or HIV/AIDS infection. - 282, 1 d : any form of discrimination
Spain	Aggravating circumstance in all crimes and misdemeanours : Art. 22 of the penal Code.	Art. 22: "The following are aggravating circumstances: (...) 4. Committing the offence for" ... <i>see "why"</i> (discriminatory reasons).	Racist or anti-Semitic reasons or another kind of discrimination related to ideology, religion or belief of the victim, ethnicity, race or nation to which he belongs, his gender, sexual orientation or identity, illness suffered or disability.

4.1.8 - Public denial, condoning or trivialising war crimes, crimes against humanity, genocide and crimes against peace

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
I.8	<p>Publicly condoning, denying or grossly trivialising</p> <p>(a) 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,</p> <p>(b) 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 ... (<i>see "Why"</i>), and 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><i>Totally prohibited or covered: 1 country out of 10.</i></p> <p><i>Mainly or partly prohibited/covered: 5 countries out of 10.</i></p> <p><i>Very partly prohibited (restricted to holocaust / National Socialism): 3 countries out of 10.</i></p> <p><i>Not prohibited: 1 country out of 10.</i></p>	<p>Race, colour, religion, descent or national or ethnic origin (colour and descent are missing in 1 country out of the 9 that cover at least partially the infringement).</p>	<p>Any means.</p>	<p>Intentional conduct.</p>	<p>(9 countries out of 10)</p> <p>In principle: author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p>Exceptions: - France, Spain: special press or media liability regimes; - France, Cyprus, and Greece exclude the penal liability of legal persons (Greece provides however for an administrative liability of legal persons).</p>	<p>Depending on the country, imprisonment up to 5 years and fine up to 45 000 €.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 144 000 €).</p> <p>[*] Such a high amount has never been applied up to now.</p>	<p>2008/913/JHA, art. 1, 1. Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:</p> <p>(c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;</p> <p>(d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.</p> <p>2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.</p> <p>3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.</p> <p>4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.</p> <p>Additional protocol to the Convention on cybercrime, Art. 6: (1). Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed</p>

						intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party; (2) A Party may either (a) require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise; (b) reserve the right not to apply, in whole or in part, paragraph 1 of this article.
--	--	--	--	--	--	--

I.2 - Countries' particularities					
Country	Provision, sanction	What	Why	How	Other particularities
Belgium	Very partly prohibited. Article 1 of The Holocaust Denial Act: Imprisonment between 8 days and 1 year and fine between 26 and 5 000 Belgian francs (0,65 € and 125 €).	Art. 1 of The Holocaust Denial Act: to minimise or approve genocide committed by the Nazi Regime during Second World War, under all circumstances. 'Genocide' is defined by reference to Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.	Any ground.	Any means.	No other particularity.
Bulgaria	Partly prohibited. Art. 419a Penal Code: (1) imprisonment from one to five years; (2) Abettors incur imprisonment of up to one year.	(1) To justify , deny or grossly palliate a crime committed against peace and humanity and thereby poses a risk of violence or instigates hatred among individuals or groups of people united on the grounds of (<i>see "why"</i>).	Same extent (race, colour, religion, origin, national or ethnic origin).	Any means.	No other particularity.
Cyprus	Prohibited. - Art.2 L134(I)/2011: imprisonment up to 5 years and/or a fine up to 10 000 pounds (17 000 €). - Art. 7 L 2004: imprisonment up to 5 years and/or a fine up to 20 000 pounds (34 000 €).	- Art.2 L134(I)/2011: same extent [1] . Covers crimes that have been recognised as such by an irrevocable decision of an international court, but also crimes that have been recognised as such by a unanimous resolution or decision of the Parliament of Cyprus (Law 45 (I) 2015 amending the law134(I)/2011). - Art. 7 L 2004: 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.	Art.2: same extent (race, colour, religion, genealogical origin, national or ethnic origin). Art. 7: motivated by racism and xenophobia refers, according to Art. 2 of the Additional Protocol to the Convention on Cybercrime, to "race,	Art.2: any means. Art. 7: through a computer system.	No other particularity.

			colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors".		
France	<p>Mostly prohibited</p> <p>- Art. 24L1881: imprisonment up to 5 years and/or fine up to 45 000 €.</p> <p>- Art. 24bis L1881: imprisonment up to 1 years and/or fine up to 45 000 €.</p>	<p>Art. 24: 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;</p> <p>Art. 24bis: publicly contesting (condoning and trivialising are missing - but the latter is covered by jurisprudence, see below) the existence of one or more crimes against humanity as are defined by Article 6 of the Charter of the International military tribunal annexed to the London agreement of 8 August 1945 and have been committed either by members of an organization declared criminal under Article 9 of the Statute, either by a person convicted of such crimes by a French or international court.</p> <p>However there is no condition for the action to be carried out in a manner likely to incite to violence or hatred against such a group for particular grounds (examples of court cases sanctioning the denying of crimes against humanity: CA Paris, 27 May 1992, Gaz. Pal. 1992. 2. Somm. 321; Crim. 12 sept. 2000 n°98-88.200, Dr. pénal 2001. 4 - 2nd decision).</p> <p>On the basis of Art. 24bis (and despite the principle that criminal law has to be interpreted by the letter), French courts also sanction the gross trivialisation of crimes against humanity (such as "the excessive understatement of the number of victims of the policy of extermination in concentration camps": Crim. 29 January 1998 n°96-82.731, Gaz. Pal. 1, chron. crim. 87; Crim. 17 June 1997 n° 94-85.126, Bull. Crim. n°236), and the denying of crimes of genocide (Paris, 31 October 1990, Gaz. Pal. 30 May 1991, 149-150, Jurisprudence, 28/ JurisData number: 1990-603896).</p>	Any ground.	Any means (the exact list is the same as in <i>Section 4.1.1</i>).	Art. 421-2-4 of the penal Code punishes the direct provocation to commit terrorism acts or to publicly make the apology of such acts (Imprisonment up to 5 years and 75 000 € fine; imprisonment up to 7 years and 100 000 € fine if committed using an online public communications service).
Germany	<p>Very partly prohibited.</p> <p>- Subsections 3 and 4 of section 130 (incitement to hatred: (3))</p>	<p>Section 130 (3) To publicly approve of, deny or downplay an act committed under the rule of National Socialism of the kind indicated in section 6 (1) of the Code of International Criminal</p>	Any ground.	130 (3) and (4): publicly or in a meeting	In addition, Art. 4 of the Interstate Treaty on the protection of minors

	imprisonment up to 5 years or a fine; (4) imprisonment up to 3 years or a fine [3].	<p>Law, in a manner capable of disturbing the public peace; (4) To disturb the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying National Socialist rule of arbitrary force.</p> <ul style="list-style-type: none"> - In addition, the condoning, denying or grossly trivializing crimes against humanity and war crimes might be punished under the general rule of section 185 (Insult) of the German penal Code (see Section 4.1.4). - Furthermore, the threatening to commit war crimes is punishable under section 126, subsection 1 no. 2 of the German Criminal Code. - Finally, the Interstate Treaty on the protection of minors (JMStV) prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: public content that: <p>(4) denies or plays down acts committed under the National Socialist regime as specified in Article 6 (1) and Article 7 (1) of the International Criminal Code in a manner suited to disturb public peace;</p> <p>(5) presents cruel or otherwise inhuman acts of violence against a person in a manner devised to glorify or trivialise such acts of violence or devised to present the cruel or inhuman nature of the act in a manner which violates human dignity; this also applies to virtual presentations;</p> <p>(7.) glorifies war.</p> <p>(8) violates human dignity, especially by presenting persons who are or were dying or exposed to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given; any agreement granted in this respect shall be irrelevant,</p> <p>9. presents children or adolescents in unnatural poses; this also applies to virtual presentations.</p>			<p>(JMStV) also prohibits the following content in electronic information and communication media, (1) without prejudice to any liability under the German Criminal Code: content that:</p> <ol style="list-style-type: none"> 1. represents propaganda instruments as defined in Article 86 of the penal Code the content of which is directed against the free and democratic order or the spirit of understanding among the nations, 2. uses insignia of organisations which are prohibited under the German Constitution⁵ as defined in Article 86a of the German Criminal Code, 6. serves as an instruction to any of the acts specified as illegal under Article 126 (1) of the German Criminal Code, 9. presents children or adolescents in unnatural poses; this also applies to virtual presentations.
Greece	<p>Mostly prohibited. Art. 2 Law 929/1979 amended: imprisonment between 3 months and 3 years and a fine between 5 000 € and 20 000 €; if committed by a public officer or employee in the exercise of the powers entrusted to him, imprisonment between 6 months and 3 years and a</p>	<p>To publicly and intentionally, condone, trivialise or maliciously deny the existence or severity of crimes of genocide, war crimes, crimes against humanity, the Holocaust and Nazism crimes identified by decisions of international courts or the Greek Parliament (crimes against peace are missing), where the behaviour is directed against a group of persons or a member of which is determined based on (see "Why"), when such conduct is such that it can incite violence or hatred or involves threatening or</p>	The list is included. Additional motivations are sexual orientation, gender identity and disability	Orally or through the press, through the Internet or by any other means or manner	No other particularity.

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

	fine between 10 000 € and 25 000 €.	abusive character of such a group or its members.			
Ireland	Not specifically prohibited.	-	-	-	-
Netherlands	Not specifically prohibited but Courts punish the denial of holocaust on the basis of Art. 137d of the penal Code (<i>see Section 4.1.1</i>). (HR 27 March 2017).	-	-	-	-
Romania	Mostly prohibited. Article 6 of Government Emergency Ordinance no. 31/2002: (1) imprisonment between 6 months to 3 years or a fine (between 399 € and 33 300 €) [2]. (2) imprisonment between 6 months to 3 years or a fine (between 399 € and 33 300 €) [2]. (3) Imprisonment between 6 months to 5 years if the activities in paragraphs (1) and (2) are made through a computer system.	(1) Publicly denying, contesting, approving, justifying or grossly trivializing, by any means, the holocaust or its effects. (2) Publicly denying, contesting , approving, justifying or grossly trivializing crimes of genocide, crimes against humanity and war crimes (crimes against peace are missing), as defined in international law, in the Statute of the International Criminal Court and in the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 and recognized as such by a final decision of the International Criminal Court, International Military Tribunal appended to the London Agreement of 8 August 1945, of the International Criminal Tribunal for Ex-Yugoslavia, of the International Criminal Tribunal for Rwanda or any other international criminal tribunal established by relevant international instruments, and whose competence or effects are recognized by the Romanian state.	Any ground.	Any means. Higher sanction in case it is committed through a computer system.	No other particularity.
Spain	Not prohibited but partly covered by Art. 510.2 (b) of the penal Code: - Imprisonment between 6 months and 2 years and fine between 6 months to 12 months (360 € and 144 000 €) [4]. - Imprisonment between 1 and 4 years and fine between 6 months to 12 months when the offence has promoted or encourage a climate of violence, hostility, hatred or discrimination against these groups.	To extol or justify crimes that have been committed against a group, a part thereof, or against a person because of their membership - in a racially motivated, anti-Semitic or other related ideology, to a (<i>see "Why"</i>), or who have participated in execution.	The list is imperfectly covered (membership of an ethnic group, race or nation, national origin, religion - colour and descent are missing, ethnic origins are not mentioned but seems to be covered). Additional grounds are beliefs, family situation, gender, sexual orientation or gender identity, gender, illness or disability .	Any means of public expression or dissemination	No other particularity.

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

4.2.1 - Direct or indirect discrimination (incl. harassment) in some specific areas

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural pers.)	International/European basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
II.1	<p>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.</p> <p>However discrimination or harassment must be committed in one of the following area: (1) conditions for access to employment, to self-employment and to occupation; (2) access to vocational guidance and training; (3) employment and working conditions; (4) involvement in in a professional organisation; (5) social protection and advantages; (6) education; (7) access to and supply of goods and services which are available to the public, including housing.</p>	<p>Intentional where penally punished (8 countries out of 10); <i>Only prohibited by civil law in 1 country; only prohibited by administrative law in 1 country.</i></p>	<p><i>In 8 countries out of 10 where the behaviour is penally punished:</i></p> <p>In principle: author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p>Exceptions: - Spain: special media liability regime; - Cyprus, Greece and Bulgaria exclude the liability of legal persons, as well as Ireland in relation (only) with the Non-Fatal Offences Against the Person Act, 1997.</p>	<p>Depending on the country, where penally sanctioned, imprisonment up to 3 years and fine up to 45 000 €.</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 288 000 €). Administrative fines may reach 50 000 €.</p> <p><i>[*] Such a high amount has never been applied up to now</i></p>	<p>Council Directive 2000/43/EC (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 occupation⁶⁵.</p> <p>International Convention on the elimination of all forms of racial discrimination, Art. 5.</p>

⁶⁵ In a 1990 court case (ECJ, 8 November 1990, case 177/88, Dekker) the European court of justice ruled that there is no room for national exonerations: discrimination cannot be legalised due to local opinions, or exceptions in national legislation. Once discriminatory behaviour is established according to European law, no national grounds can excuse this discriminatory behaviour (contribution from M. Hein Dries - see Annex 2 below).

I.2 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p>Prohibited - Moureaux Act, Art. 24 and 25: imprisonment between 1 month to 1 year and/or fine between 50 € and 1 000 €).</p> <p>Article 442 Ter BPC to offenses committed using a computer.</p> <p>Article 442 Bis: imprisonment between 15 days and 2 years and/or fine between 50 € and 300 €.</p> <p>Article 442 Bis, §2: the minimum sanction is doubled in case the victim was vulnerable for certain reasons (<i>see "Why"</i>) and where this was obvious or known by the perpetrator.</p> <p>Article 442 Ter: the minimum sanction may be doubled in case of illegal motivations (<i>see "Why"</i>).</p>	<p>Two criminal provisions inserted in the Moureaux Act are applicable to direct and indirect discrimination (including instruction to discrimination).</p> <p>Article 24: discrimination against a person or between communities.</p> <p>Article 25: discrimination against a person or between communities, in the specific field of labour relations (even if this topic is already covered by Article 24).</p> <p>Art. 442bis: to harass a person knowing that the harassment would seriously affect the quietude of the victim.</p>	<p>Art. 24 and 25: racial or ethnic origins are missing but covered by other notions ("nationality", "the national or the ethnical ancestry"; race). Additional grounds are: supposed race, skin colour, and (following the Constitution, two Acts of 10th May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.</p> <p>Art.442 bis: any ground but the sanction is higher in case of illegal motivation (442 bis §2 or 442 ter).</p> <p>Art.442 bis §2: age, pregnancy, illness, infirmity or physical or mental disability.</p> <p>Art. 442 ter: same grounds as Art. 20.1 to 20.4 mentioned above.</p>	Any means.	No other particularities.
Bulgaria	<p>Partly prohibited - Art. 172 penal Code: imprisonment for up to 3 years or a fine of up to BGN 5 000 (2 500 €).</p> <p>Administrative sanctions: fine from 50 € to 50 000 € depending on the specific situation.</p>	To intentionally impede a person to take a job, or compel him to leave a job because of his/her (<i>see "Why"</i>).	Nationality, race, religion, social origin, membership in a trade union or another type of organization, political party, organisation, movement or coalition with political objective, or because of his or of his next-of-kin political convictions	Any means.	No other particularities.
Cyprus	<p>Prohibited - Law 59(I)/2004 and Law 42(I)/2004.</p> <p>Law 42(I)/2004: fine up to 350</p>	Law 59(I)2004 defines (direct and indirect) discrimination and harassment. It applies (art. 4(1) to all persons, as regards both the public	Art. 6 L 42(1)/2004: racial or ethnic origin, religion, convictions, colour, language, community, special needs, age and sexual	Areas of prohibition are defined in Art. 4(1) of the Law 59(I)2004: social protection, social security	No other particularities.

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

	<p>pounds (595 €) pronounced by the Commissioner for the promotion of equal treatment (Ombudsman in Cyprus) if no criminal provision punishes the conduct.</p>	<p>and private sectors, including public bodies, in relation to (<i>see "how"</i>).</p> <p>Exceptions: same as the Directive.</p> <p>Law 42(1)/2004, art.6: defines the concept of illegal discrimination as any behaviour, conduct, term, provision or practice which is prohibited or regulated by any law for the reason that it constitutes direct or indirect discrimination on the basis of (<i>see "Why"</i>).</p>	orientation.	and healthcare, social advantages; education and access to and supply of goods and services which are available to the public, including housing.	
France	<p>Prohibited.</p> <p>- Law 2008-496 amended (civil sanctions): termination of the damage and compensation/damages.</p> <p>- Art. 225-1 to 225-4 of the penal Code: up to 3 years of imprisonment and/or a fine up to 45 000 €..</p> <p>- Art. 432-7 of the penal Code: up to 5 years of imprisonment and/or a fine up to 75 000 € where the offender is a representative of the public authority and where the discrimination consists: (1) in refusing the benefit of a right granted by law; or (2) in obstructing the normal exercise of any economic activity.</p> <p>Art. 222-33-2-2 penal Code - up to 1 year imprisonment and fine up to 15 000 € - aggravating circumstances do exist, among which the performance of the action through online public communication (up to 2 years / 30 000 €).</p>	<p>Law 2008 (civil): the list is covered. Is also especially punished the fact of enjoining any person to engage in this prohibited behaviour.</p> <p>Exception: same as the Directive, but exceptions must in addition satisfy an essential and critical professional requirement.</p> <p>Liability: where facts are presumed, there is a reversal of the burden of proof.</p> <p>225-1 to -4: direct discrimination is punished in six areas. Some exceptions are listed Art. 225-3 penal Code.</p> <p>225-1: discrimination is defined as any distinction applied between natural or legal persons by reason of their (<i>see "Why"</i>).</p> <p>Art. 222-33-2-2: harassment of a person through repetitive words or behaviours having the object or the effect to harm his or her living conditions leading to a mental or physical injury.</p>	<p>Law 2008: the list is covered. Additional grounds are gender, religion or beliefs, disability, age, sexual orientation or identity, home place 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). 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) good/ service addressed to a gender with legitimate aim and necessary/proportionate means to reach it; (2) calculation of insurance premium/payment of insurance benefits within the conditions set out in the Insurance Code; (3) training grouping students according to their gender).</p> <p>225-1 to -4: 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</p>	<p>Any means.</p> <p>225-1 & 2: direct discrimination is punished in six areas: (1) in refusing the provision of a good or service, (2) in obstructing the normal exercise of any economic activity, (3) in refusing to hire, or in punishing or dismissing a person, (4) in subjecting the supply of goods or services to a condition based on one of the grounds listed above, (5) in subjecting an offer of employment, internship demand or job training period to a condition based on one of the grounds listed above, (6) in refusing to accept a person at one of the internships referred to under 2 ° of Article L. 412-8 of the Code of Social Security.</p> <p>Art. 222-33-2-2: any means but sanction is higher in case of use of an online public communication means.</p>	<p>Other specific penal provisions prohibiting discrimination do exist in the field of employment (L1155-2, L. 2146-2, R2146-5 of the labour Code), sport Code (art. L.332-6 - incitement to hatred or violence against a person or group in a public broadcast of a sport event) and non-penal provisions in other codes (insurance, sport, labour).</p>

			<p>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.</p> <p>Art. 222-33-2-2: any ground.</p>		
Germany	<p>Prohibited - General Anti-Discrimination Act.</p> <p>Civil sanction.</p>	<p>Art. 2: discrimination is deemed inadmissible in relation to 8 areas.</p> <p>Part 2 of the law (section 6 to 18) – which is part of the labour law – comprehensively regulates the protection of employees against discrimination.</p>	<p>Race or ethnic origin, gender, religion or belief, disability, age or sexual orientation:</p>	<p>Any means. Areas of prohibition are: (1) conditions for access to dependent employment and self-employment, (2) employment conditions and working conditions; (3) access to all types and to all levels of vocational guidance, training, retraining, including practical work experience; (4) membership of and involvement in an organisation of workers or employers or any organisation whose members carry on a particular profession; (5) social protection, including social security and health care; (6) social advantages; (7) education ; (8) access to and supply of goods and services which are available to the public, including housing.</p>	<p>No other particularities.</p>
Greece	<p>Prohibited - Act N° 3304/ 2005 (art. 16): imprisonment up to 6 months and fine between 1 000 and 5 000 €).</p> <p>In addition, in case of infringement, Art. 57 of the civil Code (protection of personality) enables to file a claim for cessation and omission of the infringement,</p>	<p>Same extent as the directive.</p> <p>Possible exceptions: discrimination allowed to bona fide promote equality of opportunity or accommodate people with different needs (positive discrimination).</p>	<p>Additional grounds are gender, civil status, family status, sexual orientation, religion, age, disability, membership of the traveller community.</p>	<p>Any means. Areas of prohibition are the same as the Directive.</p>	<p>In addition, law punishes specifically the publication or display of an advertisement which relates to employment and which indicates an intention to</p>

	and Art. 932 of the civil Code enables to ask for compensation for moral damage.				discriminate or might reasonably be understood as indicating such an intention.
Ireland	<p>Partly prohibited. - Equal Status Acts 2000-2012 - fine up to €1,500 (1 900 €) and/or imprisonment up to 1 year on summary conviction; fine up to €25,000 (31 250 €) and/or imprisonment up to 2 years on conviction on indictment.</p> <p>Section 13 prohibits the procurement or the attempt to procure another person to engage in prohibited conduct.</p> <p>Non-Fatal Offences Against the Person Act, 1997, Section 10: fine up to €1,500 (1 900 €) and/or imprisonment up to 12 months on summary conviction; fine and/or imprisonment up to 7 years on conviction on indictment.</p>	<p>Equal Status Acts: Differences of treatment and harassment (including sexual) are punished in different situations.</p> <p>Possible exceptions: The act lists many reasons why an act may well be non-discriminatory, as well as allows discrimination to take place in a limited set of circumstances (for instance at in an educational setting – where an institution training religious leaders only accepts certain religions or a certain gender). Positive discrimination is also allowed. (Section 14).</p> <p>Non-Fatal Offences Against the Person Act: (1) any person who, without lawful authority or reasonable excuse, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence.</p> <p>(2) for the purposes of this section a person harasses another where—(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and (b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other.</p>	<p>Equal Status Acts: gender, marital status, family status, sexual orientation, religion, age, disability, race (including colour, nationality or ethnic or national origins), traveller community</p> <p>Non-Fatal Offences Against the Person Act: any ground.</p>	<p>Equal Status Acts: any means. Areas of prohibition are mainly (1) the disposal of goods and provision of services; (2) the disposal of premises and provision of accommodation; (3) Educational establishments; (4) Clubs.</p> <p>Non-Fatal Offences Against the Person Act: by any means including by use of the telephone.</p>	<p>Section 12 of the Equal Status Acts prohibits the publication or display, or the causing to be published or displayed an advertisement which indicates an intention to engage in prohibited conduct or might reasonably be understood as indicating such an intention ("advertisement" includes every form of advertisement, whether to the public or not).</p>
Netherlands	<p>Prohibited - Act on equal treatment (discrimination) - AWGB, civil law actions (the courts' practice is to grant material damages up to 20000 €); Civil action can be taken on the basis of 6:162 BW or any other material law that could be used to address the unequal</p>	<p>- Act on equal treatment: direct and indirect discrimination in the same terms of the Directive. Harassment is also covered in the act under Article 1a.</p> <p>Possible exceptions: positive discrimination mainly.</p> <p>Liability: where facts are presumed, there is a reversal of the burden of proof.</p>	<p>- Act on equal treatment: religion, beliefs, political views, race, sex, nationality, hetero or homo-sexual orientation, civil (family/marital) status; additional particular provisions relating to pregnancy, labour and motherhood; ethnic origins are missing.</p> <p>Partly punished in the case of denial of service or delivery because of race:</p>	<p>Act on equal treatment: Same extent. Areas of prohibition are the same as the Directive.</p> <p>Section 285b of the penal Code: Any means.</p>	<p>Intentional racial discrimination in a professional setting (a profession, office or commercial company) is especially prohibited by Art.</p>

	<p>treatment.</p> <p>Administrative proceedings are also possible: a special committee on human rights may give an opinion on the violation, on the basis of a complaint or on its own initiative; The committee has the power to start civil proceedings, leading to a prohibition.</p> <p>- Section 285b of the penal Code (stalking): imprisonment up to 3 years or a fine of the 4th category (20 500 €). Prosecution shall take place only on complaint of the person against whom the serious offence has been committed.</p>	<p>- Section 285b of the penal Code (stalking): any person who unlawfully, systematically, intentionally violates another person's personal privacy with the intention of compelling that other person to act or to refrain from certain acts or to tolerate certain acts or of instilling fear in that person, shall be guilty of stalking.</p>	<p>- Section 285b of the penal Code: any ground.</p>		<p>137g of the penal Code (imprisonment up to 6 months or a fine of the 3rd category (8 200 €)).</p>
Romania	<p>Partly prohibited - Government Ordinance no. 137/2000, Section on equality in economic activities, employment and occupation, Arts. 6-9: fine between 1 000 to 3 000 RON (approx. 222 to 666 €) if it discriminates a natural person and fine between 2 000 to 100 000 RON (approx. 444 to 22 222 €) if it discriminates a group of people or a community (contravention).</p> <p>Art. 208 penal Code: (1) imprisonment between 3 and 6 months or a fine; (2) imprisonment between 1 and 3 months or a fine, unless such act represents a more serious</p>	<p>137/2000, Art. 6: conditioning someone's participation, access or free exercise to a certain economic activity to being a member of a certain... (<i>see "Why"</i>).</p> <p>137/2000, Art. 7: sanctions discrimination of a person at work or in a situation of social protection (<i>for reasons mentioned in column "Why"</i>), except for the cases stipulated by the law, displayed in several areas.</p> <p>137/2000, Art. 8: the refusal of hiring someone on basis of (<i>see "Why"</i>).</p> <p>137/2000, Art. 9: discriminating the employees based on the social performance because of (<i>see "Why"</i>).</p> <p>Art. 208 penal Code (harassment): (1) to repeatedly, with or without a right or legitimate interest, pursue an individual or supervise his/her domicile, working place or other places attended by the latter, thus</p>	<p>137/2000: race, nationality, ethnicity, religion, social category, convictions, sex or sexual orientation, age or unprivileged category.</p> <p>Art. 208: any ground.</p>	<p>137/2000, Art. 6: Same extent.</p> <p>137/2000, Art. 7: Same extent. Areas concerned are: (a) Concluding, suspending, modifying or terminating work relations; b) Establishing and modifying the work tasks, the place of work and the wage; c) Granting other social rights than the wage; d) Professional formation, improvement, reconversion and promotion; e) Apply disciplinary measures; f) The right to join a union and the access to the facilities granted by it; g) Any other conditions of work, according to the laws in force.</p>	<p>The Labour Code also contains provisions against discrimination and unequal treatment in the work field.</p>

	<p>offense; (3) Criminal action shall be initiated based on a prior complaint filed by the victim [4 - fines between 266 € and 26 640 €].</p>	<p>causing to him/her a state of fear; (2) to make phone calls or communications through remote communication devices which, through their frequency or content, cause a state of fear to an individual.</p> <p>Law 202/2002 on equal opportunity for men and women prohibit discrimination based on gender at work and mentions specific obligations for the employer in order to prevent it. Discrimination based on gender is defined (art. 11) as any unwanted behaviour, defined as harassment or sexual harassment, having as purpose or effect of: (a) creating an atmosphere of intimidation, hostility or demotivation at the work place for the affected person; or (b) negatively influencing the employee as regards to their professional promotion, financial retribution or any kind of revenue or access to professional development in case of refusal of an unwanted behaviour which is connected to sexual life.</p>			
Spain	<p>Partly prohibited</p> <p>- Art. 314 of the penal Code (discrimination): Imprisonment sentence of six months to two years and a fine of between 12 up to 24 months (720 € to 288 000 €) [5].</p> <p>- Art. 172 ter of the penal Code (harassment): imprisonment between 3 months to 2 years or a fine of 6 to 24 months (360 € to 144 000 €) [5]. Criminal action can only be initiated based on a prior complaint filed by the victim or one of his or her representative.</p> <p>Where the victim is a particularly vulnerable person because of age, illness or</p>	<p>- Art. 314: to produce serious discrimination in employment, public or private, when the offender does not restore the situation of equality before the law requirements or administrative penalty after repairing the economic damage that have been derived (the offence is only punished where the perpetrator does not restore the situation to the desired equality and repairs the economic damage that has been derived, following an administrative request or sanction - In addition, the "gravity" of discrimination lies within the discretion of the judges).</p> <p>- Art. 172 ter: to harass a person carrying out insistently and repeatedly, without being lawfully authorised, any of the following behaviours and, thus seriously alter the development of the daily life of the victim: to monitor, chase or search for a physical proximity; to contact or to try to contact the</p>	<p>- Art. 314: Against any person because of their ideology, religion or beliefs, ethnicity, race or nation, sex, sexual orientation, family situation, illness or disability, bear the legal or union representation of workers, by the kinship with other workers in the company or by the use of one of the official languages in the Spanish State.</p> <p>- Art. 172 ter: Any ground.</p>	<p>- Art. 314: same extent. Discrimination or harassment is only illegal where committed in one of the following area: conditions for access to employment, to self-employment and to occupation, employment and working conditions.</p> <p>- Art. 172 ter: any means. However, in practice, more than 80% of cases of harassment will happen over ICT, social networks and Internet. The infringement was regulated for the first time 10 2015 and In Spain the first sentence of stalking was passed in Court of Tudela (Navarra): the offender has been convicted for stalking using ICT.</p>	No other particularities.

	<p>situation imprisonment between 6 months and 2 years. Where the injured party is one of the persons referred to in paragraph 2 of Article 173 (wife, husband or partner imprisonment between 1 and 2 years, or a community service between 60 and 120 days. In this case a complaint of the victim is not required.</p>	<p>person through any media, or through third parties; to misuse the person's personal data, in order to purchase products or goods, or hire services, or get a third party to come in contact with the person; to violate his or her freedom or his or her property, or the freedom or assets of another person next to him or her.</p>			
--	---	--	--	--	--

4.2.2 - Refusing to supply goods or services for illegal motivations

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

I.2 - Countries' particularities

Country	Provision, sanction	What	Why
Belgium	Not prohibited.	Not regulated regarding private goods and services. Might be punished regarding public ones under the provisions referred to Section 4.2.1.	-
Bulgaria	Not prohibited.	-	-

Cyprus ⁶⁶	<p>Prohibited.</p> <p>- Article 2A (4) of the law 12/1967: up to 1 year and/or fine up to 400 pounds (680 €).</p> <p>- Law 42(I)/2004: fine up to 350 pounds (595 €) pronounced by the Commissioner for the promotion of equal treatment (Ombudsman in Cyprus) if no criminal provision punishes the conduct.</p>	<p>Art. 2A (4) L12/1967: to supply goods or services by profession and to refuse such supply to another by reason of (<i>see "Why"</i>), or to make such supply subject to a condition relating to the (<i>see "Why"</i>) of a person.</p>	<p>Art. 2A (4) L12/1967: racial or ethnic origin or religion.</p>
France	<p>Punished - Art. 225-2 of the penal Code: imprisonment up to 3 years and fine up to 45 000 €. Imprisonment up to 5 years and fine up to 75 000 € where a refusal to provide a good or service (225-1, 1) is committed in a place welcoming the public or in order to prohibit the access of such a place (this does not apply to 225-1,4).</p>	<p>225-2: discrimination (means any distinction applied between persons by reason of their.. <i>see "Why"</i>) committed toward a natural or a legal person, where it consists (1) to refuse to provide a good or service or (4) to make such supply subject to a condition relating to the (<i>see "Why"</i>) of a person.</p> <p>Exception (225-3, 4): discriminations based on gender are allowed where it is justified by the protection of victims of sexual violence, or by considerations linked to the respect of private life or decency, or by the promotion of equality between genders or of interests of men or women, freedom of association or organisation of sportive activities.</p>	<p>Reg. natural persons: 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;</p> <p>Reg. legal persons: same grounds at the exclusion of pregnancy, in relation with a member or some members of the legal person.</p>
Germany	<p>Prohibited by civil law. Part 3 (section 19 to 21) of General Anti-Discrimination Act stipulates the protection against discrimination under civil law.</p>	<p>Prohibition of Discrimination Under Civil Law:</p> <p>(1) Any discrimination on the grounds of (<i>see "Why"</i>) shall be illegal when founding, executing or terminating civil-law obligations which</p> <ol style="list-style-type: none"> typically arise without regard of person in a large number of cases under comparable conditions (bulk business) or where the regard of person is of subordinate significance on account of the obligation and the comparable conditions arise in a large number of cases; or which have as their object a private-law insurance. <p>(2) Any discrimination on the grounds of (<i>see "Why"</i>) shall furthermore be illegal within the meaning of Section 2(1) n^{os} 5 to 8 when founding, executing or terminating other civil-law obligations.</p> <p>(3) In the case of rental of housing, a difference of treatment shall not be</p>	<p>(1) race or ethnic origin, religion, gender disability, age or sexual orientation.</p> <p>(2) race or ethnic origin.</p>

⁶⁶ Additional information from 2004 can be found at the following address (last acceded on 15 June 2016): www.coe.int/t/dghl/monitoring/ecri/legal_research/national_legal_measures/Cyprus/Cyprus_SR.pdf.

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

		<p>deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.</p> <p>[...]</p> <p>Permissible differences of treatment are stipulated in section 20, the enforcement rules (incl. compensation of damages) arise from section 21.</p>	
Greece	Prohibited – Article 16 of Law 3304/2005: imprisonment up to 6 months and fine between 1 000 € and 5 000 €.	Refusal as regards the access to, the making available and the provision of goods and services to the public, including housing, on certain grounds (<i>see "Why"</i>).	Racial or ethnic origin and discrimination due to religious or other beliefs, disability , age or sexual orientation .
Ireland	Prohibited. Equal Status Acts 2000-2012: fine up to £1,500 (1 900 €) and/or imprisonment up to 1 year on summary conviction; fine up to £25,000 (31 250 €) and/or imprisonment up to 2 years on conviction on indictment.	<p>Differences of treatment and harassment (including sexual) are punished within the context of the disposal of goods and provision of services.</p> <p>Possible exceptions: section 5 of the act lists 12 exceptions, such as (e) differences of treatment in relation to goods or services provided for a religious purpose; (f, g, h, i, j) some differences of treatment that are reasonably necessary or expected in certain listed conditions and situations; (k) a disposal of goods by will or gift; or (l) differences of treatment where goods or services can reasonably be regarded as suitable only to the needs of certain persons.</p>	Gender , marital status , family status , sexual orientation , religion, age , disability , race (including colour, nationality or ethnic or national origins), traveller community .
Netherlands	Partly prohibited. Art. 137g of the penal Code: - - Imprisonment up to 6 months or a fine of the third category (8 200 €). - Imprisonment up to 1 year or a fine of the 4 th category (20 500 €) for those who do this “habitually” or those who do this in conjunction with other persons.	Any person who, in the exercise of his office, profession or business, intentionally discriminates against persons because of their (<i>see "Why"</i>).	Race (which covers the list).
Romania	Mostly prohibited. Article 10 of Government Ordinance no. 137/2000: fine between 1 000 and 3 000 RON (approximately 222 to 666 €) if it discriminates a natural person; fine between 2 000 to 100 000 RON (approximately 444 to 22 222 €) if it discriminates a group of people or a community.	<p>Discriminating a person, a group of people or the people which are administering a legal person, based on their (<i>see "Why"</i>) through:</p> <p>a) refusing legal or administrative public services;</p> <p>b) refusing access to public health services - choosing a general practitioner, medical assistance, health insurance, emergency services or other health services;</p> <p>c) refusing selling or renting land or housing;</p> <p>d) refusing to allow a bank credit or to enter any other contractual relationship;</p> <p>e) refusing access to services offered by theaters, cinemas, libraries, museums or exhibitions;</p> <p>f) refusing access to services offered by magazines, hotels, restaurants, bars, discotheques or any other service providers, public or private;</p> <p>g) refusing access to public transportation services – plane, ship, train, metro, bus, trolley, tram, taxi or any other means;</p> <p>h) refusing to grant a person or a group of people some rights or facilities.</p>	Membership to a race, nationality , ethnicity, religion, social category , convictions , sex or sexual orientation , age or unprivileged category

Spain	<p>Prohibited - penal Code:</p> <p>Art. 512: special barring from exercise of profession, trade, industry or commerce, and d special barring from profession or educational profession, in teaching, sports and leisure area for a term of one to four years.</p> <p>Art. 511.1 and 511.2 (Law 10/2015): Imprisonment sentence of 6 months to two years and a fine of between 12 up to 24 months (720 € to 288 000 €) and special barring from public employment and office for a term from one to three years.</p> <p>Art. 511.3: public officials in charge of a public service incur (for act provided for in 511.1 and 511.2) the same penalties in the upper half and the special disqualification from public office for a period of two to four years.</p> <p>Art. 511.4: in all cases shall also be imposed the penalty of disqualification from profession or educational profession, in teaching, sports and leisure area, for 1 to 3 years more than the duration of the deprivation of freedom imposed in the judgment where appropriate, in proportionate response to the seriousness of the offense and the circumstances surrounding the offender.</p> <p>This intentional infringement of mere activity can be committed by action (denying) or omission (not revoking denial).</p>	<p>Art. 512: those who, in the exercise of their professional or business activities, were to deny a person a service to which he is entitled due to his (<i>see "Why"</i>).</p> <p>Art. 511.1: private individuals in charge of a public service who refuse to a person a service to which he or she is entitled, due to his/her (<i>see "Why"</i>). (Certain benefits that are not subject to a public service, such as comfort [SAP Balearic Islands no. 256/2000 of 30 December] or absence of enmity, are excluded from the scope).</p> <p>Art. 511.2: same acts committed against an association, foundation, society or corporation, or against its members due to the same reasons.</p>	<p>Art. 512, 511: ideology, religion or belief, belonging to an ethnic group or race, national origin, gender, sexual preference, family situation, illness or disability.</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 <i>Specific civil (3 countries) or constitutional (1 country) provisions may apply in case of discrimination or attempt to privacy or honour in 4 countries out of 10. General civil liability rules may apply in 6 countries out of 10.</i>	Any (<i>in 7 countries out of the 8 where civil liability is possible</i>).	Any way.	N/A.	The author of the fault, negligence or violation.	Highly variable depending on the country.	

I.2 - Countries' particularities

Country	Provision, sanction	What
Belgium	No specific provisions. The common liability regime may apply.	Civil law does not provide for specific provisions in case of illegal hatred or online discrimination. However, the common liability regime under civil law may apply, on the basis of Art. 1382 to 1384 of the civil Code. If the act is constitutive of a penal infringement, a civil liability action may be brought together with the penal action. Art. 1382 of the civil Code states that someone committing a fault must repair it. A fault, a damage and a link between them must be proven. Art. 1383 of the civil Code states that someone engages his or her liability for his or her own action, but also in case of negligence or recklessness. Art. 1384 of the civil Code states that a person is also responsible for the damages caused by people for whom he or she must answer (parents for their minor children, teachers and artisans for their students and apprentices during the time they are under their supervision; employers for their employee), or by things that he or she has under his or her custody. Under 1382 and 1383, a fault or negligence, a damage/injury, and a link between both, have to be demonstrated. Under 1384, parents, teachers and artisans are not liable if they prove that they could not prevent the fact that is at the origin of their liability.
Bulgaria	Specific provisions: Protection Against Discrimination Act (PADA) ⁶⁷	PADA, Art. 71: (1) In cases other than those referred to in Section I (<i>i.e. in case of proceedings before the Commission for protection against discrimination</i>), any person whose rights under this or other Acts regulating equal treatment have been violated may bring an action in the Regional Court demanding: 1. the violation to be ascertained;

⁶⁷ An English version of this Act is available at <http://www.refworld.org/docid/44ae58d62d5.html> (last acceded on 16 June 2016).

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

		the provider about the violation of the right of personality before and to give him the opportunity to remove the violating content.
Greece	No specific provisions (except in the field of employment). The common liability regime may apply.	<p>There are no civil provisions prohibiting illegal hatred and/or illegal discrimination in Greek law, with the exception of Act N° 3304/2005, which applies in the field of work and occupation, in the public and private sector. This act implements the E.U. Directives 2000/78 and 2000/43 and includes a prohibition of discrimination on the grounds of racial or ethnic origin, religious or other belief, disabilities, age, or sexual orientation.</p> <p>In other cases, the general provisions establishing the protection of personality can be applied, namely the provisions of Article 57 Greek Civil Code, which recognizes a general, absolute right of every person through which the protection of personality and of the value of human dignity is safeguarded.</p> <p>On the basis of these provisions, one can file a claim for cessation and omission of the infringement of personality; the injured party may also a claim for compensation for moral damages, in accordance with Article 932 Civil Code. In that case, the general provisions on torts apply (articles 914 et seq. Civil Code), which provide for the requirements of illegal and faulty conduct of the defendant.</p> <p>The requirements of civil liability are: a fault or negligence, a damage or injury and a link between both.</p>
Ireland	No specific provisions (except in the field of employment). No common liability regime does apply.	<p>No specific provision has been found in civil legislation. In case of Defamation, the special tort of defamation is in use, and is covered by the 2009 Defamation Act. Beside this, general tort law mostly covers direct interferences only, and speech cannot be easily construed as direct interference. As a consequence, there appears little room for actions against hate speech and discriminatory language outside of the context of Defamation.</p> <p>If a defamatory statement is published about a group of people, any member of that group has a cause of action if the statement could reasonably be understood as referring to that person, either because of the number of people in the group or because of the circumstances in which the statement is published. It should be noted that there is no generic civil law tort equivalent.</p> <p>In addition, civil liability might be pronounced in case of violation of the Employment equal quality Acts and the Equal status Acts.</p>
Netherlands	No specific provisions. No common liability regime does apply.	<p>Article 6:162 of the civil Code (BW) lays down the generic rules for civil liability, and requires an (1) illegal act (against the law or a social norm), which will be considered as a fault, (2) some damage, material or immaterial (6:106 BW), and (3) a causal relationship between the deed and the damage. Article 6:106 BW requires both that the person discriminating the victim had the intent to cause immaterial harm, and that the fault results either in a bodily harm or in harm to a person's good name, honour or person (which refers to reputation).</p> <p>Insofar as the hateful or discriminatory speech is covered by the law on equal treatment (AWGB), the resulting unequal treatment is considered a fault and therefore, on the basis of Art. 6:162 and Art. 6:106 BW, will cause an entitlement to direct and indirect (immaterial) damages.</p> <p>This common liability regime may apply as well to both discriminatory speech and hate speech, as soon as the act can be considered contrary to a social (and/or a legal) norm.</p>
Romania	Some specific provisions already studied. Additional provisions relating to the protection of privacy may apply. The common liability regime may apply in addition.	<p>The causes of civil actions in cases of hate and discrimination are tort and the conditions for where the illegal activity are is sanctioned by special legislation, criminal offenses, decisions of the National Council Combating Discrimination or other general provisions under the Civil Code.</p> <p>The civil liability is regulated by the Articles 1349 - 1395 of the Civil Code and includes the following cumulative conditions:</p> <ul style="list-style-type: none"> - the existence of the damage - the existence of the illicit deed - the existence of a causality relation between the deed and the prejudice, and - the existence of negligence or intent (as a form guilt) <p>If all the conditions are met, the injured party is entitled to ask for compensation of the prejudice under a civil action for damages.</p> <p>In addition, Art. 71 to 74 of the civil Code might apply in certain cases:</p> <p>Art. 71 of the civil Code (The right to private life): (1) Any person has the right to respect of his/her privacy; (2) No one can be subject to invasions of his/her private, personal or family life at his/her domicile or residence or in his/her correspondence, without the consent of or the compliance with the limitations specified in Article 75; (3) The use by any means of the correspondence, manuscripts or other personal</p>

		<p>documents and of one's private information without his/her consent or without the compliance with the limitations specified in Article 75 is also forbidden.</p> <p>Article 72 of the Civil Code (The right to dignity): (1) Any person has the right to respect of his/her dignity; (2) Any prejudice to the honour and reputation of a person without his/her consent or without the compliance with the limitations specified in Article 75 is forbidden.</p> <p>Article 73 of the Civil Code (The right to one's image): (1) Any person has the right to own image; (2) In exercising the right to own image, the person may forbid or prevent the reproduction by any means of its physical appearance or voice or, as appropriate, the use of such reproduction. The dispositions of Article 75 shall apply.</p> <p>Article 74 of the Civil Code (Interference with the right to privacy): Notwithstanding the dispositions of Article 75, in references to the right to privacy can be: (a) penetrating or unrightfully remaining in the dwelling or taking from it any object without the consent of the person occupying it legally; (b) tapping unrightfully a private conversation, made by any technical means, or the use, learnedly, of such an interception; (c) capture or use of the image or voice of a person situated in private premises, without his/her consent; (d) broadcasting of images which present the inside of private premises, without the consent of the person occupying it legally; (e) keeping of the private life under observation, by any means, except in cases provided by law; (f) broadcasting of news, debates, investigations of written feature audiovisual reports on the intimate, personal or family life, without the consent of the person concerned; (g) broadcasting of materials containing images regarding a person under treatment in medical assistance institutions, as well as of data with personal character on the health status, diagnostic issues, prognostic, treatment, circumstances related to the illness and any other various facts, including the result of the autopsy, without the consent of the person concerned, and in case the latter is deceased, without the consent of the family or of the entitled persons; (h) The mala fide use of the name, image, voice or similarity with another person; (j) publication or use of the correspondence, manuscripts or other personal documents, including of data concerning the domicile, residence, as well as the phone numbers of a person or of the members of his/her family, without the consent of the person to whom these belong or who, as the case may be, is entitled to dispose of them.</p> <p>Article 75 of the Civil Code: (1) It does not constitute a violation of the rights foreseen in this section the interferences permitted by law or by international conventions and covenants on human rights to which Romania is part of; (2) The exercise of rights and constitutional freedoms in good faith and in compliance with international agreements and conventions to which Romania is part of does not constitute a violation of the rights foreseen in this section.</p>
Spain	<p>No specific provisions.</p> <p>Some provisions relating to the protection of privacy may apply.</p> <p>The common liability regime does apply in addition.</p>	<p>Civil law does not provide for specific provisions in case of illegal hatred or online discrimination.</p> <p>However, the common liability regime under civil law may apply, on the basis of Art. 1902 <i>et seq.</i> of the civil Code (possibility that has been recognised by the Supreme Court of Spain). If the act is constitutive of a penal infringement, a civil liability action may be brought together with the penal action.</p> <p>- Art. 1902 of the civil Code states that a person who, as a result of an action or omission, causes damage to another by his fault or negligence shall be obliged to repair the damaged caused.</p> <p>Requirements for damages are the following:</p> <ul style="list-style-type: none"> - a culpable breach of the obligation (fault or negligence), - an impossibility to get compliance specifically, - occurred damages (damage or consequential damage such as injury suffered by the heritage, or loss of profits as a result of the breach), and - a causal direct link. <p>Despite this latter rule, the jurisprudence establishes in practice a reversal of the burden of proof, which means that the production of a damage is enough to lead to accountability, and that the offender must prove that he or she has not committed any fault and that he or she acted with all the diligences of a "good father" to prevent the damage, in order to exonerate him or herself from his/her responsibility.</p> <p>- Art. 1903 of the civil Code states that the obligation imposed in Article 1902 shall be enforceable not only as a result of one's own actions or omissions but also of those of such persons for whom one is liable. Parents are liable for damages caused by children under their care; guardians</p>

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

4.4 Additional texts, less or more generic, or prohibited in some countries only

4.4.1 - Sending of grossly offensive and/or indecent or obscene or menacing content

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

V.1 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	<p>Not specifically prohibited but might be covered by the penal prohibition of indecency.</p> <p>Art. 383 penal Code: imprisonment between 8 days and 6 months and/or a fine between 26 € and 500 €.</p>	Prohibition of public indecency (as defined by case law and by common sense).	Any ground.	Through a computer system.
Bulgaria	Not prohibited (besides the threatening of a person mentioned in Section 4.1.6) - Art. 144 of the penal Code).	<i>See Section 4.1.6.</i>	<i>See Section 4.1.6.</i>	<i>See Section 4.1.6.</i>
Cyprus	Prohibited. Art. 149 (6) L112(I)/2004, fine up to 1 700 €.	(A) To send a message, or whatever content, which is grossly	Any ground (<i>higher</i>)	By the use of a

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

		offensive and of an indecent or obscene or menacing character (offense).	<i>sanctions are incurred in case of illegal motivations due to a general provision - see Section 4.1.7).</i>	public communications network
France	Partly prohibited. Art. 227-24 penal Code: up to 3 years imprisonment and 75 000 € fine - Liability regime (227-24, 2): where committed through writing press or audio-visual, specific liability regimes do apply.	The manufacture, transport, broadcasting by any means of a message of a violent (...) or inciting to terrorism or seriously offending human dignity or inciting juveniles to play games which are physically dangerous to them, or to trade such message; is punished where it might be seen or perceived by a juvenile;	Any ground	Any means
Germany	Not specifically prohibited but might be covered by the prohibition, in the penal Code, of insult (Section 185), defamation (Section 186) and intentional defamation (Section 187) - <i>see Sections 4.1.4, 4.1.5).</i>	<i>See Sections 4.1.4 and 4.1.5.</i>	<i>See Sections 4.1.4 and 4.1.5.</i>	<i>See Sections 4.1.4 and 4.1.5.</i>
Greece	Not specifically prohibited but might be covered by the prohibition, in the penal Code, of insult (Article 361 - <i>See Section 4.1.4).</i>	<i>See Section 4.1.4.</i>	<i>See Section 4.1.4.</i>	<i>See Section 4.1.4.</i>
Ireland	Partly prohibited. Criminal Justice (Public Order) Act, 1994, Section 7, (2): imprisonment up to 3 months or/and fine up to £500 (summary conviction).	(1) to distribute or display any writing, sign or visible representation which is threatening, abusive, insulting or obscene with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.	Any ground.	In a public place.
Netherlands	Partly prohibited - Section 240 of the penal Code: imprisonment up to 2 months or fine of the third category (8 200 €).	To know or to have serious reason to suspect that an image or object is offensive to decency, and to (1) display or offer that image or object in or at a place intended or designed to be frequented or resorted to by the general public; OR (2) to send that image or object to a person, other than at the request of that person.	Any ground.	Publicly.
Romania	Not prohibited.	At the best, such a case could be construed as an infringement of the right to dignity in a tort case (but chances of success seem very low).	-	-
Spain	Not prohibited but might be partly covered by Art. 510.2 of the penal Code: imprisonment between 6 months and 2 years and a fine between 6 to 12 months (360 € and 144 000 €) [5]; Imprisonment between 1 to 4 years and a fine between 6 to 12 months when it thereby promotes or encourages a climate of violence, hostility, hatred or discrimination against these groups. Art. 510.3 of the penal Code: the penalties above-mentioned must be imposed in the upper half when the facts have been carried out through a means of social communication, via the Internet or by using information technology, so that, that is made accessible to a large number of people. Art. 510 bis: fine between 2 to 5 years (21 600 € to 9 000 000 €) if the author is a legal person.	510.2 (a): to infringe the dignity of people through actions involving humiliation, contempt or discredit a group, a part of it, or any particular person by reason of their membership to (<i>see "why"</i>), for racist, anti-Semitic or other related ideology, OR to produce, create, possess in order to distribute, provide third parties access, distribute, disseminate or sell written or any other material or supports which content is appropriate in order to injure the dignity to represent a serious humiliation, contempt or discredit any of the above groups, a part thereof, or any particular person because of their belonging to them.	Religion or beliefs, family situation, membership of members of an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, for reasons of gender, illness or disability.	Any means but sanctions are higher in case information technologies are used.

	Art. 510.5: in all cases shall also be imposed the penalty of disqualification from profession or educational profession, in teaching, sports and leisure area, for a 3 to 10 years more than the duration of the deprivation of liberty imposed in the judgement where appropriate, in proportionate response to the seriousness of the offense, the number of tasks and the circumstances surrounding the offender.			
--	--	--	--	--

4.4.2 - Sending a message that which can cause annoyance, harassment and / or needless anxiety

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

V.2 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Art. 442 <i>ter</i> of the penal Code (see Section 4.2.1).	See Section 4.2.1.	See Section 4.2.1.	See Section 4.2.1.
Bulgaria	Not specifically prohibited but might be covered by penal provisions that prohibit insult and slander - Art. 147 and 148 of the penal Code (see Section 4.1.4 and 4.1.5).	See Sections 4.1.4 and 4.1.5.	See Sections 4.1.4 and 4.1.5.	See Sections 4.1.4 and 4.1.5.
Cyprus	Prohibited. Art. 149 (6) L112(I)/2004, fine up to 1 700 €.	(B) To send a message, or whatever content, which can cause annoyance, harassment and / or needless anxiety to another person, which the sender knows to be false (offense).	Any ground (higher sanctions are incurred in case of illegal motivations due to a general provision - see Section 4.1.7).	By the use of a public communications network

France	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Art. 222-33-2-2 of the penal Code (<i>see Section 4.2.1</i>).	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>
Germany	Not specifically prohibited but might be covered by penal provisions that prohibit threats (Section 240 of the penal Code - <i>see Section 4.1.6</i>), insult (section 185 of the penal Code (<i>see Section 4.1.4</i>) and defamation (Sections 186 and 187 of the penal Code - <i>see Section 4.1.5</i>).	<i>See Sections 4.1.4, 4.1.5 and 4.1.6</i>	<i>See Sections 4.1.4, 4.1.5 and 4.1.6</i>	<i>See Sections 4.1.4, 4.1.5 and 4.1.6</i>
Greece	Not specifically prohibited but might be covered by the prohibition, in the penal Code, of insult (Article 361 - <i>See Section 4.1.4</i>).	<i>See Section 4.1.4.</i>	<i>See Section 4.1.4.</i>	<i>See Section 4.1.4.</i>
Ireland	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Section 10 of the Non-Fatal Offences Against the Person Act, 1997 (<i>see Section 4.2.1</i>).	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>
Netherlands	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Section 285b of the penal Code (<i>see Section 4.2.1</i>).	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>
Romania	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Article 208 of the penal Code (<i>see Section 4.2.1</i>). Might in certain cases also be covered by Article 74 of the Civil Code (privacy infringement): civil tort.	Art. 208: <i>See Section 4.2.1.</i> This activity might also fall under tort (Article of the Civil Code), for ex. under Article 74 of the Civil Code where the use of the name, image, voice or resemblance of a person with bad will (mala fide) represent an infringement to the right to privacy.	Art. 208: <i>see Section 4.2.1.</i> Art. 74 civil Code: any ground.	Art. 208: <i>see Section 4.2.1.</i> Art. 74 civil Code: any means.
Spain	Not specifically prohibited but might be covered by penal provisions that prohibit direct harassment - Art. 172 ter of the penal Code (<i>see Section 4.2.1</i>).	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>	<i>See Section 4.2.1.</i>

4.4.3 - Direct public incitement to commit a penal infringement

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

V.3 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	Not specifically prohibited but might be covered by penal provisions that prohibit threats - Article 327 and 330 of the penal Code (see Section 4.1.6).	See Section 4.1.6.	See Section 4.1.6.	See Section 4.1.6.
Bulgaria	Partly prohibited - Article 320 penal Code: imprisonment for up to 3 years,	320: a person who openly abets to the perpetration of a crime.	Any grounds.	320: by preaching before many people, or by distribution of printed works or in any

	<p>but the punishment must not be more severe than the one provided for the crime itself (abettors are punished as accomplices, who incur the same penalty as the perpetrator --art.20 and 21 Penal Code).</p> <p>- Punishment for open abetment to the perpetration of a crime under Article 108a (commission of certain crimes such as murder, severe bodily injury, kidnapping, etc., with special motivations), is an imprisonment between 2 and 10 years.</p> <p>- Article 320a of the penal Code: deprivation of liberty for up to 2 years.</p>	<p>320A: a person who threatens to commit some listed infringements (those under Articles 108a, par. 1, 330, 333, 334, 340, 341a, 341b, 352 §1 of the penal Code), and where such threat might give rise to justified fear of its implementation.</p>		<p>other similar manner.</p> <p>320A: any means.</p>
Cyprus	<p>Covered by Article 51 A of the penal Code (Cap 154): imprisonment of 12 months or/and fine of 1 700 €. In case the act is committed by a legal person the sentence is a fine of 5 100 €. Prosecution based on this provision can be instigated only with the written consent of the Attorney-General.</p> <p>In addition, Article 99 of Cap 154 might apply - (<i>see Section 4.1.4</i>)..</p>	<p>Article 51 A: any public incitement which procures the inhabitants to acts of violence against each other or to mutual discord or foment the creation of a spirit of intolerance.</p>	<p>Article 51 A: any ground.</p>	<p>Article 51 A: any means.</p>
France	<p>Prohibited</p> <p>- Art. 23 1881: sanction: same as accomplice - who incurs the same penalty as the author.</p> <p>- Art. 24 1881: up to 5 years imprisonment and/or fine up to 45 000 €.</p>	<p>Art. 23: 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 in case of crime (offences not concerned).</p> <p>Art. 24: 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).</p>	<p>Any ground.</p>	<p>Any means (<i>see Section 4.1.1 for details</i>).</p>
Germany	<p>Prohibited.</p> <p>Section 111 of the penal Code: (1) same sanction than the abettor (section 26); (2) If the incitement is unsuccessful, imprisonment up to 5 years or a fine [3]. The penalty must not be more severe than if the incitement had been successful; section 49(1) No 2 shall apply.</p> <p>Section 26 of the penal Code: same sanction as the principal.</p> <p>Section 130a of the penal Code: (1) and (2) imprisonment up to 3 years or a fine [3]; (3) by reference of Section 86(3),</p>	<p>Section 111 (Public incitement to crime): (1) whosoever publicly, in a meeting or through the dissemination of written materials (section 11(3)) incites the commission of an unlawful act.</p> <p>Section 26: to intentionally induce another to intentionally commit an unlawful act, if the crime has been committed or attempted.</p> <p>Section 130a (attempting to cause the commission of offences by means of publication) : (1) To disseminate (... <i>see "How"</i>) written material capable of serving as</p>	<p>11, 26: any ground. 130a: any ground.</p>	<p>11, 26: any means. 130a (1), (2)a: to disseminate, publicly display, post, present, or otherwise make accessible written material (section 11(3)) ("Written materials" include any kind of audio-visual media, data storage media, illustrations and other depictions - see section 11(3) of the penal Code). 130a (2)b: publicly or in a meeting</p>

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

		written matter.		
Romania	<p>Prohibited - Art. 368 of the penal Code (public instigation): (1) imprisonment between 3 months and 3 years or a fine [2], without exceeding however the penalty provided by law for the offenses to which the perpetrators instigated; (2) imprisonment between 1 and 5 years and a ban on the exercise of certain rights, without exceeding however the penalty provided by law for the offenses to which the offender instigated, if the act is committed by a public servant; (3) if public instigation resulted in the commission of the offense that was the object of the instigation, the penalty applied shall be the one provided in the laws for the offense in question.</p>	To urge the public to commit offenses.		Verbally, in writing or by any means
Spain	<p>Partly prohibited.</p> <p>Art. 18 of the penal Code: provocation is punished exclusively in cases in which the Law foresees this. Sanctions are provided for in the provisions that foresee its prohibition. In case the incitement has been followed by the perpetration of an offence, it is punished as induction.</p> <p>Might also be covered in certain situation by Art. 570 bis of the penal Code: imprisonment between 4 and 8 years if the organisation has the purpose or object of committing serious felonies; imprisonment between 3 and 6 years in other cases. These penalties are imposed in the upper half where the organisation (a) is formed by a large number of persons; (b) possesses weapons or dangerous instruments; or (c) has advanced technological resources for communication or transport that, due to their characteristics, are especially fit to facilitate commission of the offences or the impunity of the offenders. Where at least two of these conditions are met, the higher degree penalties must be imposed. Where the offences are against the life or integrity of persons, liberty, sexual freedom and indemnity, or involve trafficking in human beings, the penalties mentioned above are imposed in the upper half.</p> <p>Might also be covered in certain situations by Art. 510.2 (b) of the penal Code: <i>see Section 4.1.8.</i></p>	<p>18: provocation exists when there is a public direct incitation to perpetrate a crime.</p> <p>Apologia is the presentation of ideas or doctrines that extol crime or extol its author. The apology will only be criminal as a form of provocation and if, due to its nature and circumstances, it constitutes a direct incitement to commit a crime.</p> <p>Eventually, in addition:</p> <p>570 bis: to promote (...) a criminal organisation. A criminal organisation is construed to be a stable group formed by one or more persons, for an indefinite term, in collusion and co-ordination to distribute diverse tasks or duties in order to commit felonies, as well as to carry out reiterated commission of misdemeanours.</p> <p>510.2: to extol or justify crimes that have been committed against a group or a person for illegal motivations - <i>see Section 4.1.8.</i></p>	<p>18: Any ground.</p> <p>570 bis: Any ground.</p> <p>510.2: <i>see Section 4.1.8.</i></p>	<p>18 (provocation): by means of the printing press, radio broadcasting or any other means with a similar effectiveness, which enables publicity, or before an assembly of people.</p> <p>18 (apologia): before an assembly of persons, or by any means of dissemination.</p> <p>570 bis: any means.</p> <p>510.2: <i>see Section 4.1.8.</i></p>

4.4.4 - Promotion or public incitement to hostility or violence between communities

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

V.4 - Countries' particularities				
Country	Provision, sanction	What	Why	How
Belgium	Prohibited - Article 20.4° Moureaux Act: imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000 €. - Article 20.3° Moureaux Act.: imprisonment between 1 month and 1 year and/or fine between 50 € and 1 000 €.	Article 20.4° Moureaux Act: public incitement to illegal hatred or violence between communities Article 20.3° Moureaux Act: public incitement to discrimination or segregation between communities	Nationality, national or the ethnical ancestry, race, skin colour, and (following the Constitution, two Acts of 10 th May 2007 and case law) sex, age, sexual preference, civil status, birth, fortune, religious, political or philosophical beliefs, language, state of health, disability, physical or genetic characteristics, and social origins.	Any means.
Bulgaria	Not prohibited. Might be partly covered in some situations by Article 163 of the penal Code: (1) imprisonment up to 5 years for the abettors and leaders; imprisonment up to 1 year or probation for all others; (2) if the crowd or some of the participants are armed, imprisonment between 1 to 6 years for the abettors and leaders, and imprisonment for up to 3 years for all others; (3) if an assault has been made	The persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their ... (<i>see "why"</i>)	National, ethnic or racial affiliation.	Any means.

	which has resulted in severe bodily injury or death, imprisonment between 3 to 15 years for the abettors and leaders, imprisonment up to 5 years for all others - if they are not liable to more severe punishment.			
Cyprus	Prohibited - Criminal Code (Cap.154) Art. 47(b): imprisonment up to 5 years. Art. 51A: imprisonment of 12 months and/or fine of 1000 pounds (1 700 €)- 3000 pounds (5 100 €) if committed by a legal person. Prosecution can be instigated only with the written consent of the Attorney-General.	Art. 47 (b): any act done with the intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic. Art. 51A: any public incitement which procures the inhabitants to acts of violence against each other or to mutual discord or foment the creation of a spirit of intolerance.	Any ground.	Any means.
France	Not prohibited.	-	-	-
Germany	Not specifically prohibited but might be covered by: - Section 130 (1) of the penal Code (incitement to hatred): <i>see Section 4.1.1.</i> - Section 111 of the penal Code (public incitement to crime): <i>see Section 4.4.3.</i>	<i>See Sections 4.1.1. and 4.4.3.</i>	<i>See Sections 4.1.1. and 4.4.3.</i>	<i>See Sections 4.1.1. and 4.4.3.</i>
Greece	Not prohibited.	-	-	-
Ireland	No specific offence found.	-	-	-
Netherlands	No specific offence.	-	-	-
Romania	No specific provisions. Might be covered by Article 369 of the penal Code (inciting to hatred or discrimination against a category of people) - <i>See Section 4.1.1.</i>	<i>See Section 4.1.1.</i>	<i>See Section 4.1.1.</i>	<i>See Section 4.1.1.</i>
Spain	No specific provisions. Might be covered by Articles 510.1 (inciting to hatred or discrimination against a category of people - <i>see Section 4.1.1.</i>) and 510.2 (to extol or justify crimes that have been committed for illegal grounds- <i>see Section 4.1.8.</i>) of the penal Code.	<i>See Sections 4.1.1. and 4.1.8.</i>	<i>See Sections 4.1.1. and 4.1.8.</i>	<i>See Sections 4.1.1. and 4.1.8.</i>

4.4.5 - Insult to religion

N°	Prohibited conduct				Responsible persons	Main sanctions (for natural persons)	International/Euro pean basis
	Illegal material conduct (What)	Illegal motivations (Why)	Illegal ways (How)	Criminal Intent			
IV.5	<p>Insults to religion</p> <p>(Outside provisions that prohibit the solely physical or material violence or destruction without special insulting intent).</p> <p><i>Fully covered in 4 countries out of 10.</i></p> <p><i>Partly covered in 3 countries out of 10 (including one case of prohibition of defamation of religion - Germany).</i></p>	Any ground / religion.	Any means, publicly.	Intentional conduct.	<p><i>In 7 countries out of 10 where the behaviour is at least partially penally punished:</i></p> <p>In principle:</p> <p>Author; accomplice (aiding and abetting); instigator (covered expressly or not); natural persons; legal persons.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> - Spain: special media liability regime; - Cyprus, Greece, and Spain exclude the liability of legal persons. 	<p>depending on the country, imprisonment up to 4 years and/or a fine up to 26 640 € -</p> <p>Particularities in Germany (theoretically up to 10 800 000 € [*]), and Spain (up to 144 000 €).</p> <p>[*] Such a high amount has never been applied up to now</p>	

V.5 - Countries' particularities

Country	Provision, sanction	What	Why	How	Other particularities
Belgium	<p>Partly covered by several provisions of the penal Code:</p> <ul style="list-style-type: none"> - Article 144: imprisonment between 15 days and 6 months, and fine between 26 € and 500 €. - Article 145: imprisonment between 15 days and 6 months, and fine between 26 € and 500 €. <p>And eventually:</p> <ul style="list-style-type: none"> - Article 142: imprisonment between 8 days and 2 months, and fine between 26 € and 200 €. - Article 143: imprisonment between 8 days and 3 months, and fine between 26 € and 500 €. 	<ul style="list-style-type: none"> - Article 144 (Outraging an object of worship): To outrage an object of worship. - Article 145: Outraging a minister in the exercise of his or her ministry. <p>And eventually:</p> <ul style="list-style-type: none"> - Article 142: To force or prevent a person to practicing a religion or to attending worship, to celebrate religious feasts, to observe religious holidays and, as a consequence, to open or close their shops or stores, and to do or leave certain works. - Article 143: To prevent, delay or interrupt the practice 	Any ground.	<p>Art. 144: through facts, words, gestures, or threats, either in places dedicated or usually used to exercise this worship, or in a public ritual of this worship.</p> <p>Art. 145: through facts, words, gestures, or threats.</p> <p>Art. 142: Through</p>	

		of a religion which take place in a place dedicated or usually used to this practice or in a public ritual of this worship.		violence or threats. Art. 143: through troubles or disorders	
Bulgaria	<p>Not prohibited.</p> <p>Might be in some situations partly covered by Article 164 of the penal Code: (1) Imprisonment for up to 4 years or probation and a fine from 2 500 € to 5 000 €; (2) Imprisonment up to 3 years or probation, and a fine from 1 500 € to 5 000 €.</p> <p>Eventually:</p> <p>Art. 165: imprisonment up to 1 year.</p>	<p>Art. 164: (1) To propagate or instigate discrimination, violence or hatred on religious basis;</p> <p>(2) A person who desecrates (...) a religious temple, a house of prayer, sanctuary or an adjoined building, their symbols or gravestones.</p> <p>Eventually:</p> <p>Art. 165: (1) To, by force or threat, hinder the citizens from freely practising their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morality;</p> <p>(2) To compel another to take part in religious rituals and services.</p>	Religion.	<p>164 (1): by speech, through the press or other mass media, through electronic information systems or in another way.</p>	<p>Article 166 of the penal Code prohibits the use of religion against the State: "A person who forms a political organisation on religious basis or who by speech, through the press, action or in another way, uses the church or religion for propaganda against the state power or its undertakings, shall be punished by deprivation of liberty for up to three years, if he is not subject to more severe punishment".</p>
Cyprus	<p>Prohibited. Penal Code (Cap.154) -</p> <p>Art. 35: when the penal code does not provide a specific penalty, misdemeanours are punishable by imprisonment up to two years, or/and with a fine up to 2 550 €.</p> <p>Art. 141: imprisonment of up to one year.</p> <p>Art. 142: no specific penalties, therefore Art. 35 of the penal Code applies. Prosecution based on this provision can be instigated only by the Attorney-General or with his consent⁶⁸.</p> <p>Art. 138: no specific penalties, therefore Art. 35 of the penal Code applies.</p>	<p>Art. 141: the insulting, aiming to harm the religious feelings of a person.</p> <p>Art. 142: a publication which is perceived by a group of people as a public insult to their religion, with intent to ridicule such religion or to shock or insult its followers. Prosecution based on this provision can be instigated only by the Attorney-General or with his consent (Article 142)⁶⁹</p> <p>Eventually:</p> <p>Art. 138: the destruction, damaging or defiling of any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to</p>	<p>Art. 141: Intention to harm religious feelings</p> <p>Art. 142: Intention to ridicule a religion or to shock or insult its followers.</p> <p>Art. 138: Intention to insult.</p>	<p>Art. 141: orally or via sounds and gestures</p> <p>Art. 142: the publication of a book or pamphlet or any article or letter in a newspaper or magazine.</p> <p>Art. 138: any means.</p>	<p>As a general principle, but only where they fall outside the scope of the provisions referred to in the other columns, caricatures can be protected by Article 19 of the Constitution of the Republic of Cyprus which guarantees the right to freedom of expression.</p>

⁶⁸ Nicos Trimikliniotis and Corina Demetriou, Evaluating the Antidiscrimination Law in the Republic of Cyprus: A Critical Reflection, THE CYPRUS REVIEW (VOL. 20:2 FALL, at: 2008https://www.prio.org/Global/upload/Cyprus/Publications/4_TRIMIKL_DEMETRIOU.pdf).

⁶⁹ Nicos Trimikliniotis and Corina Demetriou, Evaluating the Antidiscrimination Law in the Republic of Cyprus: A Critical Reflection, THE CYPRUS REVIEW (VOL. 20:2 FALL, at: 2008https://www.prio.org/Global/upload/Cyprus/Publications/4_TRIMIKL_DEMETRIOU.pdf).

		their religion.			
France	Not prohibited.	-	-	-	-
Germany	<p>Partly prohibited by Section of the penal Code (if the insult of the religion is capable of disturbing the public peace): Imprisonment up to 3 years or a fine [3].</p> <p>Section 185 of the penal Code (insult committed against a person or a group consisting of a limited number of persons that is clearly defined - protects the personal honor - <i>see Section 4.1.4</i>) will not be applicable in most cases, because of its strict definition.</p>	<p>Section 166 (Defamation of religions, religious and ideological associations): (1) Whosoever defames the religion or ideology of others in a manner that is capable of disturbing the public peace; (2) Whosoever defames a church or other religious or ideological association within Germany, or their institutions or customs in a manner that is capable of disturbing the public peace.</p>	Any ground.	Publicly or through dissemination of written materials (section 11(3))	
Greece	<p>Prohibited.</p> <p>Article 198 of the penal Code: (1) Imprisonment up to two years; (2) Imprisonment up to 3 months.</p> <p>Article 199 of the penal Code: Imprisonment up to two years.</p>	<p>198 (1): to insult publicly and maliciously the God.</p> <p>198 (2): the public blasphemy showing lack of respect to the divine.</p> <p>199: the publicly and maliciously insulting of the Greek Orthodox Church or any other religion.</p>	Any ground.	Publicly.	
Ireland	<p>Prohibited. Defamation Act 2009.</p> <p>Section 36: fine not exceeding 25 000 € (conviction on indictment).</p>	<p>(1) To publish or utter blasphemous matter.</p> <p>(2) For the purposes of this section, a person publishes or utters blasphemous matter if—</p> <p>(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and</p> <p>(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.</p> <p>(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.</p> <p>(4) In this section “ religion ” does not include an organisation or cult—</p> <p>(a) the principal object of which is the making of profit, or</p> <p>(b) that employs oppressive psychological manipulation—</p>	Any ground.	Any means (a publication or uttering is needed).	Blasphemy is required to be an offence under Article 40.6.1.i. of the 1937 Constitution.

		(i) of its followers, or (ii) for the purpose of gaining new followers.			
Netherlands	Not prohibited. Section 137e of the penal Code (insult motivated by the religion of victims - <i>see Section 4.1.2</i>) is only applicable where the insult is directed against persons.	In the spirit of 2008/913/JHA, a Court did not punish an insulting speech that addressed a religion. Since the speech addressed only the religion and not its followers, and the article specifically speaks of “persons” the feelings of these persons about this speech alone were not enough to fulfil the criteria for 137c (High Court, March 2009 (HR 10 march 2009 nr 01509/07, ECLI:NL:HR:2009:BF0655, See http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2009:BF0655).	-	-	-
Romania	Not prohibited but might be partly covered by some provisions of the penal Code. - Article 382: imprisonment between 6 months and 2 years or a fine (266 € to 26 640 €) [2]. - Article 381 (1): imprisonment between 3 months and 2 years or a fine (266 € to 26 640 €) [2]. - Article 381 (2) and (3): imprisonment between 1 and 3 years or a fine (399 € to 33 300 €) [4].	- Article 382 (Desecration of places or objects of worship): The desecration of a place or object of worship belonging to a religious denomination which is organised and operates according to the law. Eventually: Art. 381 (Preventing the freedom to practice religion): (1) The act of preventing or disturbing the freedom to practice any ritual specific to a religion, which was organised and operates according to the law; (2) The act of compelling a person, by coercion, to take part in the service of any religion or to perform a religious act related to the practice of a religion; (3) To compelling an individual, by violence or threats, to perform a religious act forbidden by the religion, organised according to the law, to which they belong.	Any ground.	Any means.	There is a general obligation under Government Emergency Ordinance no. 31/2002 for all natural and legal persons to respect the principle of equality which, among other rights, includes the respect of the right to religion.
Spain	Prohibited - Article 525 of the penal Code: fine between 8 to 12 months (480 € to 144 000 €) [4]. The same penalties shall be incurred A special intent to humiliate, injure or impair the religious feelings must be proven in order to punish the infringement. The conduct must be wilful, and the evidence of the offense or ridicule is not sufficient.	(1) To offend the feelings of members of a religious confession, made publicly, orally, in writing or by any type of document, mockery of their dogmas, beliefs, rites or ceremonies, or vejen, also publicly, to those who profess or practice. (2) To publicly ridicule those who do, in word or in writing, of those who have no religion or belief.	Any ground. The intent to humiliate or hurt the religious feelings is however necessary.	Publicly, orally, in writing or by any type of document, mockery of their dogmas, beliefs, rites or ceremonies, or vejen, also publicly, to those who profess or practice or those who have no religion or belief. In word or in writing.	Since 1985 the offense of blasphemy was abolished, but our Criminal Code regulates derision. In practice the Courts only appreciate the crime when there is fraud and there is an offense of religious feelings.

4.4.6 - Recording of images of the commission of a crime or offence

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

V.6 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	Not prohibited. Might be partly covered by the Act of 21st March 2007 on the installation and use of video camera: fine between 25 and 1 000 €).	Recording or possession of images in public using a video camera, captured in violation with the Act.	Any ground.	Any means.
Bulgaria	Not prohibited.	-	-	-
Cyprus	Not prohibited unless it is considered as an illegal processing of personal data.	-	-	-
France	Prohibited - Art. 222-33-3 penal Code: same sanction as the author of the attack on the physical integrity; imprisonment up to 5 years and fine up to 75 000 € in case of broadcasting of such images.	To knowingly record any images relating to wilful attacks on the physical integrity of the person as they are punished by the penal Code. This provision is not applicable when the recording or broadcast of such images derives from the normal course of a professional activity aiming at informing the public or is done in order to serve as evidence in justice.	Any ground.	Any means.
Germany	Not prohibited but partly covered by Section 201a, subsection 1	The recording of an image that shows a person in a helpless situation in a	Any ground.	Any means.

	no. 2 of the penal Code (Violation of intimate privacy by taking photographs): Imprisonment up to 2 years or a fine [3].	way that violates the intimate privacy of this person.		
Greece	Not prohibited unless it is considered as an illegal processing of personal data.	-	-	-
Ireland	No specific provisions found.	-	-	-
Netherlands	No specific provisions.	-	-	-
Romania	<p>No specific provisions but might be partly covered by Articles 48 and 226 of the penal Code.</p> <p>Art. 48 (accomplice - sanctions Art. 49): the co-author, the instigator and the accomplice to a deliberately performed crime is punished with the penalty stipulated by law for the author of the act. When the penalty is established, the contribution of each person to the commission of the act shall be taken into account, as well as the stipulations stipulated in Art. 74 (this article regulates General criteria for customization of a sentence).</p> <p>There is one specific provision regarding the violation of the rights to privacy (Article 226 of the Criminal Code). However such activities would fall under criminal law and might constitute complicity to crime.</p> <p>Article 226 (Violation of privacy): (1) Imprisonment between 1 and 6 months or a fine [4]; (2) Imprisonment between 3 months and 2 years or a fine [4]; (3) Criminal action shall be initiated based on a prior complaint filed by the victim; (5) Imprisonment between 1 and 5 years.</p>	<p>Art. 48: (1) The accomplice is the person who deliberately facilitates or helps in any way with the commission of an act stipulated by criminal law; (2) the accomplice is also the person who promises, before or during the commission of the act, that they will conceal the assets originating from it or that they will favour the perpetrator, even if, after the commission of the act, the promise is not fulfilled.</p> <p>Art. 226: (1) The unlawful violation of privacy, by photographing, capturing or recording images, by listening using technical means or by recording audio of an individual, in a house or room or outbuilding related to them or to a private conversation.</p> <p>(2) The unlawful disclosure, dissemination, presentation or transmission of sounds, conversations or images set out in par. (1) to another person or to the general public.</p> <p>(4) The following do not constitute offenses: a) the act committed by the individual who attended the meeting with the victim during which the sounds and conversations were recorded and photos were taken, if there is a legitimate interest; b) if the victim has acted with the explicit intention to be seen or heard by the perpetrator; c) if the perpetrator has records of the commission of an offense or helps prove that an offense was committed; d) if public-interest acts are recorded, which are meaningful to the life of the community and whose disclosure has public advantages that outweigh the damage to the victim.</p> <p>(5) Unlawfully installing technical means for audio or video recording, in order to commit the acts set out in par. (1) and par. (2).</p>	Any ground.	<p>48: any means.</p> <p>226 (1): any means for the acts referred to in column "What".</p> <p>226 (2): any means for the acts referred to in column "what".</p> <p>226 (5): any means;</p>
Spain	<p>Not prohibited. Might be very partly covered by Articles 197 to 201 of the penal Code relating to the discovery and disclosure of secrets.</p> <p>In addition, civil liability could be engaged on the basis of Organic Law 1/1982, of 5 May, Civil Protection of the right to honour, personal and family privacy and personal image (see 4.3).</p>	See Section 4.3.	See Section 4.3.	See Section 4.3.

4.4.7 - Realising a montage with the talk or the images of a third party without his or her consent

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

V.7 - Countries' particularities

Country	Provision, sanction	What	Why	How
Belgium	<p>Not prohibited, beside the possibility to initiate a civil proceedings on the two following basis:</p> <ul style="list-style-type: none"> - Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data; - Article 10 of the Act of 30th June 1994 on the copyright and related rights. 	-	-	-
Bulgaria	<p>Not prohibited, besides the forgery or creation -and use- of a false technical record for the purposes of misleading the judicial authorities". (art. 287a of the penal Code).</p>	-	-	-
Cyprus	<p>Not prohibited, unless it is considered as an illegal processing of personal data.</p>	-	-	-
France	<p>Prohibited - Article 226-8 penal Code (attempt is punishable: Art. 226-9) - imprisonment up to 1 year and fine up to 15 000 €.</p>	Same extent [1] .	Any ground.	Any means.
Germany	<p>Not prohibited, beside the general provision of the penal Code criminalising insult (Section 185), defamation (Section 186) and intentional defamation (Section 187) - <i>See Sections 4.1.4. and 4.1.5.</i></p>	-	-	-
Greece	<p>Not prohibited unless it is considered as an illegal processing of personal data.</p>	-	-	-

Ireland	No specific provisions found.	-	-	-
Netherlands	Not prohibited.	-	-	-
Romania	Not prohibited but Art. 226 of the penal Code might apply (see Section 4.4.6), as well as Articles 71 to 74 of the civil Code in relation to the right to image, dignity and private life. Art: 226: see Section 4.4.6. Art: 71-74: see Section 4.3.	See Section 4.4.6. and 4.3.	See Section 4.4.6. and 4.3.	See Section 4.4.6. and 4.3.
Spain	Covered by Article 197 of the penal Code. Art. 197 (1) and (2): imprisonment between 1 to 4 years and a fine between 12 and 24 months (720 € to 288 000 €). Art. 197 (3): imprisonment from two to five years; Imprisonment between 1 to 3 years and a fine between 12 to 24 months (720 € to 288 000 €) [4] in case the author engages in the conduct described in § (3) with knowledge of the illicit origin of the data but without having taken part in their discovery. Art. 197 (4): the events described in paragraphs (1) and (2) are punished with an imprisonment between 3 and 5 years where (a) committed by persons in charge or responsible for the files, computer, electronic or telematics media, files or records committed; or (b) they consist of an unauthorised use of the personal data of the victim. If the reserved data had been released, transferred or disclosed to third parties, penalties are imposed in the upper half. Art. 197 (5): where the events described in the previous § affect personal data which reveal the ideology, religion, beliefs, health, racial origin or sexual life, or where the victim is a minor or a disabled person in need of special protection, the penalties are imposed in the upper half. Art. 197 (6): if the facts are made for profit, the penalties provided respectively in paragraphs 1 to 4 shall be imposed in their upper half. If data mentioned in the preceding paragraph are moreover affected, the penalty to be imposed shall be imprisonment between 4 to 7years. Art. 197 (7): imprisonment between 3 months and 1 year or a fine between 6 to 12 months (360 € to 144 000 €) [4]. Penalties are imposed in the upper half when the acts were committed by the spouse or person who has an analogous relationship with the victim, even without cohabitation, or if the victim is under age or is disabled in need of a special protection, or if the facts were committed with a profit motive.	Art. 197 (1): without authorisation, to take over, use or modify to the detriment of a third party, data reserved for personal or family use which are registered in files or computer, electronic or telematics media, or in any other file type or public or private registry. Art. 197(2): without authorisation, to access by any means to these data, to alter or use them to the detriment of the data subject or a third party. Art. 197 (3): to spread, reveal or transfer data to third parties or facts discovered or captured images referred to in the above provisions. Art. 197 (7): without authorisation of the person concerned, to disseminate, disclose or transfer to third parties images or audio-visual recordings that have been obtained with the consent of the concerned person in a home or anywhere else away from the eyes of third parties, where disclosure would seriously undermine the personal privacy of this concerned person.	Any ground. Sanctions are higher under Art. 197 (5) where some sensitive personal data are concerned.	Any means, included using ICT, through the Internet, social networks, computers, electronics or telematics media, files or records.

4.4.8 - To misuse / usurp someone else's identity

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

V.8 - Countries' particularities

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

MANDOLA D2.1 intermediate report - Definition of illegal hatred and implications

			honour or reputation.	
Germany	Not prohibited, beyond the offence of forgery and of use of a falsified or counterfeit document (esp. Sections 267 and 269 of the penal Code). In addition, the behaviours might be partly covered by provisions prohibiting insult (Section 185), defamation (Section 186) and intentional defamation (Section 187) - <i>see Sections 4.1.4 and 4.1.5.</i>	-	-	-
Greece	Not prohibited, beyond the offence of forgery (Article 216 of the penal Code - imprisonment between 3 months and 5 years).	-	-	-
Ireland	No specific provisions found.	-	-	-
Netherlands	No specific provisions.	-	-	-
Romania	Not prohibited but Articles 71 to 74 of the civil Code might apply in relation to the right to image, dignity and private life- <i>see Section 4.3.</i>	<i>See Section 4.3.</i>	<i>See Section 4.3.</i>	<i>See Section 4.3.</i>
Spain	Prohibited. Article 401 of the penal Code: imprisonment between 6 months and 3 years. It is not necessary that injury, property or other is caused. The offense does not require the conduct to take place "without prejudice to" the impersonated person or to damage it. However, the law introduces this requirement It is admissible only direct fraud. Must be an intentional conduct.	To usurp the civil status of another. The fraud must be direct, but law does not require an injury or prejudice as a result of the infringement. However this requirement has been introduced by way of interpretation (for ex. the SAP Sevilla 23/05/2000 [ARP 1861] has absolved the perpetrator of responsibility in a case where he acted with the knowledge and for the benefit of the impersonated).	Any ground. However, acting in order to serve the benefit of the victim might not be covered.	Same extent. In practice more than 80% cases of usurpation will happen using IT through the Internet.

5 Annex 2 - List of experts who contributed to the study

The following persons contributed to the current study by providing information relating to the legal framework of the country referred to before their name.

Belgium

- Mr. Bertrand Vandeveld, Attorney-at-Law, Demosdos;
- Dr. Estelle De Marco, Senior researcher, Inthemis.

Bulgaria

- Mrs. Ilona Krastenyakova, Prosecutor at the Supreme Prosecutor's Office of Cassation, Bulgaria (for ICITA);
- Dr. Estelle De Marco, Senior researcher, Inthemis.

Cyprus

- Mrs. Tatiana Synodinou, Associate Professor, Law Department University of Cyprus, Chair of the Ethics Committee of Mandola.

France

- Dr. Estelle De Marco, senior researcher, Inthemis; Célie Zamora, student, Inthemis.
- Dr. Ronan Hardouin, Attorney-at-Law, Inthemis.
- Adel Jomni, teacher-researcher; Christian Xavier Castane, Ph.D. student; and Caroline Greco, contractor; University of Montpellier.

Germany

- Mr. Nicolas von zur Mühlen, Head of Section "Information Law and Legal Informatics", Max Planck Institute for Foreign and International Criminal Law.

Greece

- Mr. Ioannis Iglezakis, Associate Professor of Computers and Law, Faculty of Law of Thessaloniki, Faculty of Law, Aristotle University.

Ireland

- Mr. Hein Dries, LL.M, senior researcher, Aconite.
- Dr. Estelle De Marco, senior researcher, Inthemis.

Netherland

- Mr. Hein Dries, LL.M, senior researcher, Aconite.
- Estelle De Marco, Ph.D., senior researcher, Inthemis; Célie Zamora, student, Inthemis.

Romania

- Mrs. Valentina Pavel Burloiu, independent researcher.

Spain

- Mrs. Miriam Guardiola, Attorney at Law.
- Dr. Estelle De Marco, senior researcher, Inthemis; Célie Zamora, student, Inthemis.