

# Hate Speech and Hate Crimes against LGBT Persons

*Human dignity is inviolable. It must be respected and protected.  
Everyone has the right to respect for his or her physical and mental integrity.  
EU Charter of Fundamental Rights (Articles 1 and 3(1))*

'Hate speech' refers to the incitement and encouragement of hatred, discrimination or hostility towards an individual that is motivated by prejudice against that person because of a particular characteristic, for example, their sexual orientation or gender identity.

'Hate crime' refers to a physical or a verbal attack on an individual that is motivated by prejudice against that person because of a particular characteristic, for example, their sexual orientation or gender identity.

'Homophobia' is irrational fear towards a person because that person is lesbian, gay or bisexual.

'Transphobia' is irrational fear towards a person because they express themselves to be of a gender different to the one assigned at birth, through e.g. hormone treatment, surgery, clothing or cosmetics.

The fear and intimidation resulting from hate crime and hate speech prevent lesbian, gay, bisexual and transgender (LGBT) persons from participating fully in society. The extent of hate speech and hate crime towards LGBT persons in the EU is not clear because most Member States do not collect data on this issue. However, some surveys suggest that in certain Member States up to 50% of LGBT persons have been victims of hate speech or hate crime. In the absence of a single rule for the EU, Member States adopt different approaches to hate speech and hate crime.

Surveys suggest that hate speech and hate crime often go unreported. In part this is because victims feel uncomfortable revealing their sexuality to law enforcement authorities. Some Member States have introduced 'third party reporting' which allows crimes to be reported at a location other than a police station and to people other than police officers.

## Criminalising Hate Speech

**In twelve Member States** (Belgium, Denmark, Germany, Estonia, Spain, France, Ireland, Latvia, Netherlands, Portugal, Romania and Sweden) plus Northern Ireland in the UK, it is a criminal offence to incite hatred, violence or discrimination on grounds of sexual orientation.

**In four Member States** (Austria, Bulgaria, Italy and Malta) hate speech is criminalised in relation to specific groups and LGBT persons are not included among them. This makes it difficult to apply the legislation to cases of homophobia.

**In the other Member States**, hate speech against LGBT persons is not specifically defined as a criminal offence, but the law is phrased in a general way and it could be used to protect them.

## Hate Crime

All Member States currently criminalise physical attacks. In most Member States the penalty for these offences can be made higher where they are motivated by prejudice against, for instance, a person's race or religion (known as an 'aggravating factor'). However, EU law does not require Member States to include homophobia or transphobia as an 'aggravating factor' for criminal offences.

**In 10 Member States** (Belgium, Denmark, Spain, France, Netherlands, Portugal, Romania, Finland, Sweden and UK), homophobia and transphobia is an aggravating factor, although some Member States restrict it to specific crimes.

**In 15 Member States** (Bulgaria, Czech Republic, Germany, Estonia, Spain, Ireland, Italy, Cyprus, Lithuania, Luxembourg, Latvia, Malta, Austria, Slovenia, Slovakia), homophobia and transphobia are not explicitly defined as an aggravating factor. However, in six of these (Czech Republic, Germany, Latvia, Malta, Austria and Slovakia), the general notion of hate crime is recognised in law, and so it is possible that homophobia and transphobia could be taken into account as aggravating factors.

### A RIGHT TO EQUAL PROTECTION

On 28 November 2008 the EU adopted a framework decision relating to hate speech and hate crime motivated by racism and xenophobia (OJ L 328/2008). The EU needs to consider adopting similar legislation to cover homophobic and transphobic hate speech and hate crime so that LGBT persons can be protected in all Member States.

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This flyer is based on two reports *Homophobia and Discrimination on the grounds of Sexual Orientation and Gender Identity in the EU Member States - Part 1 Legal Analysis* published by the European Union Agency for Fundamental Rights (FRA) in June 2008 and *Homophobia Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States – Part 2 The Social Situation* published in March 2009.

The full report is available at: <http://fra.europa.eu>  
All publications of the European Union Agency for Fundamental Rights can be ordered via its website free of charge.

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