

BELGIUM				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	<p>Incitement to hatred and violence is prohibited.</p> <p>Since the article is "technology neutral", it could be argued that the law is therefore also applicable to offenses committed online.</p>	<p>Article 444 of the Penal Code <sup>A</sup></p> <p>Source: "The European Legal Framework on Hate Speech, Blasphemy and its Interaction with Freedom of Expression", 2015, p. 156. (Available at <a href="http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf">http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf</a>.)</p>		
<i>What is the punishment for online hate speech?</i>	<p>Incitement to hatred or violence is punishable by</p> <p>(1) imprisonment for a period of one month to one year; and/or</p> <p>(2) a fine of 50 to 1,000 euros.</p>	<p>Article 22 of the Law Combating Certain Acts Motivated by Racism or Xenophobia <sup>C</sup></p>		
<i>Is there a law-based obligation for intermediaries to filter or monitor hate speech?</i>	<p>The law does not obligate telecom operators and internet service providers to assist content owners.</p> <p>Internet service providers are obligated to cooperate with judicial authorities in their fight against online crimes.</p> <p>Internet service providers are not obligated to monitor the information which is transmitted or stored. They are also not obligated to actively look for information which may point to unlawful activities.</p>	<p>Belgian Internet Service Association Code of Conduct (<a href="http://www.ipnews.be/wp-content/uploads/2014/04/Code_of_conduct_-FR.pdf">http://www.ipnews.be/wp-content/uploads/2014/04/Code_of_conduct_-FR.pdf</a>.)</p> <p>Article XII.20 of the Code of Economic Law <sup>D</sup>; Directive 200\31\EC</p> <p>Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. (Available at <a href="https://www.coe.int/en/web/freedom-expression/country-reports">https://www.coe.int/en/web/freedom-expression/country-reports</a>.)</p>		<p>In <i>Sabam v. Scarlet</i>, a European Court of Justice decision of 24 November 2011, the Court considered that a general filter could not be imposed on internet service providers as this would be contrary to the freedom of business.</p> <p>(Source: The European Legal Framework on Hate Speech, Blasphemy, and its Interaction with Freedom of Expression, 2015, <a href="http://www.europarl.europa.eu/suppoorting-analyses">http://www.europarl.europa.eu/suppoorting-analyses</a>.)</p>
<i>Who is responsible to remove hate speech?</i>	<p>The Crown prosecutor or examining judge may use all appropriate technical means to make hate speech published on the internet</p>	<p>Articles 39 and 39bis of the Criminal Procedure Code <sup>B</sup></p>		<p>The Belgian Court of Cassation, in a ruling on 22 October 2013, stated that according to the law (Article 39bis.4 of the Criminal Procedure</p>

BELGIUM				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
	<p>inaccessible (e.g., blocking access to websites or removing data). They may also require the service provider to block a particular website or remove information from it.</p> <p>Hosting providers are required to remove illegal content from the very moment they are made aware of its "manifest illegality".</p>		<p>"Manifest illegality" – content of a revisionist, pedophile, or indisputable offensive kind.</p> <p>(Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at <a href="https://www.coe.int/en/web/freedom-expression/country-reports">https://www.coe.int/en/web/freedom-expression/country-reports</a>.)</p>	<p>Code), internet service providers could be compelled to block access to online data that infringes upon the law. The court also declared that an order issued by the examining judge on the basis of Article 39bis could be issued in order to find out the truth, for confiscation or restitution, for ending acts which seem to constitute an offence, or for the protection of civil interests. Accordingly, measures for blocking or removing illegal online content could be ordered with the aim both of ascertaining the truth and eliminating illegal content. (Cass. 22 October 2013, no. P.13.0550.N, available at <a href="http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=fr&amp;jur=1">http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=fr&amp;jur=1</a>)</p> <p>Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at <a href="https://www.coe.int/en/web/freedom-expression/country-reports">https://www.coe.int/en/web/freedom-expression/country-reports</a>.</p>
<p><i>What is the required time frame, if any, for removing hate speech?</i></p>	<p>"Promptly", as soon as made aware.</p>	<p>Article XII.19 of the Code of Economic Law <sup>D</sup></p>		
<p><i>Is the intermediary liable for hate speech posted on a website?</i></p>	<p>The intermediary may be deemed liable if they were aware of the illegal content and did not take measures to render it inaccessible.</p> <p>Internet service providers may be exempt from liability if their</p>	<p>Article XII.19 of the Code of Economic Law <sup>D</sup></p>		<p>According to the Belgian Supreme Court ruling of 3 February 2004, internet service providers may be exempt from liability if their activities are of a merely "technical, automatic or passive nature", since this may point to the fact that the</p>

BELGIUM				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
	<p>activities are of a "technical, automatic or passive nature".</p> <p>Moreover, the liability of internet service providers will also be based on whether they cooperated with the authorities to remove access and the preventative measures taken by them.</p>	<p>Source: International Comparative Legal Guides, Telecom, Media and Internet. Available at: <a href="http://www.iclg.co.uk/practice-areas/telecoms-media-and-internet-laws/telecoms-media-and-internet-laws-and-regulations-2016/belgium">http://www.iclg.co.uk/practice-areas/telecoms-media-and-internet-laws/telecoms-media-and-internet-laws-and-regulations-2016/belgium</a>.</p>		<p>intermediary does know or is not able to control the transmitted or stored information.</p> <p>According to the judgement by the Criminal Court of Hasselt, from 17 November 2000, "when deciding on the liability of an Internet Service Provider, the cooperation that this intermediary had given to the judicial authorities to exclude criminal use of the medium as much as possible may be taken into account, as well as its technical means to intervene in a preventive manner."</p> <p>Source: International Comparative Legal Guides, Telecom, Media and Internet.</p>
<p><i>Civil, administrative or criminal liability?</i></p>	<p>If published by the press, publishing hate speech is considered a press offence.</p> <p>If conducted through the internet, then the person may be liable for any damages (moral or material). In such cases, general civil liability rules apply.</p>	<p>Articles 13 to 18 of the Act Combating Acts Motivated by Racism and Xenophobia<sup>C</sup></p> <p>Article 15 to 20 of the Act Combating Certain Forms of Discrimination.</p>		<p>In a ruling on 6 March, 2012, the Court of Cassation declared that a press offence, including one related racism and xenophobia, may be committed via the internet, and therefore, civil liability rules would be applicable upon it.<sup>20</sup></p> <p>(Source: Court of Cassation, 6 March 2012, No. P.11.1374.N/1 and No. P.11.0855.N/1, available at <a href="http://jure.juridat.just.fgov.be">http://jure.juridat.just.fgov.be</a>; 2012/2-3, 253-254. <a href="http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf">http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf</a>, 156.)</p>

BELGIUM				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
<i>Are there online mechanisms for anyone to report about hate speech content?</i>	Offenses committed online are reported to the Federal Computer Crime Unit.		Note that until July 2015, the online hotline "ecops" ( <a href="http://www.ecops.be">www.ecops.be</a> ), under Belgian police supervision, was used to report offense committed online. It is currently not operational.	
<i>When is the online offence considered to be committed within the territory\under country's jurisdiction?</i>	<p>When the host is abroad the authorities can only request Internet service provider to block access to the website in accordance with the Criminal Procedure Code (including Article 39bis(3))</p> <p>When the host is in Belgium, the authorities can request the internet service provider and the host provider to block access and to remove the data.</p>	(Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at <a href="https://www.coe.int/en/web/freedom-expression/country-reports">https://www.coe.int/en/web/freedom-expression/country-reports</a> .)		
<i>Are intermediaries / social media sites obligated to disclose data of hate speech offenders?</i>	<p>It is prohibited to collect electronic information and identify users involved in an electronic transmission except in specific circumstances.</p> <p>Internet service providers are obligated to inform authorities of any unlawful information. They are also required, upon authorities' request, to disclose information useful for discovering offences committed through their platforms.</p>	<p>Articles 122 to 125 of the Electronic Communication Law (<i>available at</i> <a href="http://www.dekamer.be/FLWB/PDF/54/1279/54K1279001.pdf">http://www.dekamer.be/FLWB/PDF/54/1279/54K1279001.pdf</a>.)</p> <p>Article XII.20 of the Code of Economic Law <sup>D</sup></p>		

## BELGIUM APPENDIX

### A. Penal Code of 1867, as Amended up to 2016

*The English translation could not be found. The French text is available at <http://www.ejustice.just.fgov.be/>.*

### B. Criminal Procedure Code of 1808, as Amended up to 2016<sup>21</sup>

**Article 39 bis** - “In cases where hate speech is published on the internet and does not fall under the scope of a press offence, Article 39bis of the Criminal Procedure Code allows the Crown Prosecutor to use all appropriate technical means to make these data inaccessible, i.e. to have the website blocked. Crown prosecutors may thus require that Internet service providers block a particular website. In addition, in cases of hate speech leading to criminal liability published on the Internet, and which does not fall under the scope of press offences, Article 39bis of the Criminal Procedure Code allows the crown prosecutor to use all appropriate technical means to make these data inaccessible, i.e. to have the website blocked. Crown prosecutors may thus require that Internet service providers block a particular website”.<sup>22</sup>

### C. Law Combating Certain Acts Motivated by Racism or Xenophobia of 1981, as Amended up to 2014<sup>23</sup>

**Article 22** - “Whosoever commits the following shall be punished with imprisonment from one month to one year and with a fine from fifty to one-thousand euros, or with one of the punishments:

1. Whosoever incites to discrimination against a person on the basis of one of the protected criteria according to one of the circumstances specified in Article 444 of Penal Code, even if it occurred outside the domains provided in Article 5.
2. Whosoever incites to hatred or to violence against a person on the basis one of the protected criteria, according to one of the circumstances specified in Article 444 of Penal Code, even if it happened out of the domains provided in Article 15.
3. Whosoever incites to discrimination or segregation against a group, a community or its members on the basis of one of the protected criteria, according to one of the circumstances specified in Article 444 of Penal Code, even if it happened out of the domains provided in Article 5.
4. Whosoever incites to hatred or violence against a group, a community or its members on the basis of one of the protected criteria, according to one of the circumstances specified in Article 444 of Penal Code, even if it happened out of the domains provided in Article 5.”

### D. Belgian Code of Economic Law of 2014<sup>24</sup>

**Article XII. 19** - “1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- 1) The provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
  - 2) The provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, provided he acts in accordance with the procedure provided in paragraph 3.
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.
3. When the service provider obtains actual knowledge of illegal activity or information, he shall expeditiously communicate this to the Public Prosecutor, who shall take measures in accordance with Article 39bis of the Code of Criminal Proceedings. Providing the public prosecutor has taken a decision in relation to the coping, the disablement of access and removal of information stored in an information system, the service provider may only take measures to prevent access to the information.”

#### **Section 4 -Obligations to monitor**

**Article XII.20** - “1. When providing service covered by articles XII.17, XII.18 and XII.19, the service providers shall not have a general obligation to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity. The principle established in the first paragraph shall apply only to the general obligations. It does not exclude the right of the competent judicial authorities to impose monitoring obligation in a specific case, if an act enables this possibility.

2. The information society service providers referred to in paragraph 1 shall be held to promptly inform the competent judicial or administrative authorities of alleged illegal activities undertaken or information provided by recipients of their service. In addition to other legal or regulatory provisions, these service providers shall communicate to the competent authorities, at their request, all the information they possess and that is useful for the investigation and establishment of the infringements made by their intervention.”

<sup>21</sup> The law in original French text is *available at* <http://www.ejustice.just.fgov.be/>.

<sup>22</sup> “The European Legal Framework on Hate Speech, Blasphemy and its Interaction with Freedom of Expression”, 2015, *available at* <http://www.europarl.europa.eu/supporting-analyses>.

<sup>23</sup> Law Aimed at Punishing Certain Acts Motivated by Racism or Xenophobia of 30 July 1981, as amended up to 2014, *available at* <http://www.ejustice.just.fgov.be/>.

<sup>24</sup> *Available at* [http://www.slideshare.net/Johan\\_Vdd/belgian-code-of-economic-law-book-xii-law-of-the-electronic-economy-unofficial-consolidated-translation](http://www.slideshare.net/Johan_Vdd/belgian-code-of-economic-law-book-xii-law-of-the-electronic-economy-unofficial-consolidated-translation).