



EDiMA



22 May 2017

**Germany's Draft Network Enforcement Law is a threat to freedom of expression, established EU law and the goals of the Commission's DSM Strategy -- the Commission must take action**

Dear President Juncker,  
dear First Vice-President Timmermans,  
dear High Representative Mogherini,  
dear Vice-President Ansip,  
dear Vice-President Katainen,  
dear Commissioner Bieńkowska,  
dear Commissioner Jourová,  
dear Commissioner Oettinger,

The signatories to this letter represent civil and human rights organisations as well as industry bodies representing the Internet technology sector. We are writing to call on the Commission to ensure compliance of Germany's draft Network Enforcement Law (as notified on 27 March 2017) with EU law, including the EU Charter of Fundamental Rights.

While no one would object to the aim of curbing illegal hate speech and other unlawful content online, the draft law would unquestionably undermine freedom of expression and information. In practice, a distinction between content that is 'manifestly' unlawful and not manifestly unlawful is very difficult to make. The legality of individual statements must always be assessed in its specific context. **This, coupled with very tight time limits (24 hours or 7 days) for takedowns and draconian sanctions, will strongly incentivise online companies to simply take reported content down, thereby chilling freedom of speech online.**

Beyond that, the draft law also requires social networks to immediately remove or block any copies of the unlawful content that are located on the platform. This obligation would, in practice, necessitate content filters searching the whole platform to automatically take down content in a fully undifferentiated manner. Automatically identified content, which is used in a totally different context, e.g. a parody, would be taken down because filters are 'blind' to contextual circumstances. **We would like to stress that these kinds of content filters would be unprecedented in a free democracy -- so far only a handful of countries with serious democratic deficits require similar systems.**

With respect to the above, we also see grave conflicts with established EU law. In various cases **the European Courts stressed that measures put in place to protect a public interest, including the protection of a fundamental right, must strike an appropriate balance with other fundamental rights. We do not see how a proposal that profoundly undermines freedom of expression would pass that test.**

Furthermore, the law's content filtering requirement runs counter to EU law that protects fundamental rights by prohibiting general monitoring obligations.

In addition, the draft law will also have negative economic implications for the EU. **The German draft law is a national measure which will lead to far greater regulatory fragmentation and runs against the Commission's policy agenda as well as the spirit of a Digital Single Market.** That is particularly obvious with respect to the obligation to store removed content within the Federal Republic.

On the basis of our concerns, we call on the Commission to live up to its role of guardian of the Treaties and make sure national rules are compliant with EU law and case law. **In concrete terms, this would translate into at least responding to Germany with a detailed opinion expressing incompatibility with EU law under the ongoing notification process.**

We would like to thank you for your time and attention.

With kind regards,

James Waterworth  
Vice-President, CCIA Europe

Siada El Ramly  
Director General, EDiMA

Joe McNamee  
Executive Director, EDRI

TJ McYntyre  
Chair, Digital Rights Ireland

Fanny Hidvégi  
European Policy Manager,  
Access Now

Jens-Henrik Jeppesen  
Director, Center for  
Democracy and Technology