EUROPEAN COMMISSION
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Notification Number : 2017/0127/D (Germany)

Act improving law enforcement on social networks [Netzdurchführungsgesetz – NetzDG]

Date received : 27/03/2017
End of Standstill : 28/06/2017 (closed)

Message

Message 002

Communication from the Commission - TRIS/(2017) 00838
Directive (EU) 2015/1535
Translation of the message 001
Notification: 2017/0127/D

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késéseket - Ma' jiftaħx il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - Не се предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 201700838.EN)
1. MSG 002 IND 2017 0127 D EN 27-03-2017 D NOTIF

2. D

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4. 2017/0127/D - SERV60

5. Act improving law enforcement on social networks [Netzdurchführungsgesetz – NetzDG]

6. -

7. -

8. The draft proposes the introduction of statutory compliance rules for social networks in order to encourage them to process complaints about hate speech and other criminal content more quickly and comprehensively.

By laying down a legal definition of a social network, the draft ensures that the duty to report applies only to the operators of large, influential social networks, instead of to all service providers as set out in the Telemedia Act [Telemediengesetz – TMG]. The draft does not cover media platforms that publish their own journalistic and editorial content. The definition of a social network includes both the exchange of content between users in a closed or 'gated' community, and the public distribution of content. A minimum size is provided for relatively small companies (start-ups). It is also clarified that the illegal content concerned is only that covered by the objective offences in the criminal

provisions used to combat hate speech or other criminal content, as set out in § 1(3) of the draft act.

Social networks shall be legally bound to file quarterly reports on how they dealt with complaints regarding potentially criminal content. The reports shall contain statistics on the volume of complaints and information on the networks' decision-making process. They shall also provide information on the complaints team responsible for processing the complaints. The reports must be readily retrievable both in the electronic Bundesanzeiger [Federal Gazette] and on the social network's homepage.

The draft sets out legal standards for effective complaint management to ensure that social networks delete blatantly criminal content corresponding to an objective offence in one of the criminal provisions stated in § 1(3), as a rule 24 hours after receipt of the complaint from the user. The draft makes it compulsory to have effective, transparent methods for the prompt deletion of illegal content, including user-friendly mechanisms for registering complaints. This compliance obligation is based on the provision regarding service providers' liability pursuant to § 10 TMG. Service providers are bound to immediately remove illegal content they are storing for a user, or to block access to said content once they become aware of it. The compliance obligations laid down in this draft presuppose said requirement imposed on service providers and specify it further.

Pursuant to the draft, the following constitute regulatory offences punishable with a fine of up to EUR 5 million: deliberate or negligent non-compliance with the reporting obligation, violation of the obligation to have effective complaint management, or violation of the obligation to appoint a person on German soil authorised to accept service and an authorised recipient on German soil for requests for information from law enforcement authorities. According to § 17(4) of the Act on Regulatory Offences [OWiG], the fine shall exceed the financial benefit obtained from the regulatory offence. Under § 130 OWiG, which is also applicable, the owner of the company running the social network can also be prosecuted if proper supervision could have prevented or significantly reduced the likelihood of contravention of the obligation to have effective complaint management, the reporting obligation, or the obligation to appoint a person authorised to accept service and an authorised recipient on German soil.
Pursuant to § 30 OWiG, fines can also be imposed on legal persons and associations of persons. For such cases, the maximum fine according to this draft is increased to EUR 50 million (§ 30(2), sentence 3 OWiG).

The draft designates the Federal Office of Justice [Bundesamt für Justiz] as the competent administrative authority under § 36 OWiG. In connection with prosecutions for the regulatory offences stated in this draft, the Office shall also be responsible for checking whether the content is criminal within the meaning of § 1(3).

9. The language used in discussions on the internet, and particularly on social networks, is currently undergoing dramatic changes. Internet debates are often aggressive and hurtful, and hateful speech is not uncommon. Hate speech and racist slurs may be used to vilify people because of their opinion, skin colour, ethnicity, religion, gender or sexuality. Hate speech and other criminal content that cannot be effectively combatted and tracked pose a great danger to the peaceful co-existence enjoyed by citizens of a free, open and democratic society.

Following the events during the US election campaign, Germany too has made fighting fake news on social networks a priority.

To do so requires improvements in law enforcement on social networks in order to promptly remove objectively criminal content, such as hate speech, abuse, defamation or content that could lead to a breach of the peace by misleading authorities into thinking a crime has been committed.

The spread of hate speech and other criminal content, especially on social networks, prompted the Federal Ministry of Justice and Consumer Protection in 2015 to set up a task force together with operators of the networks and civil society representatives. The companies represented in the task force agreed to improve their processes for dealing with messages notifying them of hate speech and other criminal content on their sites. The companies committed themselves to set up user-friendly mechanisms for reporting discriminatory posts. They also agreed to review and delete the majority of reported posts that turn out to be illegal within 24 hours, using teams of linguists and legal experts. German law shall

form the basis for this review.

The voluntary measures taken by the companies brought initial improvements, yet these are still inadequate. Too much criminal content is still left on the sites. A check carried out by jugendschutz.net on the deletion practices of social networks in January/February 2017 showed that complaints from normal users about criminal content were still not processed promptly and satisfactorily. While YouTube now deletes criminal content in 90 % of cases, this only occurs in 39 % of cases on Facebook, and just 1 % on Twitter.

Social networks are also not sufficiently transparent. The information they published on the removal and blocking of illegal content on their platforms is lacking. Complaints received are not classified by type, and the companies do not give any information on what percentage of complaints led to content being deleted or blocked.

Social network operators must live up to the responsibility they have in terms of social debate. Since the current mechanisms and the voluntary measures agreed on by social networks are inadequate and given the significant problems in enforcing the current law, it is necessary to introduce rules to make social networks comply on pain of a fine, to enable prompt, effective action against hate speech and other criminal content on the internet.

10. No basic text(s) available

11. No

12. -

13. No

14. No

15. The draft will entail total annual compliance costs of at least EUR 28 million for social networks. The draft will mean annual compliance costs of at least EUR 4 million for the Federal Government, as well as one-off costs of at least EUR 350 000. Federal states will incur estimated total compliance costs of at least EUR 200 000 a year.

16. TBT aspect

No - the draft has no significant impact on international trade.

SPS aspect

No - the draft has no significant impact on international trade.

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European Commission

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