To whom it may concern

Opinion on notification number: 2017/127/D (Act improving law enforcement on social networks)

The German government plans to regulate internet based commercial social media to prevent from publication of unlawful content such as “fake news”, hate speech and encouragement of violence. According to the law any “obviously” unlawful content must be removed within 24 hours after notification by an appellant. Non-compliance to the rules defined in the law will lead to fines of up to EUR 50 million for a company. The companies shall be held responsible for the complaint management and removal of incriminated posts.

Comment

1. **Economic consequences**
   Since terms like “fake news”, “hate speech” and “encouragement of violence” depend on subjective power of definition there are no reliable criteria for decision. Everybody may have a clear definition of their meaning. Everybody will agree that content described by the terms is not acceptable. However there is no consensus which news is fake news and which content is hate speech. For people not familiar with German history it may be instructive to read how the former Nazi regime assessed the flyers distributed by the “White Rose” resistance group.
   That means, the German government provides a draft law based on widely interpretable content opening up the door for arbitrary “justice” to be exerted by private companies.
   In consequence the affected companies are either threatened by significant fines if deleting not enough posts or by the loss of customers if only posts dealing with the weather are allowed anymore. So there will be serious economic consequences on commercial internet companies caused by non-defined terms in the draft law and thus an unpredictable financial risk. As set forth under point 2. and point 3. there is a clear measure to avoid economic risks for the companies. In this sense it is untrue that there is no alternative to the proposed law as stated by the German government in the draft (notification_draft_2017_127_D_DE) under point C of the preamble.

2. **Implications from the Charter of Fundamental Rights of the EU**
   Since terms like “fake news”, “hate speech” and “encouragement of violence” are strongly dependent on a political and moral perspective there are no clearly defined definitions. In developed democracies violations of laws concerning libel, slander and public incitement to murder are dedicated tasks for the courts deciding on case basis. The German government now aims on outsourcing this process to private companies instead of creating new positions for judges. What is the consequence? Since members of social media communities have no formal right to express their opinions incriminated posts will be removed without a real chance of opposition against a company´s decision. So in consequence the proposed German law violates Article 11 and Article 12 of the **Charter of Fundamental Rights of the EU.** The **Act improving law enforcement on social networks** is non-compliant with essential human rights of free speech and freedom of coalition without any need, since the existing German legislation already allows for the law enforcement. The German government however is obviously not willing to improve the conditions for the existing legal proceedings.

3. **Implications from the German Constitution**

Similar to the arguments delineated under point 2. the **Act improving law enforcement on social networks** violates Article 5 of the German constitution (Grundgesetz der Bundesrepublik Deutschland). Again the proposed law will suppress the freedom of speech and the dissemination of opinions. In addition Article 18 of the German constitution may be relevant for those who undertake it to establish the proposed law.

Furthermore the draft law is in opposition to Article 92 of the German Constitution determining that the judicial power is entrusted to judges – and not to international based private companies.

4. **Implications from German History**

Over the last years there is an increasing discussion on the role of Germany in the world. The conservative coalition of CDU/CSU/SPD together with parts of the Green party are engaged in a new military buildup. The German entanglement in the potential overthrow of foreign governments and clearly in wars not backed by the UN leads to serious discussions on legality and consequences of these engagements. Citizens complaining about the situation are defamed "Putin friends" by many of the German print and web-based news media, ultimately leading to a vicious cycle of ever increasing emotional reactions. Many people in Germany meanwhile compare the current situation to the final phase of the Weimar Republic.

There is no doubt that sedition by media companies and unlawful statements in comments must be taken to the court and according to German laws they can. Unfortunately the German government seems to be not interested to adhere to procedures based on commonly accepted rules of law.

What would happen under the new law may be illustrated by one example: Hans-Georg *Maaßen* as the president of the German Office for the Protection of the Constitution is blamed by many citizens as an accessory to murder in the US drone war. The allegation is based on his disclosure of mobile phone and IMEI-numbers of terrorist suspects to US secret services. These data are finally useful to kill those and a lot of innocent bystanders without criminal proceedings.

A post with this content is supposed to be deleted under the new law thus eliminating any further discussion of his case – which in fact is also a Government case. In a functional democracy Mr. Maaßen would have the opportunity of filing a lawsuit against such a post and a court would take evidence leading to a final clarification of the case. In fact the latter is impeded by the German government.

The elections in September will find Germany at the crossroads between new military power buildup and its restraint in foreign affairs of the former years. In the light of the German history and the doubt of many citizens in the legality and morality of the actual political course there is an essential need for open discussions that may and should end up in court decisions clarifying legal positions and constitutional issues.

With the **Act improving law enforcement on social networks** the German government comes under suspicion to suppress discussion and prevent from dissemination of information in order to influence the outcome of the German elections in September of 2017.