

Alliance for Freedom of Expression
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To
Andrus Ansip, Vice President
European Commission
Rue de la Loi 200
1049 Brussels
Belgium
cab-ansip-web@ec.europa.eu

Berlin, 17 May 2017

Dear Vice-President Ansip,

we, the signatories of the [Declaration for Freedom of Expression](#), have come together for an ad hoc coalition to protest against the draft Network Enforcement Law which will be introduced in the German Bundestag this week. The Alliance for Freedom of Expression, our joint initiative by a most diverse group of stakeholders, is unprecedented in Germany. However, so is the governing German coalition's apparent resolve to push through an ill-conceived law which a great variety of academic experts and commentators are warning about.

On May 19, the Bundestag will in a first reading discuss the draft Network Enforcement Law. Although it is clear that illegal hate speech must be fought effectively within and outside online social networks, both this draft law's fundamental concept as well as its specifications are harmful for the balance of fundamental rights. The draft law poses a substantial threat to the freedom of expression and for the vibrant and diverse political discourse indispensable in a democratic society.

We urgently call upon the European Commission to use the means at its disposal, namely those laid down in Article 6 of Directive (EU) 2015/1535, according to which the Commission can block such a draft for a period of 12 to 18 months if European Union harmonisation work is to be undertaken or is already underway in the same field.

The draft law would require operators of large social networks to delete “obviously” illegal content within 24 hours and “other” illegal content within seven days of receiving a complaint. A failure to comply can incur a fine up to 50 million euros. An examination of the content at question by courts or law enforcement agencies before such a deletion is not provided for in the draft law. A central task which so far is performed only by the judiciary, to evaluate a certain behavior or content as illegal, would be outsourced to commercial enterprises. Internet service providers play an important role in combating illegal content by deleting or blocking it. However, they should not be burdened with the governmental task of making decisions on the legality of content.

Therefore, the draft law would lead to increased deletion even of lawful content. The designation of an act of speech as illegal is a complex matter, involving not only the context of the statement but also the consideration of chilling effects for fundamental rights like freedom of expression or artistic freedom. Since the draft law stipulates rigid deadlines combined with severe penalties for missed obligations to remove, the only rational strategy for operators of social networks to pursue would be one of always erring on the side of avoiding penalties, meaning: deletion. Any legislation should ensure that a balance is struck between constitutionally protected rights. Free expression and free information for all must not be affected by the existence of unlawful or criminal content being dealt with. This is particularly the case for content, in which illegality cannot be determined quickly enough, certain enough or at all to begin with. "When in doubt delete / block" should not be a fallback option, since such an approach would have catastrophic consequences on the freedom of expression. The draft Network Enforcement Law would introduce entirely new deletion obligations which go far beyond the established system of notice and takedown.

The draft law's many flaws go beyond the ones outlined by us in this letter. Despite a multitude of criticism already voiced in [position papers of a great number of stakeholders](#) in the consultation process formally conducted by the Federal German Ministry of Justice and for Consumer Protection, the authors of the law have so far not halted their hasty rush to advance the draft law in the parliamentary process. We expect a wide variety of European stakeholders to voice their concern using the instruments laid down in Directive (EU) 2015/1535. A number of our Alliance's members have already delivered their opinion and legal expertise as part of the TRIS procedure. The results are clear: Numerous serious conflicts between the draft law and European Union law exist.

We therefore call upon the European Commission to inform the German Government that it holds the draft law to be in infringement with EU law, in particular the E-Commerce Directive, the General Data Protection Directive, and the E-Privacy Directive.

We believe that an overall political strategy is necessary to curb the proliferation of hate speech and deliberate fake news on the internet. However, the draft law does not meet the requirement to adequately protect the freedom of expression. On the contrary – it jeopardises the core principles of free expression.

Therefore, we call for a cross-societal approach which intensifies criminal prosecution and law enforcement while also strengthening counter speech, fostering media literacy, and preserving a regulatory framework that respects freedom of expression in the deletion or blocking of unlawful content.

Yours sincerely,

Volker Tripp

Signatories of the Declaration for Freedom of Expression are:

Amadeu Antonio Stiftung
Bitkom – Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.
BIU – Bundesverband Interaktive Unterhaltungssoftware e.V.
Bundesverband Deutsche Startups e.V.
Bundesverband Digitale Wirtschaft (BVDW) e.V.
Bundesverband IT-Mittelstand e. V. (BITMi)
Chaos Computer Club e. V.
cnetz – Verein für Netzpolitik e. V.
D64 – Zentrum für digitalen Fortschritt e.V.
Digitale Gesellschaft e. V.
DJV – Deutscher Journalisten-Verband e.V.
eco – Verband der Internetwirtschaft e.V.
Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. (FSM)
Internet Society, German Chapter (ISOC.DE) e.V.
LOAD e.V. – Verein für liberale Netzpolitik
Open Knowledge Foundation Deutschland e.V.
Reporter ohne Grenzen e. V.
Wikimedia Deutschland – Gesellschaft zur Förderung Freien Wissens e. V.

Additional signatories are:

Dr. Ulf Buermeyer, LL.M., Chairman of GFF (Gesellschaft für Freiheitsrechte / Society for Civil Rights)
Dr. Frederik Ferreau, Research assistant, University of Cologne
Prof. Dr Hubertus Gersdorf, Jurist
Joerg Heidrich, Attorney
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Sabine Leutheusser-Schnarrenberger, former German Minister of Justice
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Stephan Schmidt, Attorney

Additional signatories following the publication are:

Arbeitskreis Zensur
Deutscher Anwalt Verein
Deutscher Kulturrat e.V.
Deutscher Presse Verband – Verband für Journalisten e.V.
FITUG – Förderverein Informationstechnik und Gesellschaft e.V.
Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung e.V.
Gesellschaft für Informatik e.V.
Gesellschaft für Medienpädagogik und Kommunikationskultur
Handelsverband Deutschland e.V.
Verbraucherzentrale Sachsen