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Freedom of speech: ICT must help, not hinder

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

Event on the idea of an EU "GOFA" (US Global Online Freedom Act)

EP Plenary Session, Strasbourg, 3 February 2009

Honourable Members of the European Parliament,

Ladies and Gentlemen,

First of all I would like to congratulate Mr Maaten and the co-presenters of this initiative of the European Parliament concerning a possible "Global Online Freedom Act" for the European Union. I very much welcome the fact that members of the Parliament presenting this initiative come from all the main political parties. This gives a strong signal to the rest of the world: the signal that the European Union places the freedom of expression on the Internet high on its agenda.

As you rightly remind us in the paper you made public in July last year many authoritarian states block the access to websites, filter search engines results and intimidate internet users. While it is the duty of every government to ensure that the media respect legitimate rules pursuing objectives of public interest such as the protection of minors, restriction of free speech must be exceptional and legitimate. The principle must be freedom of speech. Freedom of speech and freedom of the press are fundamental human rights, and free flow of information on the Internet is protected in Article 19 of the Universal Declaration of Human Rights, which guarantees freedom to "receive and impart information and ideas through any media regardless of frontiers".

Over the last ten years, the internet has become an unprecedented opportunity for individuals everywhere to share information and exchange views. In developed economies, many of us avail ourselves of blogs and photo sharing services to inform the world simply about our favourite movies and recipes or to show some holiday pictures. But for others, living in authoritarian countries, the Internet is primarily the most important vehicle to express and share political views which are minority views in their own country, or which oppose the political regime. The use of the Internet by dissidents in Burma last year provided us all with an example of how important a lifeline the Internet can be for the repressed and the censored. At a time where it is very easy to upload recordings made on a mobile phone and have them available via the Internet in seconds – in other words at a time where everybody can become a news reporter – the internet has become a real instrument of international policy, either as a force to help democracy or, for authoritarian regimes, as a problem – examples go from the attempt by the Chinese Government in 2004 to block news on the outbreak of SARS to the attempts by the Burmese authorities last year to hide the number of victims of the cyclone and their incapacity to cope with the situation without international solidarity.

Against this background, members of the US Congress, together with human rights organisations such as reporters without borders launched the idea of a "Global Online Freedom Act". The US State Department and the Department of Justice reacted in a cautious way, explaining in particular that the definition of "Internet-restricting country" Congress wants to establish could result in some democratic countries - including in Western Europe - to be subject to the restrictions foreseen in the draft bill. In addition they expressed concerns that the bill would put US businesses in an environment of conflicts of law and could trigger reciprocity and may have the exact opposite effect of its intended goal, encouraging freedom of expression. US companies called by Congress to act and develop a Code of conduct setting out minimum corporate standards related to Internet freedom have been very reluctant as well. However, at the end of October last year, a group of US-based companies, universities, think-tanks and human rights organisation announced the Global Network Initiative (GNI). The GNI principles state that "participating companies will respect and protect the freedom of expression rights of their users when confronted with government demands, laws and regulations to suppress freedom of expression, remove content or otherwise limit access to information and ideas in a manner inconsistent with internationally recognized laws

and standards." How will these principles be implemented? The GNI members commit themselves to (I quote again) "implement these Principles wherever they have operational control. When they do not have operational control, participating companies will use best efforts to ensure that business partners, investments, suppliers, distributors and other relevant related parties follow these Principles". Obviously, one has to see how the implementation will work. But this seems to me a promising step forward.

So, what do we do in Europe?

The European Union has become a major player on the world stage and is a major trade partner for many countries in the world. This implies that we conclude agreements, and that we have bilateral or multilateral meetings with our partners. I believe that every one of these opportunities must be used by the European Commission and by the EU Presidency to promote freedom of speech and fight against censorship. In addition, we must ensure that nothing in the agreements we negotiate with third countries, including its bilateral trade agreement, could be used to constrain or limit in any way the freedom of speech.

As regards a European Code of conduct or a European initiative such as the GNI, I would like to remind you that the European Commission, on my initiative, called for such a Code in its Communication of April 2006 following-up the conclusions of the World Summit on the Information Society (WSIS). I quote again: "the Commission follows closely the ongoing debate in the US on ways to bar companies (Internet access and Internet service providers, providers of Internet technologies) from helping repressive regimes to restrict the free flow of information on the Internet. The Commission encourages the companies concerned to work on a code of conduct on this crucial issue, in close cooperation with NGOs". After almost three years, no initiative has been taken by our companies. Even if, indubitably – and unfortunately for Europe's economy – we don't have big European search engines present worldwide, there are European providers of internet related technologies and I expect from these companies to finally take an initiative. I am ready to give a helping hand to kick it off.

Should the EU have a specific legislation on internet freedom? I am not convinced so far that hard law is the best way to deal with the challenge. The instruments you are referring to in your paper of July 2008 are quite heavy: export control procedure, civil and criminal penalties against businesses, creation of a specific EU body controlling European companies of the internet sector having business abroad, etc. I believe that we should not put European companies in an invidious position where their choice appears to be to break the law or leave the market to more unscrupulous operators. Rather, our goal should be to find ways to allow operators and service providers to respect human rights without doing either.

Coming back to your July paper, I find other suggestions such as devoting EU money to the R&D on anti-censorship software tools quite interesting and I propose that you meet with my team and my services to follow-up on this.

Ladies and gentlemen,

The relationship between freedom of expression and the need to protect other values of society such as security and privacy is not a novelty of the Internet. But indeed, the borderless nature of the Internet and easiness of publishing for a worldwide audience may however add complexity and raise new questions. I am convinced that the pursuit of ensuring freedom of expression should not be seen as competing with the goal to improve online security and guarantee privacy. Those goals are not mutually exclusive, but do, I believe, in fact reinforce each other.

When debating those issues, I think that it is also indispensable to emphasise that there is already a significant degree of international consensus on the basic principles. In 2005, the World Summit on the Information Society provided an important milestone by achieving the commitment to the freedom to seek, receive, impart and use information on the Internet and via other ICT technologies.

In its 2006 post WSIS Communication, the Commission also announced its intention to be vigilant regarding any attempts to call into question the neutral character of the Internet – a key element in maintaining a free and open approach to Internet-based communications.

Indeed, the architectural principles that underlie the Internet we have today, namely the principles of openness, inter-operability and neutrality do not only create an environment that enables innovation in services and applications, more importantly they allow for an environment where users can express themselves freely without discrimination by their service provider. Therefore, those basic design principles need to be preserved.

In the meanwhile, the silver bullet to ensure respect for freedom of expression online in a satisfactory manner remains yet to be found. I find it, however, reassuring that this issue has not disappeared from international discussions and that the European Parliament gives it such high priority.

At the global level, one forum which serves as a useful platform for exchanges on this issue is certainly the Internet Governance Forum.

As you are aware the Commission supports the Internet Governance Forum as a platform for non-binding exchanges among Internet stakeholders on all Internet Governance related issues. In this context, I would stress that the lack of binding negotiated documents should not be considered as a weakness of the process. It is in fact one of its major strengths which is increasingly recognised because it allows for a much freer exchange between participants.

One of the topics which has been constantly on the agenda of the forum is openness. At the Hyderabad IGF in December 2008 this issue was addressed under the aspect of "fostering security, privacy and openness". As already mentioned, I believe that those three goals should not be perceived as excluding each other. I would welcome it if the IGF would continue to provide a platform for exchanges on this very important issue.

The discussions in the IGF could indeed also serve as input for policy deliberations on the question how to guarantee freedom of expression on the Internet, but at the same time address challenges that the Internet brings about when it comes to illegal or harmful content.

Ladies and Gentlemen, thank you very much for your attention.