



EUROPEAN COMMISSION

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*Mr Edgar MAYER
President of the Bundesrat
Dr Karl Renner-Ring 3
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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Code of Conduct on countering illegal hate speech online. It also takes note of its invitation to take initiatives at European level, including through regulatory measures, to oblige Information Technologies companies and platform services providers to actively counter hate speech and other illegal content as well as fake news.

Preventing and combatting illegal online hate speech is and will remain a key priority for the Commission. There are European criminal law rules¹ in place against public incitement to violence or hatred. Citizens expect the law to be respected in the online world as much as offline and that illegal content, such as illegal hate speech, is removed quickly and effectively from online platforms, while fully respecting freedom of expression, as one of the fundamental rights and values of Europe.

The Commission has been proactive in its pursuit of combatting illegal hate speech and, on 31 May 2016, agreed with Facebook, Twitter, YouTube and Microsoft (“the IT Companies”) a voluntary Code of Conduct to combat the spread of illegal hate speech online. The Commission thanks the Bundesrat for its support for the Code, which is a positive step in the fight against illegal hate speech online.

In December 2016, the Commission carried out a preliminary evaluation of how the companies had delivered on their commitments and discussed it with the Justice Ministers. Although progress was recognised, the assessment showed that the IT Companies needed to do more to comply with the commitments they undertook in the Code.

¹ Council Framework Decision 2008/913/JHA on of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

On 31 May 2017, one year after the adoption of the Code of Conduct, the Commission presented the results of the second monitoring exercise² which showed significant progress achieved by the IT Companies. Data showed that these companies have improved their speed of assessment and removal rate relating to notifications on manifest illegal hate speech as compared to the previous monitoring exercise. The IT Companies have removed around 60% of the notifications, which represents twice the level of notifications recorded six months earlier. The IT Companies are now also treating the notifications in a more coherent way without the outcome of their assessment changing depending on the reporting channel used (i.e. notifications are made as a general user or as trusted partner).

Moreover, within the last year, the companies have strengthened their reporting systems and made it easier to report hate speech, trained their staff and have increased their cooperation with civil society.

The implementation of the Code of Conduct has also strengthened and enlarged the IT Companies' network of trusted flaggers throughout Europe, which has led to a higher quality of notifications, shorter handling times and better results in terms of reactions to the notifications. As an example, the Austrian organisation Zivilcourage und Anti-Rassismus-Arbeit (ZARA) has increased the removal rate for notifications made to the IT Companies in more than 60% as compared to the first monitoring exercise.

The Commission nonetheless understands the concerns expressed by the Bundesrat. While the results of the monitoring are encouraging, further work needs to be done in the area of transparency, in particular in terms of improving the quality of the feedback to their users. In this regard, the outcome of this self-regulatory exercise feeds into the work developed on the context of the European Union Digital Single Market strategy.

On 10 May 2017, the Commission presented the Communication on the Mid-Term Review on the implementation of the Digital Single Market Strategy³ and committed to continue the fight against illegal content. In the Communication, the Commission underlined the need to continue working towards minimum procedural requirements for the 'notice and action' procedures of online intermediaries, including as concerns quality criteria for notices, counter-notice procedures, reporting obligations, third-party consultation mechanisms and dispute resolution systems.

In the same vein, the Commission's proposal for a revision of the Audio-Visual Media Services Directive⁴, presented in May 2016, widens the definition of hate speech by referring to 'incitement to violence or hatred' and including ethnic origin, belief, disability, age or sexual orientation. The proposal would also introduce an obligation on Member States to ensure that video-sharing platforms (e.g. YouTube) put in place, preferably through co-regulation, appropriate measures, such as flagging and reporting mechanisms, to protect all citizens from incitement to violence or hatred.

² http://europa.eu/rapid/press-release_IP-17-1471_en.htm.

³ http://europa.eu/rapid/press-release_IP-17-1232_en.htm.

⁴ COM/2016/0287 final.

The Commission is also concerned about the effect on the democratic discourse of false news and misinformation. However, this issue requires an even more nuanced approach than the above due to the fact that fake news does not necessarily involve illegal content; hence possible actions aimed at ensuring their effective removal could be perceived as a form of censorship and as being incompatible with the fundamental right to freedom of expression and information.

The Commission's 2016 Annual Colloquium on Fundamental Rights, held in November 2016, underlined the need for a high level of media literacy, which must be part of the most basic skill set of European Union citizens of all ages to foster critical thinking, especially in the new, converged media environment, together with commitment to ethical standards among those producing media. In this context quality journalism is more needed than ever and should be promoted. All journalists' codes of conduct include accuracy as one of their main requirements and this is essential to (re)build trust in quality journalism. Moreover, the Commission will continue its dialogue with online platforms to identify and exchange best practices in media literacy through events such as the November 2016 Media Literacy Expert Group meeting. The Commission draws the Bundesrat's attention to the European Parliament's growing interest in media literacy, manifested through the 'Media Literacy for All' pilot action; and to a new mapping study of media literacy practices across Europe undertaken by the European Audiovisual Observatory and financed by the Commission.⁵

In addition, through Horizon 2020 research and innovation projects in the converging media area, the Commission aims to improve content verification tools and collaborative platforms open to both mainstream and social media, with a view to enhancing coordination and multi-stakeholder dialogue, and strengthening social media ecosystems.

Finally, the Commission is working to ensure that there is an effective cooperation between Information Technology companies and national authorities and started a mapping exercise to get an overview of the prevalence and efficiency of court orders, including injunctions issued by the Member States' judiciaries in respect of illegal hate speech.

The Commission hopes that the above information addresses the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

First Vice-President

*Julian King
Member of the Commission*

⁵ <http://www.obs.coe.int/de/legal/all-publications>