

EuroISPA's points of critique on the French law aimed at combating hate content on the Internet

EuroISPA is the voice of the European Internet industry, representing over 2.500 Internet Service Providers across Europe, all along the Internet value chain including providers of all sizes and business models. EuroISPA has been closely following ongoing discussions on the French proposal for a law aimed at combating hate content on the Internet.

While sharing the important objective of combating hate speech online and having members running hotlines themselves, we would like to voice our concerns on several elements of the proposal, as we see it posing a risk towards a fragmentation of the European internal market and placing excessive additional burdens on providers offering services in France. As the President-elect of the European Commission Ursula von der Leyen has announced a Digital Services Act in her [political guidelines which shall also address the challenges of hate content online](#), we urge France to ensure that the proposal is aligned with the upcoming EU framework. Furthermore, we would like to draw attention to the proposal of setting specific thresholds per decree to avoid any potential detrimental impact for MSMEs (micro and small enterprises), which might be disproportionately impacted by the law. EuroISPA also sees important issues to be raised in relation to blocking duties, as well as to the proportionality of sanctions.

We support legislative consistency across the Digital Single Market

- The French proposal, with its restrictive 24-hours timeframe to take down content, would create excessive additional burdens for providers offering services in France. This would fragment the internal market, as online platforms operating in different European Member States would have to put in place specific compliance mechanisms for the French market. In our opinion it is questionable, whether such a restriction on the freedom to provide an information society service from another Member State is in compliance with Art 3 para 2 E-Commerce Directive.
- We instead encourage the French government to wait for the European Commission to present its proposal for a Digital Services Act, as announced by President-elect Ursula von der Leyen in her [political guidelines](#), in order to ensure legislative consistency with the upcoming EU framework.

We support horizontal rather than vertical regulatory frameworks

- A set of EU laws and proposals (e.g. the EU Copyright Directive¹, the AVMSD², IPRED³, the proposal for a Regulation on preventing terrorist content online⁴) create obligations to tackle specific categories of content. The proposal for a law aimed at combating hate content on the Internet would create another vertical, national framework for hate speech.
- However, in order to avoid regulatory fragmentation, we consider that, in principle, statutory obligations to remove illegal content online should apply horizontally to any type of illegal content. This will better enable the creation of a balanced, consistent, sustainable and stable framework for the role of Internet intermediaries, that takes into account the legitimate interests of all stakeholders.

We favour removal at source instead of web-blocking

- Article 6(II) foresees that when a final judicial decision prohibits the total or partial reuse of content, the administrative authority may request that providers of domain name services block access to any site, server or other electronic process giving access to content deemed unlawful by said decision. Under the same conditions, the administrative authority may also request that any search engine or directory cease referencing email addresses giving access to this content.
- EuroISPA considers that, in first instance, competent authorities should always take action against the content provider of the illegal content itself (the user) or the online platform. Where possible, removal at source should always be preferred and prioritised to preserve proportionality. Only in the case that there is no action from the content provider or platform, as *ultima ratio*, should the competent authority request the access provider to intervene.
- Additionally, we believe hosting providers should fall within the scope of article 6 to ensure a fair distribution of the blocking order between stakeholders and at the same time to avoid inappropriate blocking of hosting providers' websites by operators because they were not given the option to react.
- Finally, limitations of MSMEs should be considered when imposing web-blocking obligations to ensure a level-playing field and to avoid the creation of market entry barriers for emerging European innovative businesses and startups.

Sanctions should be proportionate

- We note that Article 4(II)(2) of the proposal foresees sanctions amounting to up to 4 % of the operator's total annual turnover for the preceding financial year, in case the operator fails to comply with the provisions of the proposal.
- We reiterate that sanctions against operators for non-compliance should be proportionate to the offence and level of culpability. When determining the sanction, aggravating and mitigating factors, such as the size and capabilities of the intermediary, should be taken into account. Individual instances of non-compliance with a statutory duty should only give rise to a maximum penalty proportionate to that instance of non-compliance. Furthermore, we consider that sanctions should only be assigned after verifying that removal at source is not

¹ [Directive \(EU\) 2019/790](#) of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

² [Directive \(EU\) 2018/1808](#) of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities

³ [Directive 2004/48/EC](#) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004)

⁴ [Regulation](#) Of The European Parliament And Of The Council on preventing the dissemination of terrorist content online

possible and that the online platform has made its best efforts to comply with the obligations, rather than because of the failure to achieve the assumed result.

- Lastly, operators should be able to benefit from a “Good Samaritan clause”, extending protection from liability in cases where they have actual knowledge of allegedly illicit content when they apply in good faith procedures designed to tackle said content, where those procedures contain measures to preserve fundamental rights. In practice, this would extend liability protection both (1) when proactively searching for illicit content and (2) after any good faith decision that potentially illicit content does not qualify for removal.