

IP/IT/Media

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German government to fight online hate speech - Fines up to EUR 50 million

The German Federal Ministry of Justice has presented a draft for a new legislation against hate speech and fake news on social networks. The discussion has just started and while important points might still be modified, this new law could have an impact on major communication platforms.

The draft law applies to networks with 2 million or more registered users in Germany. It defines such networks as commercial online platforms that allow their users to exchange and share any kind of content with other users or the public. Editorial content is explicitly excluded.

The draft wants the new rules mainly to apply to major social networks such as Facebook, YouTube and Twitter. However, the proposed wording is very broad and could lead to a scope of application beyond such social networks.

The aim of the law is to reduce hate speech and fake news on social media. It therefore creates certain obligations for social networks if so-called illegal content is reported. The definition of illegal content is limited to statements that are already prohibited under German Criminal Code. Such illegal content includes propaganda for unconstitutional organisations (such as Nazi content), racist content, insult to people or religious communities, threats and public incitements of crime and pornography. It should be noted that even though freedom of speech is protected under the German Constitution, the concept differs significantly from the US concept.

The draft provides for extensive reporting obligations on how the platform has to deal with illegal content. Networks have to publish quarterly accounts on how they handle complaints about such content. These reports need to include information about the responsible staff, the internal procedure and statistics concerning the number and severity of complaints and actions taken in response.

Furthermore, the networks need to implement an effective and transparent procedure to deal with illegal content. This procedure has to ensure that obviously illegal content is removed within 24 hours starting with the complaint, and other illegal content is removed within 7 days.

To facilitate enforcement, the new law also obligates social networks to appoint an authorised representative in Germany for service of process.

If those new obligations are not fulfilled, companies can be fined up to EUR 50 million. This does not apply exclusively to German networks, but to foreign networks as well.

Further, the draft provides a new right to access to information regarding the identity of users, which could be read as an attempt of the government to fight against anonymity in the World Wide Web. This would raise further data protection related issues.

The German association of judges has commented in a statement that the proposed law should be made even stricter than proposed by the Ministry. The judges propose to add the obligation to disclose the identity of the infringer.

The legislation process is pending and may be overtaken by the General elections in September 2017.



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