

(GROW)

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Sent: 03 April 2017 12:43
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Cc: (GROW); (GROW); (GROW); (GROW); (GROW)
Subject: 📢 Early Warning - Single Market Transparency Directive 📢 Notification 2017/127/D law enforcement on social networks
Importance: High

EARLY WARNING ON SENSITIVE NOTIFICATIONS



<u>In a nutshell</u>	
Country:	Germany
Sector:	Digital social networks and criminal offences
Deadline for EU reaction:	28 June 2017
Sensitive because:	
Preliminary analysis:	Notified drafts are still under assessment. CNECT might propose a reaction
Next steps:	EC services contributions are expected by 28 April 2017

Background:

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the German authorities notified to the Commission on 27 March 2016 a draft **"Act improving law enforcement on social networks"**.

The draft Law aims at ensuring that criminal content published on digital social networks, such as hate speech, abuse, defamation or fake news, is promptly removed by social network operators. According to the notification message, the definition of its scope would ensure that the draft applies only to operators of large influential digital social networks such as YouTube, Facebook or Twitter. The German authorities explain that a voluntary agreement was reached with these operators in 2015 but that the results were not sufficient and required legal action (i.e. the proposed draft law).

The German intention to regulate the matter has been recently discussed between CNECT's Cabinet and the German authorities. During these discussions, CNECT informed the German authorities of CNECT's intention to regulate the same matter with a different approach than the one presented in the notified draft. It seems that DG CNECT and DG JUST are in contact to discuss the notified draft and have contacts with the German Ministry of Justice (which prepared the notified draft).

Main content:

The notified draft contains the following provisions:

- Standards for effective complaint management to ensure that social networks delete blatantly criminal content 24 hours after receipt of a complaint from a user. The draft makes it compulsory to have effective, transparent methods for the prompt deletion of illegal content, including user-friendly mechanisms for registering complaints.
- Social networks shall be legally bound to file quarterly reports on how they dealt with complaints regarding potentially criminal content. The reports shall contain statistics on the volume of complaints and information on the networks' decision-making process. They shall also provide information on the complaints team responsible for processing the complaints. The reports must be readily retrievable on the social network's homepage.
- Social networks may be imposed a fine of up to EUR 5 million in the following cases: deliberate or negligent non-compliance with the reporting obligation, violation of the obligation to have effective complaint management, violation of the obligation to appoint a person on German soil authorised to accept service and an authorised recipient on German soil for requests for information from law enforcement authorities.

The notification message and the draft text concerning this notification can be found on <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=127>

Relation with past notifications:

The notification under subject come to develop further the obligations regarding intermediaries' liability contained in Article 10 of the German Telemedia Act (TMG). According to this Article, service providers are bound to immediately remove illegal content they are storing for a user, or to block access to said content, once they become aware of it. This provision was commented by the Commission when it was amended and notified under notification 2015/305/D, in relation with the liability exemption contained in Article 14 of the E-commerce Directive.

Interim assessment:

The notified drafts are still under assessment by the following EC services concerned: GROW E1 and E3, JUST and CNECT.
DG CNECT has flagged the sensitivity of the notified draft and informed that they might propose a reaction.

Timeline:

EC services views are expected by 28 April 2017.

The legal deadline for the EC reaction is 28 June 2017.

European Commission

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