

The Network Enforcement Act 2020 reloaded – improved as well?

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Current Status

On 1 April 2020, the Federal Cabinet adopted an amendment to the Network Enforcement Act (NetzDG)¹. Users of social networks such as Facebook, Twitter und Instagram are to be given more rights if they are confronted with hate and incitement of hatred.

The amended law has to pass through the parliamentary procedure yet. The parliament will certainly see controversial debates as the NetzDG and its impact have been controversial from the outset and not all suggestions for improvement submitted by politicians² and the digital economy have actually been reflected in the present reformed version.

What has happened so far

The NetzDG has been in force for two years. Its regulations are aimed at combatting hate speech on the Internet and making social network providers liable for their obligations. Clearly punishable content must be deleted within 24 hours and user complaints must be responded to within 48 hours.

The general point of criticism concerning the NetzDG was the fact that it transfers government duties such as the enforcement of the law to the digital companies. Practice, however, has shown that although hate and incitement of hatred on the Internet put the rule of law to the test, it is ultimately the courts that clarify cases and decide on penalties. Adequate equipment – and above all staffing – of the judiciary is of course an essential prerequisite which must be further adapted for the future.

Furthermore, the law was vehemently criticised as an instrument for curtailing the freedom of expression. However, a massive over-blocking, i.e. the preventive deletion of entries, has not occurred in the past two years. In times of increasing brutalisation of the discourse on the net the justifiability of the NetzDG is hardly questioned any more, but there are still calls for improving central parts of the regulation in this respect.

The contents of the reform

The regulatory approach should be readjusted and further developed with a sense of proportion. The Konrad Adenauer Stiftung has already contributed to the debate at an early stage of the evaluation process, e.g. a short expert opinion³ on the NetzDG: there were concrete demands to supplement the guidelines for complaint management and to strengthen the protection of users, in particular by their right to demand that unjustly deleted contents be restored.

The reform adopted by the cabinet now provides for the introduction of an easily understandable reporting system within the platforms for their users in the future. This will make the mechanism of making complaints about unlawful content more user-friendly. In addition, a regular procedure for the reinstatement of unlawfully deleted or blocked content is to be introduced. It is also intended to introduce more efficient mechanisms for obliging operators to disclose the identity of the author of a message.

Criticism of the law reform

For many critics the NetzDG reform project does not go far enough. Among other things, it is argued that the law would lead to even greater uncertainty instead of more transparency, as undefined legal concepts and unclear specifications on content deletion would not be eliminated.

In the forthcoming parliamentary proceedings, the following points should therefore be examined and discussed in more detail:

- › whether the reporting channels are sufficiently practicable for users;
- › whether the comparability of transparency reports can be enhanced and whether more transparency in the use of technical instruments can be created by the networks.
- › whether there are sufficient new incentives encouraging network operators to self-regulate;

- › whether the unequal treatment of video sharing platforms and social networks is tenable: The NetzDG adheres to the “country-of-origin” principle for video-sharing providers – however, for social networks the responsibility still lies with the target country.

Conclusion

In combatting criminal content on platforms, it is not only appropriate to focus on consistent law enforcement but also to strengthen the legal protection of the persons concerned. What remains, however, is that many insults and much hate speech are a grey area and not criminally relevant. At this point, we must continue to focus firmly on media and digital competence being imparted so as to ensure a reasonable culture of debate on the Internet in the future.

- 1 https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RegE_Aenderung_NetzDG.pdf?jsessionid=7919944928F6720C566096E7098AC6FC.2_cid324?__blob=publicationFile&v=2 (last accessed: 20/04/2020).
- 2 e.g. by the Position Paper of the CDU/CSU-parliamentary group in th Bundestag <https://www.cducsu.de/sites/default/files/2019-11/Positionspapier%20Weiterentwicklung%20des%20Netzwerkdurchsetzungsgesetz.pdf> (last accessed: 20/04/2020).

- 3 <https://www.kas.de/documents/252038/3346186/AA+326+-+Soziale+Netzwerke+in+der+Pflicht+-+Meinungsfreiheit+in+Gefahr.pdf/f682eb8f-f69f-fa3c-fe00-fdbc8bbfa15f?version=1.1&t=1545124105923> (last accessed: 20/04/2020).

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