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Germany: Combating disinformation and hate speech on the Internet

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On 5 April, the German government passed a bill prepared by the Minister of Justice Heiko Maas (SPD) imposing on social networking portals the obligation to block or remove untrue information and hate speech. The project concerns portals which have over 2 million users in Germany (identified on the basis of IP addresses at the time of registration on the portal) and envisages the removal of posts within 24 hours or 7 days, depending on the degree of content complexity following a request from the injured party. It is up to the portal administrator, acting on the grounds of the criminal code regulations indicated in the act, to decide what is hate speech and untrue information. These regulations concern, for example, spreading materials of organisations that are deemed unconstitutional, which offend the constitutional authorities of the German state, offend other people or which are deemed to be incitement to crime. The portals which repeatedly fail to comply with the obligation to remove such content may face a penalty of 50 million euros. The bill imposes the obligation on portal owners to appoint plenipotentiaries in charge of considering complaints from injured parties and making quarterly reports detailing the number of decisions passed. The act is expected to be passed by the Bundestag in June so that it can come into effect before the election in September this year.

Commentary

- The German government has imposed stricter regulations concerning social networking portals mainly out of fear that this channel of communication might be used during the election campaign to spread false information, especially as regards migration and asylum policy. It may be concluded from analyses conducted by the US portal BuzzFeed that Chancellor Angela Merkel is the object of the most frequent attacks in German- and English-language electronic media using false information concerning the migration crisis. One example of this was the widely spread untrue message that one of the authors of the Brussels attack was on a photograph with Merkel.
- The increasing popularity of Alternative für Deutschland (AfD) in Germany, alongside Brexit and Donald Trump's victory have made the government coalition aware of the threat posed by false information, and the range of its impact is increased by special software. False information generated this way may also strongly affect the course and the result of the election to the Bundestag in autumn this year. This is even more likely

given the fact that the German media have been forced to deal with a credibility crisis over the past few years. According to a public opinion poll ordered in December 2016 by Westdeutscher Rundfunk, 37% of respondents believe that the media cannot be trusted, and this concerns mainly the people who derive information from social networking portals. 46% of respondents admitted that their trust in the media had fallen over the past few years.

- One essential reason for passing the new law is the desire to counteract disinformation spread by foreign entities. Experts and German secret services are concerned about a possible destabilisation of the situation in the country, especially during the election campaign. In this context they are pointing both to Russia (which may mobilise radical circles who are opposed to the constitutional order in Germany), and to Turkey (accusing its foreign intelligence service, MIT, of attempting to manipulate German public opinion). The most widely publicised example of using disinformation in order to provoke unrest in Germany was the so-called 'Lisa case' – the alleged rape of a 13-year old girl from Berlin (originating from a family of German immigrants from Russia) who went missing in January 2016. Untrue information about her being hurt by refugees publicised across social networking media provoked numerous demonstrations of so-called 'delayed displaced people' (i.e. ethnic Germans who moved to Germany from the former Soviet republics after 1990 – their number in Germany is estimated to be 2.5 million). The mobilisation of what was until recently a politically passive community has convinced the German government that Russia may make attempts to destabilise the situation in Germany by influencing this community.
- Already during the migration crisis Germany pressed the owners of social networking portals to change the rules of verification of the information published there and to remove unlawful contents. In September 2015, Mark Zuckerberg (the founder of Facebook) met with Angela Merkel and representatives of the German Ministry of Justice. During the meeting they criticised the corporation for allowing the dissemination of hate speech against refugees. In effect, a joint working group was established in co-operation with the three largest social networking portals (Facebook, YouTube and Twitter) and non-governmental organisations with the intention to facilitate faster monitoring and removal of untrue information and hate speech. The German Ministry of Justice found the results of the group's work unsatisfactory and decided to intensify the pressure on social networking portals by threatening them with the imposition of strict financial penalties. The disputes between the German government and the social networking portals concern mainly the speed of removing illegal information and the methods of verification thereof. Facebook has the largest number of users in Germany (28 million) and eliminates only 39% of content deemed illegal (by comparison, YouTube removes 90%). In this context, the new act is expected to convince social networking portals to consider complaints from German users in a shorter time.
- The bill proposed by the Ministry of Justice is legally dubious. The proposed regulations have been criticised by Christian Democrat MPs (including Thomas Jarzombek, the Christian Democrats' spokesman for Internet policy) who fear that social networking portals might put preventive censorship in place. The ministry made attempts to dispel these fears – it has promised dialogue with the portal owners and changed the proposed

criterion for imposing the penalty – it will be imposed in the case of a persistent violation of the regulations. Another point of dispute is disclosing the data of individuals who publish insulting information to the injured party so that they can claim damages. The act does not state precisely whether data disclosure must be preceded by a court decision. Regulations of the act have been criticised by both non-governmental organisations (for example, Digital Society) and political parties, including the Greens who want strong protection of data in the Internet.

- Verification is an important issue because if the regulations are not precise enough, the act may even have the reverse effect—in practice, radical circles or foreign entities may demand the removal of true information, capitalising on portals' problems with the effective verification of information. Furthermore, blocking untrue information on large social networking portals may improve the popularity ratings of other websites, including those presenting disinformation whose owners will present themselves as operating on a 'censorship-free' basis.
- The Ministry for the Economy blocked the bill for a few months because it was concerned about the interests of German companies from the IT sector, which were strongly opposed to the bill. BITKOM, the association of companies from the digital sector of the economy, has argued that the new regulations will impede the development of social networking portals and new digital services on the German market. In its opinion, the act will establish the culture of deleting content since companies will be unable to assess whether information is legal within 24 hours of receiving a complaint from an injured party (it takes much more time for the courts to process these claims). German firms from the digital sector fear that the act, given its imprecise regulations, will not be limited to social networking portals but will also cover other suppliers of online services, such as email inboxes, sites that enable file sharing, and video chat.
- One of the government's frequently voiced concerns is the issue of Germany's maintaining so-called 'digital sovereignty' which is understood as German consumers' right to monitor their actions online and information concerning them made available there. Given the strong position of foreign corporations in the digital services sector, the government wants to allow foreign IT corporations to operate on the German market only on condition that they comply with German law. It cannot be ruled out that if the new regulations turn out to be successful, Germany will be pushing them through in the European Union. Berlin is interested in setting standards in the area of the digital economy for the EU as a whole.