[DE] CDU/CSU and FDP Coalition Overturns Access Obstruction Act

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According to media reports, the CDU/CSU and FDP coalition committee decided on 5 April 2011 to overturn the Gesetz zur Erschwerung des Zugangs zu kinderpornographischen Inhalten in Kommunikationsnetzen (Act on the obstruction of access to child pornography via communication networks - Zugangserschwerungsgesetz), which was passed by the previous government on 18 June 2009 with the aim of enabling internet sites with child pornography content to be blocked. The law came into force on 17 February 2010 but, in accordance with the coalition agreement of the then newly-formed Federal Government and on the basis of a decree of the Federal Ministry of the Interior of 17 February 2010 (see IRIS 2010-4/19), was never implemented.

The decision now taken by the coalition committee must be seen as a response to the long-running criticism concerning the constitutionality of the Act. Among other things, there was criticism that the federation had no formal legislative powers in that area. With regard to substantive law, critics stressed in particular that the Act led to unjustified interference with basic rights because the planned website blocks were not the right way to achieve the set objectives since many means of circumventing them were available. As additional problems of a technical nature are involved - such as so-called “over-blocking” (unavoidable blocking at the same time of legal content available at the domain or on the server to be blocked - critics also doubted the proportionality of the measures provided for by the Act.

After recent reports by the Bundeskriminalamt (Federal Bureau of Criminal Investigation - BKA) had shown that intensive efforts to remove content could produce quite acceptable results, policymakers were seen to be changing their minds in favour of the principle of “removal before blocking” (or even “removal instead of blocking”). For example, the Federal Minister of Justice said that 93% of child pornography content complained about had been removed two weeks after a request had been made by the BKA, and the figure had even risen to 99% after four weeks. Those successes in bringing about the removal of this type of content showed, it was claimed, that the coalition had embarked on the right path with the repeal of the Access Obstruction Act.

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