European Commission: Recommendation on measures to effectively tackle illegal content online

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On 1 March 2018, the European Commission issued a Recommendation on measures to effectively tackle illegal content online. The Recommendation addresses the need for IT companies and member states to put in place a series of operational measures for the effective removal of illegal content, as well as necessary safeguards intended to protect users' fundamental rights. This Recommendation should be seen in the light of the Communication of September 2017 on tackling illegal content online, in which the Commission emphasised the increasing responsibility of Internet intermediaries in the countering of illegal content online and thereby issued different guidelines and principles to be taken into account by them (see IRIS 2017-10/7). In the 2017 Communication, it was made clear that additional measures might see the light of day if, on the basis of the results of the Commission's monitoring, more progress would need to be made. The present Recommendation constitutes one of those additional measures and builds further on various voluntary initiatives already undertaken by hosting service providers in their fight against illegal content online, such as the EU Code of Conduct on countering illegal hate speech online (see IRIS 2018-3/6).

The Recommendation has one general part (Chapter II) which is concerned with all types of illegal content. Illegal content is defined as "any information which is not in compliance with Union law or the law of [the] Member State concerned". As was stated in the Commission's press release, this includes terrorist content, incitement to hatred and violence, material depicting child sexual abuse, counterfeit products and copyright infringement. In order to counter more effectively such type of content, IT companies are encouraged to ameliorate their notice and action procedures to allow their users to submit sufficiently precise and adequately substantiated notices, as well as "trusted flaggers" to issue notifications by means of fast-track procedures. Moreover, in order to avoid the over-removal of content, content providers shall always be given the chance to issue counter-notices. Furthermore, the Recommendation encourages companies to have in place a system which allows them to take proactive measures in respect of illegal content. In order to limit removals to content that is illegal, as well as to respect users' fundamental rights, effective and appropriate safeguards shall exist that encompass human oversight and verification. The Recommendation also emphasises the need for hosting service providers to

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cooperate together and to share their best practices among each other and especially with SMEs. Lastly, under certain circumstances dealing with criminal offences, hosting providers and member states should cooperate together.

The Recommendation also has a specific part which deals solely with terrorist content (Chapter III). Having regard to the urgent nature of such type of content, hosting service providers should have in place fast-track procedures allowing them to process referrals as fast as possible. In light of this, Member States should provide their national competent authorities with the necessary resources for effective identification and submission of referrals. Hosting service providers are also advised to take proactive measures which would ensure that previously removed terrorist content cannot be uploaded again. Moreover, cooperation between hosting providers (especially with SMEs), as well as between hosting providers and the relevant authorities, is encouraged. Lastly, the Commission recommends that hosting service providers remove terrorist content within one hour of being notified through referral. Importantly, both member states and hosting service providers should collaborate with the Commission,by submitting to it all relevant information, with a view to the latter monitoring progress. As stated in the Recommendation's preamble, such monitoring process might give rise to additional steps, which could include the proposal of binding acts of Union law.

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