[DE] Federal Office for Justice fines Facebook

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Marius Drabiniok
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 3 July 2019, the Bundesamt für Justiz (Federal Office for Justice – BfJ) fined Facebook Ireland Limited EUR 2 million for infringing the Netzwerkdurchsetzungsgesetz (Network Enforcement Act – NetzDG) in its transparency report for the first half of 2018.

Since 1 January 2018, as a social network provider, Facebook has been obliged under Article 2(1) NetzDG to submit a report in German twice a year explaining how it has dealt with complaints about illegal content, and to publish these reports in the Federal Gazette as well ason its own website. According to Article 1(3) NetzDG, unless it is justified, content is unlawful in the sense of paragraph 1 if it meets the criteria laid down in Articles 86, 86a, 89a, 91, 100a, 111, 126, 129 to 129b, 130, 131, 140, 166, 184b in connection with 184d, 185 to 187, 201a, 241 or 269 of the Strafgesetzbuch (Criminal Code).

The reports published on a provider's own website must be easily recognisable, directly accessible and permanently available. For the purposes of transparency, they must cover the points listed in Article 2(2) NetzDG, including general observations outlining the efforts undertaken by the provider of the social network to prevent criminally punishable activity on its platforms;a description of the mechanisms for submitting complaints about unlawful content and the criteria applied in deciding whether to delete or block unlawful content;the number of incoming complaints about unlawful content during the reporting period;and the number of complaints that resulted in the deletion or blocking of the content at issue during the reporting period, broken down according to criteria such as the reason for the complaint. Under Article 4(1) and (2) NetzDG, the BfJ, as the relevant regulatory body, can issue fines of up to EUR 5 million if a transparency report is inaccurate or incomplete.

In particular, the BfJ accuses Facebook of listing only a fraction of the complaints filed about unlawful content in the published report, which it blames on an inconsistent system for platform users to submit complaints. For example, Facebook has created a special reporting form for complaints under the NetzDG, while a separate flagging mechanism is used to report infringements of Facebook's community standards. Problems arose because users wishing to report unlawful content in the sense of the NetzDG often did so via the standard flagging mechanism. The specially created NetzDG form was difficult to find on

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the provider's website. In view of discrepancies with the Community Standard Enforcement Report, the BfJ concluded that the transparency report published by Facebook was incomplete, and that, in particular,the obligation to provide information on the number of complaints that had resulted in content being deleted or blocked,asenshrined in Article 2(2)(7) NetzDG, had not been met. Facebook's own Community Standard Enforcement Report, a separate report fromthe NetzDG transparency report, is designed to demonstrate its progress incombating content that is unlawful or in breach of its community standards. The purpose of the transparency report, namelyto provide as accurate an account as possible of the effectiveness of the complaints mechanism, had therefore been ignored.

The report had also failed to meet Facebook's obligations under Article 2(2)(4) NetzDG to provide information about the organisationand the procedures for handling complaints. The information published by Facebook failed to provide a rigorous and transparent account of how its internal systems were organised.

Facebook was also accused of reporting inaccurately on measures to report back to complainants (Article 2(2)(9) NetzDG). In the BfJ's view, the disclosures made did not show whether complainants were informed of the grounds for decisions taken on reported content.

Pressemitteilung des BfJ

https://www.bundesjustizamt.de/DE/Presse/Archiv/2019/20190702.html

Press release of the BfJ

NetzDG-Transparenzbericht von Facebook

https://fbnewsroomus.files.wordpress.com/2018/07/facebook_netzdg_juli_2018_deutsch-1.pdf

NetzDG-Transparenzbericht von Facebook

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