Proposals for co-regulation in the fight against illegal content on online content-sharing platforms

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On 6 February 2020, the audiovisual regulator of the French-speaking community of Belgium (Conseil supérieur de l'audiovisuel – CSA) published a guidance note on the fight against certain forms of illegal Internet content, in particular hate speech. This note is designed to open a public debate on the measures that could be taken at national level to lay the foundation for co-regulation with online content-sharing platforms and cooperation with the other Belgian authorities concerned.

In the note, the CSA begins by summarising the current situation, highlighting the important role played by content-sharing platforms and their limited responsibility. It emphasises that some content can be harmful to young people in particular, whether they are the authors or victims of the content. It recognises that regulation, in its current form, is inappropriate and creates an imbalance between the regulation of online content-sharing platform operators, including social networks, and traditional players in the audiovisual sector. It supports its analysis by taking into account legislation already in force or under discussion in other EU member states, Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online, and the Code of Conduct on Countering Illegal Hate Speech Online, adopted in 2016 under the auspices of the European Commission.

The CSA then proposes some practical public measures which it considers urgent. For example, it suggests that the legislative body of the French-speaking community of Belgium (the federated entity of the Belgian State to which it is answerable) should take its own legislative measures without waiting for work to start on an EU directive on the subject.

The CSA recommends that various obligations be imposed on the largest content-sharing platform operators, that is, any natural or legal person offering, on a professional basis, whether for remuneration or not, an online content-sharing platform, wherever it is based, used by at least 20% of the population of the French-speaking region of Belgium or the bilingual Brussels-Capital region.

Such operators would be legally obliged to remove or block content notified to them that is 'clearly illegal' within 24 hours. The CSA proposes classifying content

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as illegal if it advocates crimes against humanity; incites or advocates terrorist acts; or incites hatred, violence, discrimination or insults against a person or a group of people on grounds of origin, alleged race, religion, ethnic background, nationality, gender, sexual orientation, gender identity or disability, whether real or alleged.

Platform operators would also need to put in place reporting procedures as well as processes for contesting their decisions. They would also be required to use all necessary means to meet their obligations, provide information and act with transparency towards users, especially minors.

In terms of their relations with the regulator, platform operators would have to appoint an official contact person, follow the CSA's recommendations and provide the latter with a half-yearly report on compliance with their obligations. The CSA would thus become their main point of contact, ensuring that they meet their obligations and, after issuing a formal notice requiring them to comply with their obligations or recommendations, would be able to fine them up to 4% of their total global annual turnover for the previous financial year, depending on the seriousness and any repetition of their infringements. The CSA would not be able to report individual content or punish an operator for an individual case.

Finally, the CSA suggests that the legislative body of the French-speaking community of Belgium should cooperate with the other competent Belgian authorities and set up an information-sharing mechanism as part of an efficient, coherent system that respects the various partners.

The CSA guidance note has been distributed to all interested parties, who now have the opportunity to discuss it and decide whether or not to implement its recommendations.

Note d'orientation du CSA sur la lutte contre certaines formes de contenus illicites sur Internet, en particulier le discours de haine

https://www.csa.be/wp-content/uploads/2020/02/Note-dorientation-contenus-illicites_f%C3%A9vrier-2020.pdf

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