

DAV: Commission's Plans to Remove Terrorist Content Online May Infringe Freedom of Expression



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News

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In January 2019, the German Bar Association (Deutscher Anwaltverein - DAV) tabled a [critical statement](#) on the Commission's proposal for a regulation on preventing the dissemination of terrorist content online (for the proposal, see [eucri](#)m 2/2018, pp. 97-98 and [G. Robinson](#), [eucri](#)m 4/2018, pp. 234-240).

First, the DAV has considerable doubts as to whether the EU has sufficient competence to adopt such a legal instrument. In particular, the Commission had not proved that a regulation can be based on Art. 114 TFEU and is necessary in order to achieve the articles' objectives of functioning the internal market. Furthermore, the focus of the instrument is actually on the prevention of risks of terrorist content and law enforcement, so that the instrument cannot but be based on one of the provisions of Title V, i.e., the area of freedom, security and justice. Lastly, the Commission had not sufficiently taken into account the CJEU case law, which acknowledges that measures of public security and law enforcement cannot be based on the internal market.

Second, the DAV notes that the definition of "terrorist content" remains vague and unclear. Due to the ambiguities, hosting service providers may feel compelled to remove information from the Internet "in case of doubt." This constitutes a serious threat to freedom of expression.

Third, the DAV criticises the plans for the removal orders, referrals, and proactive measures. Here, the DAV sees an infringement of the freedom of companies to conduct business. The statement also clarifies that the instrument transfers tasks of the state to private entities without providing for the necessary flanking measures.

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