



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels, **12 JUL. 2016**
DG JUST/C1/LK/hk Ares(2016)s3664853

Dear Petitioner

Thank you for your petition to Commissioner Jourová expressing concerns about the Code of Conduct between the European Commission and Facebook, Microsoft, Twitter and YouTube on countering illegal hate speech online announced on 31 May 2016.

You consider that such a Code of Conduct would be detrimental to the free expression of ideas and that it would fail to make a clear distinction between content that is protected by the right to freedom of expression and content that constitutes illegal hate speech.

The scope of the Code of Conduct is limited to tackle online hate speech that is illegal.

The code of conduct indicates that *"Upon receipt of a valid removal notification, the IT Companies to review such requests against their rules and community guidelines and where necessary national laws transposing the Framework Decision 2008/913/JHA, with dedicated teams reviewing requests."*

Council Framework Decision 2008/913/JHA on combatting racism and xenophobia by means of criminal law, obliges Member States to criminalise public incitement to violence or hatred against a person or group on the basis of their race, colour, religion, descent or national or ethnic origin. This is the definition used for identifying illegal online content and for the removal or disabling of access to content under the Code of Conduct. For instance, public calls to kill all members of a certain religion or to burn down refugee shelters might represent illegal hate speech.

This Framework Decision reflects fully the existing jurisprudence, in particular of the European Court of Human Rights in terms of speech that is not protected by the right to freedom of expression. Content that 'offends, shocks or disturbs the State or any sector of the population' is not illegal under the Framework Decision and the code will not require its removal. The code cannot be used to oblige companies to take down content that is not clearly illegal, i.e. that falls within the type of speech that is protected by the right of freedom of expression as defined in Article 11 of the Charter of Fundamental Rights. For more information on this topic, reference is made to the European Court of Human Rights factsheet on hate speech¹.

¹ European Court of Human Rights Factsheet – Hate speech, March 2016, http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

To ensure the correct implementation of the definition of the types of acts that constitute illegal hate speech, Member States can rely on a long line of case law, starting with the Jurisprudence of the European Court of Human Rights to offer guidance as concerns this question. The IT companies also have access to this jurisprudence for guidance as to what content should be considered illegal. The application of such rules by non state actors is nothing new and it should be noted that rules on hate speech are already applied on a daily basis by newspapers, radio and TV stations in Europe, including on their internet website where millions of third party comments are made. Laws should apply in the online and in the offline world and content that is criminal in the offline world should not be accepted on the Internet.

I hope that the explanations above ease any concerns that you may have as regards the Code of Conduct and its application.

Yours sincerely,



Tiina ASTOLA