

## **Comments by the Latvian authorities on the Comparative Study on filtering, blocking and take-down of Internet content**

1. The Latvian authorities welcome the Comparative Study initiated by the Council of Europe aimed at identification of the domestic legal framework and existing practices in the Council of Europe Members States regarding the filtering, blocking and takedown of illegal content on the internet and find the performed study very useful.
2. In the light of the observations made with respect to Latvia, the Latvian authorities would like to use the opportunity to make a few comments both as to the terminology used in the Report and to its substance that might contribute to the better understanding of the Latvian legal system and existing practice.

### **As to the terminology**

3. As concerns the terminology used in the Report, the Latvian authorities would like to note that the correct term to be used when referring to the national institution responsible for the security of information technologies is “Information Technology Security Incident Response Institution of the Republic of Latvia”, while the correct abbreviation of the institution is “CERT.LV”, rather than “Information Technologies Security Incident Prevention Institution” and “cert.lv”, currently used in the Report (see pages 376, 377, 380, 382, 384 and 385).
4. Further, as concerns the Section 12, paragraph 1, of the Criminal Procedure Law (referred to in page 400 of the Report), it should be noted that it requires that criminal proceedings are performed in conformity with internationally recognised “human” rights, rather than “civil” rights.

### **As to the substance**

5. In the light of the information set out in part II of the Report concerning the “legal framework”, the Latvian authorities, in particular the Ministry of Welfare, observe that the Report on Latvia does not fully reflect the issues related to child protection from illegal content on the Internet. Namely, the Report omits information concerning the legal norms enshrined in the Law on Protection of the Rights of Child<sup>1</sup> which provide for protection of children from any kind of harmful content, *inter alia*, available on the Internet.

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<sup>1</sup> <http://likumi.lv/doc.php?id=49096>

6. In addition thereto, the Latvian authorities, in particular the State Inspectorate for Protection of Children's Rights (hereinafter - the Inspectorate), would like to note that as of 2009 the Inspectorate is partner to the project “Net-Safe Latvia”, implemented by the Latvian Internet Association (see page 392 of the Report). The main aim of the project is to inform the society about the safety on the Internet and to create a possibility to report on infringements on the Internet. Within the framework of the said project, the Inspectorate carries out the following activities: 1) ensures operation of *Helpline* for children and youth, consulting them on the safety on the Internet as well as providing psychologist’s assistance; 2) organises workshops, conferences and courses for children and youth on the safety on the Internet, providing them with informative materials on the safety on the Internet and responsible user.
7. In addition thereto, the Inspectorate in cooperation with other competent authorities has developed number of informative videos on child protection on the Internet<sup>2</sup>.
8. In practice, the Inspectorate, when controlling the observance of children’s rights in different children establishments, verifies whether the Internet browsers are equipped with special content filters.
9. Further, in the light of part V of the Report concerning the assessment of the case-law of the European Court of Human Rights (hereinafter – the ECHR), the Latvian authorities, in particular the Ministry of Justice, would like to express their concerns as to the conclusion (see page 400 of the Report) that: “*Secondly, there is a limited possibility for judicial review of pre-trial security measures laid down in the Criminal Procedure Law*” and “*It can be concluded that these provisions do not ensure effective review to prevent abuse of power, as required by the ECHR*”.
10. The above conclusion is based on the wording of Section 262 of the *Criminal Procedure Law of Latvia* that “*(...) an appeal can be only made by a person with the status of the suspect or the accused (or a representative of this person) so that persons who are not the addressees of the decision may not avail themselves of this appeal procedure (...)*”.
11. It is true that pursuant to Section 262 of the *Criminal Procedure Law of Latvia* the security measure (prohibition to approach a specific person or location; prohibition to perform a specific employment; prohibition to leave the State; a

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<sup>2</sup> [http://www.bti.gov.lv/lat/uzticibas\\_talrunis/?doc=4204&page](http://www.bti.gov.lv/lat/uzticibas_talrunis/?doc=4204&page)

bail; placement under police supervision; duty to report to the police at a specific time; duty to reside at a specific place) can be appealed against before the investigating judge only by its addressee (or his/her representative thereof). Also, given the fact that the execution of a security measure, for example, payment of a bail, is only possible if the person concerned indeed is in the position to execute it, the law requires to justify in the appeal that the appealed security measure may not be fulfilled by the suspect or accused. At the same time, one could hardly allege that such a regulation limits the rights to judicial review. It should be emphasised in this connection that any of the security measures listed above, for instance, duty to report to the police or to reside at a specific place, and applied in the course of the pre-trial proceedings are specifically addressed to the particular person and, accordingly, can be executed only by that person. Also, any (negative) consequences accompanied with the execution of the security measure are exclusively caused to its addressee and cannot affect the third parties.

12. Given the foregoing, it is very logical that the appeal rights are allocated only to the addressee of the security measure and not to the 3<sup>rd</sup> persons. Moreover, a right of the 3<sup>rd</sup> persons to appeal a security measure applied with respect to other person cannot be implied from the Court's case-law.