

Response of the German authorities to an alert dated 28 April 2017 on the *Platform to Promote the Protection of Journalism and the Safety of Journalists*

Contrary to the statements made in the entry “Germany: Draft Bill on Social Networks Raises Serious Free Expression Concerns,” the draft of an Act to Improve Enforcement of the Law in Social Networks, adopted by the Federal Government on 5 April 2017, does not endanger the freedom of the press and freedom of opinion. The draft legislation envisages the introduction of statutory compliance rules for social networks in order to compel social networks to process complaints concerning hate crime and other content punishable under criminal law, faster and more comprehensively.

The Federal Government is aware of the great importance of the freedom of expression which is protected by the Basic Law for the Federal Republic of Germany (Article 5). It is also aware that the draft creates regulations in an area that is sensitive with regard to fundamental rights. It also observes that many voices in the debate on the draft highlight the dangers of over-vigorously deleting or blocking content.

There is no reason to fear that this draft law endangers the freedom of the press and freedom of opinion:

- 1. The draft does not establish genuinely new obligations to filter or remove content. The draft clarifies obligations which are already established by European Law: to react after being put on notice of infringing material.*
- 2. The draft has a clearly defined scope. It is about criminal content, about hate crime – and not about hate speech. It is therefore not a matter of removing content that might cause a fierce debate or even be deemed almost unbearable, but only content that is prohibited by the German Criminal Code.*
- 3. There is no restriction to the freedom of expression, since criminal content is not protected under Article 5 of the Basic Law for the Federal Republic of Germany.*
- 4. The draft already contains mechanisms to prevent an approach of “if in doubt, erase”: There will be fines only for systemic failure, not for each instance of non-deletion. Fines will only be imposed for culpable breaches, i.e. where the social network is at fault.*
- 5. The draft introduces a preliminary court ruling, which also protects against over-vigorously deleting or blocking: if there is doubt about the criminal liability for specific content that has not been blocked, a court will have to decide. There will be no fines for content where criminal liability cannot be proven.*