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Reining in Big Tech

New digital rulebook: EU to rein in the tech giants?

On 15 December – after much anticipation, delays and fierce lobbying – the EU Commission unveiled an ambitious new rulebook for digital platforms. The bigger the platform, the more and tougher the rules.

There are two sets of rules, the Digital Services Act (DSA) which in effect replaces the 20-year-old e-Commerce Directive, and the Digital Markets Act (DMA).

The [Digital Services Act](#) includes binding EU-wide obligations which will apply to all digital intermediary services, from online platforms such as social media to internet access providers and cloud services. All online intermediaries offering their services in the EU single market – whether they are established in the EU or outside – will have to comply with the rules.

The obligations of the online players are “carefully graduated on the basis of the services’ size and impact”. Among the requirements:

- **Measures to counter illegal content online** such as a mechanism for users to flag such content, and for platforms to cooperate with “trusted flaggers”
- **Effective safeguards for users**, including the possibility to challenge platforms’ content moderation decisions
- **Wide-ranging transparency measures for online platforms**, for example on online advertising and on the algorithms used to recommend content to users
- **Oversight structure**: Member States will have the primary role, supported by a new European Board for Digital Services; for very large online platforms, enhanced supervision and enforcement by the Commission.

Regarding online advertising, the users will have to be clearly informed whether and why they are targeted by each ad and who paid for the ad; they should also see very clearly when content is sponsored or organically posted on a platform. Notice and action obligations also apply for potentially illegal ads, as for any other type of content.

Two quotes of interest from the [Q&A](#) on the Digital Services Act:

“To the extent that it is not illegal, harmful content should not be treated in the same way as illegal content. The new rules will only impose measures to remove or encourage removal of illegal content, in full respect of the freedom of expression.”

“The text puts protection of freedom of expression at its very core. This includes protection from government interference in people’s freedom of expression and information. The horizontal rules against illegal content are carefully calibrated and accompanied by robust safeguards for freedom of expression and an effective right of redress – to avoid both under-removal and over-removal of content on grounds of illegality.”

If a company does not comply with the DSA rules there will be penalties, among them fines. For the very large platforms, the Commission can, in the most serious cases, impose fines of up to 6% of the company’s global turnover.

The second set of rules, the [Digital Markets Act \(DMA\)](#) addresses the negative consequences of certain behaviours by large platforms acting as digital “gatekeepers”, mainly competition matters.

“We have tried in the past to address gatekeeper issues through competition cases. But these cases took years to instruct”, [said](#) EU’s internal market commissioner Thierry Breton. “In the meantime, the harm is done, and SMEs and innovators lose the opportunities of the digital world, as they are often squeezed out of the market.” With the Digital Markets Act “we will be able to prevent harmful behavior before it even takes place”.

The DMA will not replace but complement competition law, [clarified](#) the Commission’s executive vice-president Margrethe Vestager who is in charge of competition, “antitrust will have to work hand in hand with regulation...”.

Gatekeepers are defined as companies with more than 6.5 billion euros in annual European turnover in the last three years or 65 billion euros in market value in the last financial year, and provide a core platform service in at least three EU countries.

Other criteria include having more than 45 million monthly users in Europe and more than 10,000 business users. Such companies could be online search engines, social networking services, cloud computing services and advertising services.

The gatekeeper platforms face a list of “do’s” and “don’ts”. Among other things, they will have to provide their business users with access to the data generated by their activities on the gatekeeper’s platform.

Some of the “don’ts”: Gatekeepers may no longer treat services and products offered by the gatekeeper itself more favourably in ranking than similar services or products offered by third parties on the gatekeeper’s platform; prevent consumers from linking up to businesses outside their platforms; or prevent users from un-installing any pre-installed software or app if they wish so.

Failure to live by the DMA rules could lead to hefty fines up to 10% of a company’s worldwide turnover, or – in the worst cases – threats to break up firms that repeatedly violate the new rules, a provision that is already incorporated into EU law.

Before the new rules come into force the EU Parliament and the Member States will discuss the Commission’s proposals and must agree – first among themselves and then with each other. That could take up to two years, estimates Vestager.

If adopted, the final text will however apply automatically and uniformly to all EU countries as soon as it enters into force, without needing to be transposed into national law.

Digital rules: Final version a different story?

What the final version of EU’s new digital rulebook will look like remains to be seen. The Commission’s draft rules need to be reconciled with the demands of EU countries and Parliament lawmakers, some of which have pushed for tougher

laws while others are concerned about regulatory over-reach and the impact on innovation. And then there are the lobbyists...

The negotiating process starts with agreeing on what the texts actually cover. EU countries already disagree on whether the Digital Services Act should also include harmful, yet legal, content such as disinformation, and they also don't agree on how to define gatekeepers, [points out](#) Politico.

In September France and the Netherlands issued a joint paper urging the EU executive to take a tough line against tech giants, suggesting a number of measures identical to the ones proposed. Germany is also a fan of stronger measures against tech giants, [reports](#) Reuters.

The Czech government, on the other hand, has cautioned against over-regulation. And Ireland, the European home of the largest tech companies including Apple, Facebook, Google and Microsoft, has already made it clear it thinks there is no evidence that Big Tech stifles competition.

Competition authorities from Finland, Denmark and Sweden [also warned](#) against "a detailed list of obligations and prohibitions", such as a list of dos and don'ts which is included in the bill.

In the European Parliament, MEPs generally welcomed the Commission's proposals, but sent a clear message that there is still work to be done, [reports](#) Euractiv.

"Unfortunately, the proposal remains too flexible on enforcement and sanctions, which are vital to ensuring a high level of consumer protection in the internal market", said Internal Market Chair Anna Cavazzini.

The Commission's proposals only mandate transparency requirements for online advertising, without imposing limits on the practice itself. That sets up a potential clash with the Parliament, which [narrowly approved](#) a nonbinding text calling for the Commission to phase out and eventually ban targeted advertising, says Politico.

How the United States reacts to the EU's new rulebook may also weigh in. The rules risk inflaming tensions with Washington, already irked by Brussels attempts to tax U.S. tech firms more, [writes](#) Reuters.

Reactions among publishers seem positive, but not entirely uncritical. "We welcome that the Commission is taking a targeted approach to regulating the mega platforms, seeking to inject fairness and transparency and to restore competition", [said](#) European Publishers Council Executive Director Angela Mills Wade.

"However we regret that the Commission missed this opportunity to create binding mechanisms for publishers to negotiate with gatekeepers", she added.

Major U.S. lawsuits against Facebook, Google

Americans may be tiffed by EU's "crusade" against Silicon Valley but digital giants are under intense scrutiny by lawmakers and authorities in the United States too. As in Europe, they have honed in on competition and liability issues.

In October the U.S. Justice Department sued Google, [alleging](#) that the company broke antitrust law to maintain its monopoly in search. The federal government's complaint against Google was joined by 11 American states.

On 9 December it was Facebook's turn when the US Federal Trade Commission (FTC) and 46 American states [filed anti-trust lawsuits](#) against the social media company, saying it used a "buy or bury" strategy to snap up rivals and keep smaller competitors at bay and should potentially be broken up.

U.S. law on platforms' liability to be changed?

As in Europe, U.S. policymakers want to make the digital giants assume more responsibility for the content on their platforms.

In recent months a hot debate has focused on Section 230 of the Communications Decency Act which protects companies from liability over content. Politicians from both parties seem unhappy with the present rules.

In September, the U.S. Justice Department proposed a series of reforms to ensure internet companies are transparent about their decisions when removing content and when they should be held responsible for speech they modify. The legislation would also revise existing definitions of Section 230, [explains](#) Reuters.

The bill would need congressional approval and is not likely to see action until 2021 at the earliest, says Reuters. A person who may then have a say on this matter is President-elect Joe Biden's top technology adviser Bruce Reed.

Though Section 230 has allowed tech freedom to flourish, it has now gone against the desires of its backers by giving companies a financial incentive to encourage hate and abuse, says a recently published book co-authored by Reed, [reports](#) Reuters.

"In the long run, the only real way to moderate content is to moderate the business model."

Tech governance: Joint EU-US agenda?

The EU seems to have high hopes of a renewed alliance with the United States under President-elect Joe Biden. Already in early December the Commission and EU's chief diplomat Josep Borrell proposed [a plan](#) for future cooperation in various fields, among them a "joint EU-US tech agenda".

They say that there is "an increasing consensus on both sides of the Atlantic that online platforms and Big Tech raise issues which threaten our societies and democracies, notably through harmful market behaviours, illegal content or algorithm-fuelled propagation of hate speech and disinformation".

The EU will propose a new transatlantic dialogue on the responsibility of online platforms. "We should also work closer together to further strengthen cooperation between competent authorities for antitrust enforcement in digital markets."

Fair taxation in the digital economy is another area in which the EU hopes for cooperation. "EU and the US should strongly commit to the timely conclusion of

discussions on a global solution within the context of OECD and G20”, says the document.

Whether Biden will be keen to agree to something which makes U.S. corporations pay more tax in Europe and probably has few benefits to the U.S. remains to be seen.

Copyright: French publishers take on Big Tech

French publishers probably got a warm round of applause from colleagues in many countries in October when Google struck a deal with them about payment for use of their material, in accordance with EU law.

The deal was reached on the eve of a ruling by the Paris Court of Appeal, which [upheld](#) an earlier decision by the French competition authority demanding that Google negotiate fairly with publishers in France on ‘neighbouring rights’ – a key element outlined in the revamped EU copyright directive which allows publishers to negotiate with platforms over remuneration for the publication of extracts of their articles on Google News.

Emboldened by the victory against Google, French publishing groups have now set their sights on fighting for better terms with another of the Big Tech giants, Apple, [reports](#) the news service Euractiv.

In October a group of French and European publishers’ organisations, led by the one that had been negotiating with Google, wrote a letter to Apple’s Tim Cook about their concerns over the company’s terms of service in the App store.

“Content publishers are in a situation of absolute economic dependence on Apple for the distribution of their content on the iPhone, since the only store available on this device is the AppStore”, the letter pointed out.

France orders tech giants to pay digital tax

Digital giants pay only peanuts in dues by transferring their profits to countries offering them minimal tax rates (among them EU members like Ireland, Luxembourg and the Netherlands). This has led to European and international attempts to rewrite the rules for cross-border taxation.

Now France seems to have lost patience with the slow progress of these initiatives. Recently it ordered companies liable for the French digital service tax to pay the levy, in spite of risking sanctions from the U.S. which considers this tax discriminatory against American companies, [reports](#) Reuters.

In 2019 France introduced a 3% levy on revenue from digital services earned in France by companies with revenues of more than 25 million euros there and 750 million euros worldwide.

The tax on digital services, which brought France €400 million in 2019, seems all the more justified since the GAFA (Google, Amazon, Facebook and Apple) are turning out to be the big winners in the pandemic.

Italy investigates Google over advertising market abuse

In October Italy's antitrust authority announced that it is investigating Google for alleged abuse of its dominant position in the Italian online display advertising market.

The watchdog said it suspects Google of using enormous amounts of data collected through its own applications to prevent rival operators from competing effectively.

Publishers are delighted. Angela Mills Wade, executive director of the European Publishers' Council, [welcomed](#) the Italian investigation, which must be completed by November 2021.

She said the tech giant's "unrivalled position" hit "publishers and, ultimately, their readers as less advertising revenue leads to less investment in journalism".

EU issues search ranking guidelines for digital platforms

Already before presenting the new digital rulebook the EU Commission issued [guidelines](#) for digital platforms on how to be more transparent in how they rank online search results.

The guidelines – which are not legally binding but take immediate effect (as opposed to the proposed new rulebook) – require online platforms like Google and Microsoft to identify the algorithmic parameters that determine ranking and to share them with companies.

Smaller rivals and some companies have long complained about arbitrary and opaque practices tech giants employ that affect how their products and services are ranked in search results, especially when that means they are placed far below the bigger companies, [explains](#) Reuters.

Disinformation

False claims about COVID-19 vaccines a big worry

Ever since the beginning of the pandemic there has been much concern about disinformation on the internet about COVID-19. Now that the vaccines are rolling out, worries are focusing on false claims and conspiracy theories about them. This may well exacerbate the vaccine hesitancy already on the rise, many fear.

"Within hours of news breaking about the Pfizer/BioNTech vaccine, comments and memes suggesting it will deliberately harm us were popping up in local Facebook groups, parent chats and on Instagram", the BBC [reported](#) in November.

The anti-vax movement, which pre-dates the pandemic, is not the only thing responsible for the spread of this disinformation online, says the BBC.

"Pseudoscience figures with large online followings – who have spread other false claims such as linking coronavirus to 5G or suggesting the pandemic is a hoax – have also turned their attention to vaccines."

Lately social media have begun taking action. In early December Facebook said it would remove false claims about COVID-19 vaccines that have been debunked by public health experts, following a similar announcement by YouTube in October.

Earlier Facebook had already taken steps to surface authoritative information about vaccines and said it would also ban ads that discourage people from getting vaccinated.

Disinfo policy: From self-regulation to co-regulation

So what are the latest EU policy developments regarding disinformation?

As for the handling by social media of false claims about COVID-19 vaccines, the Commission seems relatively pleased:

“A step in the good direction”, [said](#) EU Commission Vice President Věra Jourová in a comment to reports from Facebook, Google, Microsoft, Twitter and TikTok on actions taken in October 2020 to fight false and misleading coronavirus-related information, including measures taken to limit the spread of disinformation on vaccines.

Jourová however made a point of mentioning the recently published [European Democracy Action Plan](#) which “sets the path to a reinforced Code of practice against disinformation and a permanent framework for its monitoring”.

“We do not want to create a ministry of truth; freedom of speech is essential. I will not support any solution that undermines it but we also cannot have our societies manipulated” [said](#) Věra Jourová when the Action Plan was launched.

“We will move from self-regulation to co-regulation”, she explained.

The plan foresees more obligations and accountability for online platforms for disseminating and amplifying disinformation, false or misleading content intentionally spread for political or economic gain.

The Commission says it will steer efforts to overhaul the Code of Practice on Disinformation into a co-regulatory framework in line with the new Digital Services Act (DSA).

In spring 2021, the Commission will issue guidance setting out how platforms need to step up their measures based on its assessment of the code of practice.

At the same time it will launch discussions on bolstering the code with platforms and other stakeholders, such as advertisers, media, civil society, fact-checkers, and academia, [reports](#) the news service Euractiv.

Once the beefed-up code of practice is in place, the Commission will set up a monitoring and auditing framework.

Media - general

More EU support to media sector in the pipeline

The EU institutions seem to have heard the calls for support to the ailing media industry which has been hit hard by the pandemic.

Recently the EU Parliament and Member States reached a political agreement on the new Creative Europe programme (2021–2027) with a budget of €2,24 billion, quite a bit more than for the 2014–2020 period.

The MEDIA strand of the programme will keep supporting projects with a European or international dimension, as well as nurturing talent and supporting the use of new technologies to strengthen the competitiveness of the sector.

For the first time, the news media sector will be supported through different actions promoting media literacy, pluralism and media freedom under the cross-sectoral strand, [points out](#) the EU Commission.

A few weeks earlier the EU Council of Ministers adopted [conclusions on safeguarding a free and pluralistic media system](#) in which financial issues were raised.

Here the Council invites the EU member states to provide “an adequate and independent framework for economical sustainability of the national media landscape, including state aid, to support a recovery from the crisis and thus ensure a pluralistic media system in the long run”.

The EU Commission should help too, for instance by complementing national state aid efforts, informing about EU funding opportunities for the creative and media sectors through an EU-wide online portal, and evaluating the application of state aid rules for the press sector, “with a view to make suitable adaptations, for example within the Block Exemption Regulation”.

European newspaper and magazine publishers across Europe [welcomed](#) the Council Conclusions.

Just a few days later, on 2 December, the EU Commission launched an [Action Plan to support recovery and transformation of the media and audiovisual sectors](#).

Under the EU Recovery and Resilience Facility, each National Recovery and Resilience Plan will earmark a minimum level of 20% of expenditure for digital investment and reforms. “Measures to boost the production and distribution of digital content, such as digital media, will count towards this target”, the Commission underlines.

Among the aims of the Action Plan is to boost investment in the audiovisual industry via a new initiative MEDIA INVEST whose target is to leverage investments of €400 million over a 7-year period and launch a “NEWS” initiative to bundle actions and support for the news media sector.

The Commission will also facilitate access to EU support via a tool for media companies to find all relevant EU funding opportunities for them.

Furthermore, the Action Plan seeks to support the green and digital

transformation of the sector. Another aim is to foster European media talents, including “by promoting diversity before and behind the camera, and by scouting and supporting media startups”.

Most of the measures outlined in the Action Plan will be launched already in the first months of 2021, says the Commission.

Call for proposals:

€3.9 million to support investigative journalism and more

The EU Commission is making €3.9 million available to support cross-border investigative journalism as well as to map and address violations of press and media freedom. In November the Commission launched a [call for proposals](#) for projects in these areas.

“More than ever journalists are facing threats, from online harassment to physical attacks, from political pressure to the lack of job security. When journalists are in danger, democracy is in danger. This is why we are funding projects which will directly support journalists who need it with legal and practical assistance as well as with grants for cross-border investigations, [explained](#) Commission Vice-President for Values and Transparency, Věra Jourová.

Each project should involve partners from at least two countries. Project coordinators should be based in the EU. Deadline for submissions: **20 January 2021**.

This call for proposals is part of a series of EU co-funded projects to support media pluralism and freedom detailed in this [factsheet](#).

No consensus on gender equality in cultural sector

The European Commission and most EU member states seem concerned about the situation of women in the cultural sector.

On 20 November the German EU Presidency issued [Presidency conclusions on gender equality in the field of culture](#). 24 member states supported the text; the remaining three – Hungary, Poland and Bulgaria – obviously were not happy with the conclusions, which state for example:

“Women still face a lot of obstacles in terms of, e.g., equal access to the cultural and creative labour market, equal payment and representation in creative and decision-making positions”..., “gender stereotyping and sexual harassment and abuse remain major concerns in the cultural and creative sectors”.

“...the current crisis caused by the COVID-19 pandemic has impacted the cultural and creative sectors extremely hard and there is a risk of gender stereotypes and structural gender inequality being exacerbated.”

The EU Presidency invites the member states to strengthen gender equality in cultural policy in different ways. They could also encourage “sector-specific commitments to foster gender equality and cultural diversity as well as prevention of sexual harassment and abuse”.

Some may find these recommendations too radical, but the EU Commission does not seem to have any problem with them. "Gender equality in culture is a very important subject", stressed Commissioner Mariya Gabriel during a video conference of culture and audiovisual ministers in early December.

At the meeting it was announced that the matter will remain firmly on the agenda under Portugal's Presidency of the Council, beginning in January 2021.

Freedom of Speech / Media Freedom

COVID-19 measures curtail media freedom

Emergency measures to tackle the COVID-19 pandemic pose a risk of abuse of power, warns the European Parliament in a [resolution](#) pointing to their impact on democracy, the rule of law and fundamental rights.

"...even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail", and all emergency measures must be necessary, proportional, and of a temporary nature, underlines the Parliament.

Among those affected by the emergency measures are the media.

Parliament refers to many accounts of questions from media outlets to governments being rejected or ignored and journalists and media workers needing to be protected when covering demonstrations and protests. Some Member States have also restricted access to information by either extending or suspending deadlines for authorities to respond to freedom of information requests.

The COVID-19 crisis also affects the financial viability of media outlets, in particular of independent media and journalists, "thereby further undermining media pluralism in the EU", stress the MEPs.

The EU Commission expressed similar concerns in its recent [2020 Report on the rule of law](#) situation in the European Union.

"Developments caused by the COVID-19 pandemic ...have underlined the potential risks arising from restrictions on freedom of expression and on access to information. The crisis has revealed that the measures designed to tackle the 'infodemic' can be used as a pretext to undermine fundamental rights and freedoms or abused for political purposes", writes the Commission.

The report includes concrete examples of abuse in the European Union (some countries are particularly named and shamed). There are also separate, more detailed [assessments](#) of the media situation in each Member State.

Commission:
Make use of EU Charter of Fundamental Rights!

Some governments and many citizens seem unaware of the legal weight of the [EU Charter of Fundamental Rights](#). In early December the European Commission presented a new [strategy](#) to ensure that the Charter is applied to its full potential.

Article 11 of the Charter, for example, protects freedom of expression and information, including freedom and pluralism of the media.

“The Charter has the same legal value as the Treaties. I want people to know who and where to turn to if their rights are breached”, said Věra Jourová, Commission Vice-President for Values and Transparency.

As of 2021, the Commission will report annually on the Charter and how it is applied in the Member States in specific areas. The 2021 report will focus on fundamental rights in the digital age.

The Commission will, for example, “closely monitor and take action against national measures affecting the activities of civil society that are contrary to EU law”.

Strengthening people’s awareness of their rights is important. A recent Eurobarometer shows that six in ten respondents want to know more about their rights and where to turn to if their Charter rights are violated.

The Commission will launch an information campaign on the Charter and use the Erasmus+ programme to raise awareness of young people. The Commission encourages Member States to develop their own initiatives to promote awareness too.

European Democracy Plan:
Measures to protect journalists and media pluralism

On 3 December the EU Commission published its long-awaited [European Democracy Plan](#) which outlines measures it intends to launch in the next few years to “build more resilient democracies across the EU”. To strengthen media freedom and pluralism is an important part of the plan.

“In recent years, the safety of journalists has continued to deteriorate – physical and online threats and attacks on journalists are on the rise in several Member States”, points out the Commission.

In 2021 it will propose a recommendation on the safety of journalists, drawing particular attention to threats against women journalists, and an initiative to curb the abusive use of strategic lawsuits against public participation (SLAPPs), a particular form of harassment increasingly used against journalists and others involved in protecting the public interest.

The Commission will also work closely with Member States on these issues and provide funding for projects on legal and practical assistance to journalists in the EU and elsewhere. Furthermore it will strengthen transparency of media ownership and state advertising, for example through the new Media Ownership Monitor.

The Committee to Protect Journalists (CPJ) [welcomes](#) “the Commission’s

commitment to strengthen press freedom and journalist safety at a time when it is needed more than ever”, adding:

“But this is just the first step. EU member states should provide full and unequivocal support for the plan in order to ensure real improvements for journalists around Europe.”

Artificial Intelligence: Concerns about freedom of expression

AI technology already affects freedom of expression in many ways. In the coming years the impact of artificial intelligence will hardly diminish, a good reason to keep an eye on policy developments in this field.

In February 2020 the EU Commission published a [White Paper on Artificial Intelligence](#) and is expected to propose legislation in this field in early 2021. So in recent months policymakers and many others have aired their views on this subject.

EU heads of government seem keen on AI. “The EU needs to be a global leader in the development of secure, trustworthy and ethical Artificial Intelligence”, they [declared](#) at their summit in early October.

No need to regulate AI very much, say some of the member states. In a [position paper](#) spearheaded by Denmark and signed by digital ministers from fourteen countries – among them France, Finland, Sweden and Estonia – they stress the importance of “an innovation-friendly single market for AI” and urge the EU Commission to go easy on regulation. Soft law solutions such as self-regulation and voluntary labelling would be better, say these ministers.

MEPs and civil society organisations concerned about the impact of AI on fundamental rights are not convinced that this is a good approach.

“Only by enforcing legal obligations on those developing or deploying AI systems will we succeed in protecting people from AI-driven mass surveillance, predictive policing, and other harmful ‘innovations’ ”, [says](#) the digital rights group Access Now.

“In 2020 we should finally put to rest the idea that innovation is an unequivocal good in itself and that we can rely on tech companies to self-regulate.”

Also worried about the potential dangers of AI technology is the intergovernmental organization OSCE’s Representative on Freedom of the Media, Harlem Desir. “When driven by commercial, political or state interests, the use of AI could seriously jeopardize our human rights, in particular the freedom of expression and media pluralism”, he [says](#).

The Council of Europe in Strasbourg is concerned about these issues too. On 10 and 11 June 2021 Ministers responsible for Media and Information Society are [scheduled to meet](#) in Nicosia, Cyprus, to agree on how to “address the radical changes brought by the new wave of technologies, including Artificial Intelligence (AI), that have affected the media and the internet environment and, with it, the exercise of Freedom of Expression”.

Terrorism / Law Enforcement

'Competent authorities' to get access to encrypted apps?

Law enforcement agencies in many parts of the world are vexed by WhatsApp and other end-to-end encrypted apps which prevent them from having access to protected communications and are pressing governments to do something about it. This is worrying journalist and civil society groups.

Recently the issue has surfaced in the EU. In November a draft Council resolution called for national authorities across the EU to have access to encrypted messages as part of criminal investigations into terrorism and organized crime.

Privacy advocates and civil society organisations were appalled. So was the European Federation of Journalists (EFJ) which reacted instantly, [demanding](#) that the Council "immediately retract all plans that may weaken secure encryption in digital communication. Journalists rely on encryption to protect sources", it pointed out.

The Council of Ministers may have been somewhat rattled by these reactions. For on 15 December it adopted its [resolution on encryption](#) which now says the EU wants to "strike the right balance between ensuring the continued use of strong encryption technology and guaranteeing the powers of law enforcement and the judiciary to operate on the same terms as in the offline world".

Since there is no single way of achieving the set goals, governments, industry, research and academia need to work together to create this balance, says the Council, stressing that "potential technical solutions will need to respect privacy and fundamental rights, and preserve the value that technological progress brings to society".

The EU executive is more upfront about this issue. In early December the Commission set out [a new counter-terrorism strategy](#) earlier than planned in response to pressure from member states after recent terror attacks in France and Austria.

Here the EU Commission says it wants to work with governments to improve access to digital evidence and encrypted information used by criminals.

Terrorist content online: Agreement on controversial regulation

On 10 December the EU Council and Parliament reached a provisional agreement on the controversial draft regulation on the dissemination of terrorist content online. Journalists and digital rights groups, who have voiced much concern about this legislation, may be somewhat relieved by the agreement.

"There will be no mandatory internet filtering. Content distributed for educational, journalistic, artistic or research purposes or content distributed to raise awareness against terrorist activity will be exempt. At the same time, the member states will always be able to suspend a removal order if they consider it violates fundamental rights. Under this law, parties have the right to appeal", [explained](#) the Parliament's Rapporteur Patrik Jaki.

Internet platforms have to remove terrorist content or disable access to it in all member states as soon as possible and in any event within one hour after they have received a removal order.

If material is disseminated for educational, journalistic, artistic or research purposes or to prevent or counter terrorism, it will not be considered terrorist content. This also includes content expressing polemic or controversial views in a public debate, writes the Parliament.

Internet platforms will not be obliged to monitor or filter all content. Nonetheless, if they are exposed to terrorist content, they will have to take specific measures to protect their services against its dissemination. Service providers will also need to publish annual transparency reports on action taken against the dissemination of terrorist content.

More on the agreement in the Council's [press release](#), which, i.a. underlines that the proposed rules will apply to hosting service providers offering services in the EU "whether or not they have their main establishment in the member states."

Telecom / Infrastructure

5G: Embattled Huawei hits back

The American crusade against Chinese telecom giant Huawei seems to have paid off in many parts of Europe. But the company is not ready to give up without a fight. Legal challenges seem to be the latest tactic.

In a letter sent to EU competition chief Margrethe Vestager in September, the Chinese firm said proposed 5G security rules in Poland and Romania "are predicated on several violations of EU law", [reports](#) Politico.

In the letter Huawei also took aim at bilateral deals signed by Washington and many Central and East European countries to push out certain telecom suppliers. None of the deals mention Huawei directly, but U.S. Secretary of State Mike Pompeo has been explicit about whom exactly the agreements are meant to shut out.

Other European countries, for example the United Kingdom and Belgium, have excluded Huawei too. So did Sweden, home of Ericsson, Huawei's biggest rival.

The Swedish telecom regulator PTS [said](#) that the decision, ahead of a spectrum auction, followed advice from the country's armed forces and security service, which described China as "one of the biggest threats against Sweden".

Huawei however hit back and appealed the decision. But in December the company announced that is willing to meet any requirement the Swedish government may set on 5G network equipment and take other measures to mitigate concerns.

Whatever the outcome of these legal wranglings, the U.S. crusade against Huawei does not seem likely to relent under Biden. "In fact, the assessment that China poses a long-term threat to U.S. interests in the world is one of the few issues that Democrats and Republicans agree on these days", [points out](#) Politico.

Anti-5G campaign disrupts rollout of high-speed networks

Some want a rapid deployment of 5G, the new generation telecommunication networks. Others don't.

Policymakers and business people often say it is vital to have a powerful, high-speed infrastructure if the EU is to be a major player in the digital economy. They also see 5G as the linchpin of its economic recovery from the COVID-19 pandemic and of technological sovereignty, a policy catch phrase in Brussels these days.

But the rollout of the new generation infrastructure is delayed; many EU member states have yet to assign the frequencies required for 5G deployment, which worries the European Commission and many business leaders.

One of the reasons for the delay seems to be what anti-5G groups have been up to and the information they spread.

Conspiracy theories that the novel coronavirus may be linked to the wireless technology have led to the torching of mobile phone masts in 10 European countries and assaults on maintenance workers in recent months.

In October 15 EU member states – among them Estonia, Finland and Sweden – wrote a letter to the Commission [urging](#) it to come up with a strategy to counter disinformation about 5G technology.

They also called for more scientific research on the risks to people's health and suggested a broad debate taking into account the fears and worries of opponents to 5G.

That may be a good idea; the opposition to 5G is not only made up of screwballs who imagine nasty viruses beaming out of phone masts. In France, for example, there seems to be a rather solid skepticism towards 5G among certain political groups.

In September nearly 70 French officials and politicians from the left and green parties published a call for a government moratorium on the deployment of 5G at least until summer next year.

The signatories [pointed out](#) that the government's decision to allocate the frequencies had been made "without any assessment of the impact on the climate and the environment, nor any public consultation".

Others, like La Quadrature du Net – an association which promotes and defends fundamental freedoms in the digital world – oppose 5G because it will facilitate many forms of digital surveillance.

What's more, [says](#) Félix Tréguer of the Quadrature, 5G is "a technocratic and costly technology imposed from "above" for economic and political interests we don't share".

"5G is only one of the symptoms of a much larger problem", he concludes.

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