



Resolution 2334 (2020)¹

Towards an internet ombudsman institution

Parliamentary Assembly

1. With the emergence of social media platforms, harmful content on the internet has become more and more widespread. In some cases, such content is clearly illegal, for instance incitement to terrorism, hate speech or harassment, while in others, it is more difficult to determine whether internet content is legal or illegal. On the one hand, there are legitimate calls on social media to take greater responsibility for the content they publish, with the ruling of the Court of Justice of the European Union on the “right to be forgotten” being a perfect example of the growing pressure on internet intermediaries. On the other hand, the idea of controlling content published on social media poses a serious challenge in terms of preserving freedom of expression, in particular since the internet is a global medium connecting people with different histories, traditions and legal cultures.

2. In order to avoid freedom of expression being limited in a discriminatory manner while at the same time making efforts to fight against illegal content on the internet, the Parliamentary Assembly is proposing that consideration be given to establishing an ombudsman institution (or equivalent) with the requisite independence, powers and authority to assess whether internet content is legal or illegal. Internet intermediaries could submit questionable cases to the institution for its recommendations on how to deal with them.

3. The damage caused by the dissemination of harmful content on the internet can quickly become irreversible. The establishment of an ombudsman institution responsible for issues related to the internet should speed up the removal of such content. Moreover, by complying with the ombudsman’s recommendations, internet intermediaries could avoid possible criminal penalties. They would therefore have good reason to support the ombudsman institution financially.

4. Given the transnational nature of the web, ombudsman institutions set up in the member States should co-operate and network. In spite of the wide range of legal frameworks and sociocultural traditions among member States, the European Convention on Human Rights (ETS No. 5, in particular Article 10 on freedom of expression) and the case law of the European Court of Human Rights offer a sound basis for useful co-operation between ombudsman institutions in the various countries and for harmonised, if not uniform, approaches to resolving disputed cases.

5. While recognising the difficulties involved in setting up such an institution, the Assembly believes that it could play a key part in the online communication process by maintaining a balance between freedom of expression and other fundamental rights.

6. The Assembly therefore calls on member States to consider establishing in their domestic legal orders an internet ombudsman institution, either as a separate body or by expanding the remit of an existing body such as a data protection agency, a media regulator or a conventional ombudsman institution responsible for the protection of human rights.

7. The member States should, *inter alia* identify the mechanisms, procedures and measures for guaranteeing:

7.1. the political independence of the internet ombudsman institution;

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 15 September 2020 (see [Doc. 15085](#), report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Frédéric Reiss).*



- 7.2. constructive interaction between the institution and the legislature, executive and judiciary, as well as the national data protection authority;
 - 7.3. the economic independence of the institution, by examining various funding arrangements and, in this context, through discussion with representatives of the major social media platforms on the issue of the financial support which these operators could provide to ensure the sustainability of the ombudsman institution;
 - 7.4. the transparency of the ombudsman's opinions and of the decisions taken by intermediaries on the basis thereof;
 - 7.5. the specific legal, technical or other skills required for the effective operation of the ombudsman institution and its administration;
 - 7.6. forms of co-operation between the institution and pre-screening agencies, which could help with the swift detection of manifestly illicit content.
8. In the context of this reflection, the Assembly calls on member States to study:
- 8.1. the co-ordination mechanisms and measures that should be put in place to ensure close co-operation and, if possible, networking by national ombudsman institutions;
 - 8.2. the establishment of an insurance-type mechanism to provide compensation for internet users adversely affected by unlawful decisions and enable internet intermediaries to avoid unnecessary legal proceedings.
9. The Assembly calls on the European Union, following Commission Recommendation (EU) 2018/334 on measures to effectively tackle illegal content online, to consider whether an internet ombudsman institution should be set up at European Union level and, while respecting the competences of its member States, to foster harmonisation of legislation on internet content.
10. The Assembly calls on the major internet technology platforms and other internet intermediaries concerned to:
- 10.1. indicate their support for the idea of setting up an internet ombudsman institution and their willingness to support it financially, given the advantages it would bring;
 - 10.2. develop co-operation to expand online communication that is both unfettered and free of illegal content;
 - 10.3. pool resources in terms of teams of moderators and scientific researchers;
 - 10.4. co-operate in the area of developing algorithms capable of helping moderators effectively with their task of detecting illegal content.