

Margrethe Vestager  
Vice-President-designate  
European Commission  
Rue de la Loi/Wetstraat 200  
1049 Brussels (BELGIUM)

**Subject: Infringement of the European telecom framework in The Kingdom of Spain**

Dear Ms. Vice-President-designate Vestager,

The present letter aims at bringing to your attention that, in the context of the ongoing unlawful repression of the institutions and competences of autonomy of Catalonia, the Kingdom of Spain has clearly infringed several items of European regulation, more specifically, Article 3(3) of Regulation EU 2015/2120 of the European Parliament and of the Council of 25 November 2015; Article 1(3) of the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive); and article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

On October 18, the main Spanish telecom operators received a court order asking telecom companies to block access to a civil website platform (called “Tsunami Democràtic”) and all its social media profiles. The contents of such platform are within the boundaries of the European right of freedom of speech and political activism, in this case against the court sentence that convicted nine of the former Government members with 100 years of prison just for organising a self-determination referendum in Catalonia.

Spanish paramilitary police, before proceeding to effectuate such closure, publicly stated that it was a preventive move but that no actual crime or offense had been perpetrated by “Tsunami Democràtic” (see attached). This is a procedure unprecedented in Western democracies, as it not only targets an organisational site but also political speech and undermines the freedom of expression of the Catalan society.

This action finds its precedent in October 2017 when Spanish authorities ordered to block all “.cat” domains related to the Referendum of Self-Determination in Catalonia, ordered to unpublish “APPs” related to the Referendum from APP markets, to investigate tweets that contained information about the Referendum, and more actions executed against digital rights. Multiple international entities (e.g. ICANN, Internet Society, Electronic Frontier Foundation, EDRI) expressed their concern, as legal experts agreed that the requests were of unprecedented scope in Western democracies.

The first infringed article is the “Article 1(3a) of the Directive 2002/21/EC” which states that *“measures taken by Member States regarding end-users access to, or use of, services and applications through electronic communications network shall respect the fundamental rights and freedom of a natural person, as guaranteed by the European Convention for the Protection of Human rights and Fundamental Freedoms and general principles of Community Law”*.

According to Article 1(3a), *“any of these measures regarding end user’s access to, or use of, services and applications through electronic communications network liable to restrict those fundamental freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society.”*

Similar provisions might be found in the Regulation 2015/2120, which states that *“any measures liable to restrict those fundamental rights or freedoms are only to be imposed if they are appropriate, proportionate and necessary within a democratic society, and if their implementation is subject to adequate procedural*

*safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including its provision on effective judicial protection and due process.”*

Similarly, the United Nations Human Rights Council states in its report A/HRC/17/27 that “*Internet has become a key means by which individuals can exercise their right to freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*” (Sect. III, art. 20). It also condemns all arbitrary or discriminatory State action against an independent body and the restriction of its freedom of expression, on- and off-line, acknowledging that “*the arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right*” (Sect. IV, art. 28).

The order sent to telecom operators asking them to block up to fifteen websites and social media profiles that might host and serve purposes related to those pursued by *Tsunami Democràtic*, is clearly contrary to Article 3(3) of the Regulation EU 2015/2120 and Article 1(3) of Directive 2002/21/EC.

The Catalan Government refuses this kind of censorship measures and considers it unlawful from the point of view of Spanish, Union and International Law. Court orders that block or restrict specific content must comply with the Law of the European Union.

On October 18, when being questioned by this issue, the spokesman for digital economy and society of the European Commission issued a warning urging Member States to “respect the freedom of expression of their citizens” and the necessity to “find the right balance between guaranteeing the fundamental freedom and upholding public order and ensuring security, as well as protecting from illegal content”.

On top of that, the Commissioner of Human Rights of the Council of Europe, Dunja Mijatovic, issued yesterday a clear statement expressing its concern for the “protection of the rights to freedom of expression and peaceful assembly during last week's demonstrations in Catalonia”.

In order to protect such European digital values, Catalonia is working on a Charter for Digital Rights and Responsibilities, which you can see attached, to promote a legislative and democratic framework to guarantee human rights and fundamental liberties in the digital era, with special attention to the “freedom of expression and information”.

For all the above-mentioned reasons, as Minister of Digital Policies of the Catalan Government, I respectfully request you to make these facts rapidly visible within the European Commission and your department in particular, so that we can together fulfil our legal and political role as the ultimate guardians of the digital rights of European citizens, which are being so blatantly breached in one of the Member States.

Yours sincerely,

Jordi Puigneró  
Minister for Digital Policy and Public Administration  
Government of Catalonia

Barcelona, 22 October 2019