

EDRi calls for fundamental rights-based responses to COVID-19

The Coronavirus (COVID-19) disease poses a global public health challenge of unprecedented proportions. In order to tackle it, countries around the world need to engage in co-ordinated, evidence-based responses. Our responses should be grounded in solidarity, support and respect for human rights, as the Council of Europe Commissioner for Human Rights has highlighted.¹ The use of high-quality data can support the vital work of scientists, researchers, and public health authorities in tracking and understanding current pandemic.

However, some of the actions taken by governments and businesses under exceptional circumstances today, can have significant repercussions on freedom of expression, privacy and other human rights both today and tomorrow. We are already seeing the launch of legal initiatives to tackle misinformation², but sometimes with disproportionate reactions³ from governments. Similarly, we are witnessing a surge in emergency-related policy initiatives⁴, some of them risking the abuse of sensitive personal data in an attempt to safeguard public health⁵. When acting to address such a crisis, measures cannot lead to disproportionate and unnecessary actions, and it is also vital that measures are not extended once we are no longer in a state of emergency.

In these circumstances, European Digital Rights (EDRi) calls on the Member States and institutions of the European Union (EU) to ensure that, while taking public health measures to tackle COVID-19, they:

- **Strictly uphold fundamental rights:** Under the European Convention on Human Rights, any emergency measures which may infringe on rights must be⁶ “temporary, limited and supervised” in line with the Convention’s Article 15, and cannot be contradictory to international human rights obligations. Similar wording can be found in Article 52.1 of the EU Charter of Fundamental Rights. Actions to tackle coronavirus using personal health data, geolocation data or other metadata must still be necessary, proportionate and legitimate, must have proper safeguards⁷, and cannot excessively undermine the fundamental right to a private life.
- **Protect data for now and the future:** Under the General Data Protection Regulation (GDPR) and the E-Privacy Directive, location data is personal data, and therefore is subject to high levels of protection even when processed by public authorities or private companies. Location data revealing movement patterns of individuals is notoriously difficult to anonymise, although many companies claim that they can do this. Data must be anonymised to the fullest extent, for example through aggregation and statistical counting. COVID-19 cannot be an opportunity for private entities to profit, but rather can be an opportunity for the EU’s Member States to adhere to the highest standards of data quality, processing and protection, with the guidance of national data protection authorities, the European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS).
- **Limit the purpose of data for COVID-19 crisis only:** Under law, the data collected, stored and analysed in support of public health measures must not be retained or used outside the purpose of controlling the coronavirus situation.
- **Implement exceptional measures only for the duration of the crisis:** The necessity and proportionality of exceptional measures taken during the COVID-19 crisis must be reassessed once the crisis is ameliorated. Measures should be time limited and subject to automatic review for renewal at short intervals.
- **Keep tools open:** To preserve public trust, all technical measures to manage coronavirus must be transparent and must remain under public control. In practice, this means using free/open source software when designing public interest applications.
- **Condemn racism and discrimination:** Measures taken should not lead to discrimination of any form, and governments must remain vigilant to the disproportionate harms that marginalised groups can face.
- **Defend freedom of expression and information:** In order to take sensible, well-informed decisions, we need access to good-quality, trustworthy information. This means protecting the voices of human rights defenders, independent media, and health professionals more than ever. In addition to this, the increased use of automated tools to moderate content⁸ as a result of fewer human moderators being available needs to be carefully monitored. Moreover, a complete suspension of attention-driven advertising and recommendation algorithms should be considered to mitigate the spread of disinformation that is already ongoing.
- **Take a stand against internet shutdowns:** During this crisis and beyond, an accessible, secure, and open internet will play a significant role in keeping us safe⁹. Access for individuals, researchers, organisations and governments to accurate, reliable and correct information will save lives. Attempts by governments to cut or restrict access to the internet, block social media platforms or other communications services, or slow down internet speed will deny people vital access to accurate information, just when it is of paramount



importance that we stop the spread of the virus. The EU and its Member States should call on governments to immediately end any and all deliberate interference with the right to access and share information, a human right and vital to any public health and humanitarian response to COVID-19.

- **Companies should not exploit this crisis for their own benefit:** Tech companies, and the private sector more broadly, need to respect existing legislation in their efforts to contribute to the management of this crisis. While innovation will hopefully have a role in mitigating the pandemic, companies should not abuse the extraordinary circumstances to monetise information at their disposal.

Referenzen

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Anmerkungen

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- 2 <https://www.article19.org/resources/coronavirus-new-article-19-briefing-on-tackling-misinformation/>
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Humanistische Union

Grundrechte gehören nicht in Quarantäne

Die Humanistische Union formuliert Forderungen zur Corona-Pandemie

Die Humanistische Union versteht sich als radikale Verfechterin der Grund-, Bürger- und Menschenrechte in ihrer ganzen Breite. Sie sieht heute mit Sorge, wie diese Rechte in der momentanen Krisensituation zunehmend eingeschränkt werden. Von den einschränkenden Maßnahmen sind nahezu alle Grundrechte betroffen. Grundrechte sind aber kein Hindernis für die Bekämpfung der Pandemie. Sie können sich gerade auch in Bedrohungssituationen erweisen. In Krisenzeiten sind daher gerade in Zeiten wie diese die Grundrechte von einer Mehrheit zu verteidigen. „Das Corona-Virus hat unser Leben in einem vorher unvorstellbarem Maße in eine Zwangspause katapultiert, aber für die Verteidigung von Grundrechten gibt es keine Pause“, erklärte Werner Koep-Kerstin, der Bundesvorsitzende der Humanistischen Union.

Nur wenn jeder Grundrechtseinschränkung transparente und demokratische politische Entscheidungen zugrunde liegen, kann die notwendige Akzeptanz einschneidender Maßnahmen weiter gewährleistet werden. Der fast vollständige Übergang der Entscheidungsgewalt an die Exekutive des Staates in Bund und Ländern ohne parlamentarische Mitwirkung ist erschreckend. Die zur Bekämpfung der Pandemie getroffenen Maßnahmen resultieren in einer Form von Ausnahmezustand, wie es ihn seit dem

Zweiten Weltkrieg nicht mehr gegeben hat. Es ist unerlässlich, dass ausschließlich demokratische Institutionen über derartige Maßnahmen entscheiden – und nur im Rahmen der ihnen vom Grundgesetz verliehenen Kompetenzen. Das gilt sowohl für die klassischen drei Gewalten als auch für die föderalen Strukturen. Entscheidungen müssen transparent vorbereitet und demokratisch legitimiert sein. Politische Erkenntnisse sind dafür die Grundlage für Entscheidungen, die nicht determinieren. Politische Entscheidungen!

Die Humanistische Union fordert:

- Jede Maßnahme, die wegen der Pandemie Grundrechte einschränkt oder ihre Geltung aussetzt, muss befristet sein. Bevor die Fortgeltung solcher Maßnahmen angeordnet wird, muss demokratisch überprüft werden, ob sie zur Erreichung des angestrebten Ziels noch die geeignetsten und mildesten Mittel sind, und ob sie noch angemessen sind. Dazu gehört die transparente und sorgfältige Abwägung der mit der Grundrechtseinschränkung verbundenen Risiken. Bei allen Maßnahmen müssen auch die damit verbundenen anderen Risiken (z. B. das Risiko häuslicher Gewalt) berücksichtigt werden.

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