

European Commission
Vice-President Andrus Ansip
Rue la Loi/ Wetstraat 200
1049 Brussels (BELGIUM)

24/09/2017

SUBJECT : Infringement of the European telecom framework in The Kingdom of Spain

Dear Mr. Vice-President Ansip,

The present letter aims at bringing to your attention that, in the context of the ongoing unlawful repression of the institutions of autonomy of Catalonia, the Kingdom of Spain has very clearly infringed Article 3(3) of Regulation EU 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and Article 1(3) of 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).

On September 15, *puntCat* Foundation, which promotes Catalan language by managing the register of domains ending in ".cat", received a seizure warrant, which we attach to this letter. As you will see, in point c) the warrant asks the private Foundation to block all ".cat" domains that could "be about or point to any hosting with content about the Referendum of Self-Determination in Catalonia".

This incident has been reported by Politico Europe, New York Times, and many other newspapers. Multiple international entities (e.g. ICANN, Internet Society, Electronic Frontier Foundation) have expressed concern, as legal experts agree that the requests is of unprecedented and absolute scope in Western democracies, as it targets not only organizational sites of the referendum, but political speech.

The disproportionate seizure warrant places the burden of blocking domain names based on political content to *puntCat* Foundation. The Foundation was raided by Spanish military police on 20 September, its CTO arrested, and later charged for "disobedience" among others.

In parallel, the main Spanish telecom operators have received and are still receiving different court orders asking telecom companies to block access not only to specific referendum sites that inform the public about the vote, but also proxy servers, and all websites publicized by any member of the Catalan Government in any social network that have a direct or indirect relation with the referendum without any further court order. This is a procedure unprecedented in Western democracies, as it targets not only organizational sites of the referendum, but political speech.

The Catalan Government refuses all these censorship measures, including the ones against specific referendum sites, and considers them unlawful from the point of view of Spanish, Union and International Law.

Court orders that block or restrict specific content must comply with Union Law.

Article 1(3a) of Directive 2002/21/EC 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 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 networks liable to restrict those fundamental freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society."

Similar provision 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."

There are then at least two clearly disproportionate State measures articulated via court orders contrary to Article 3(3) of Regulation EU 2015/2120 and Article 1(3) of Directive 2002/21/EC:

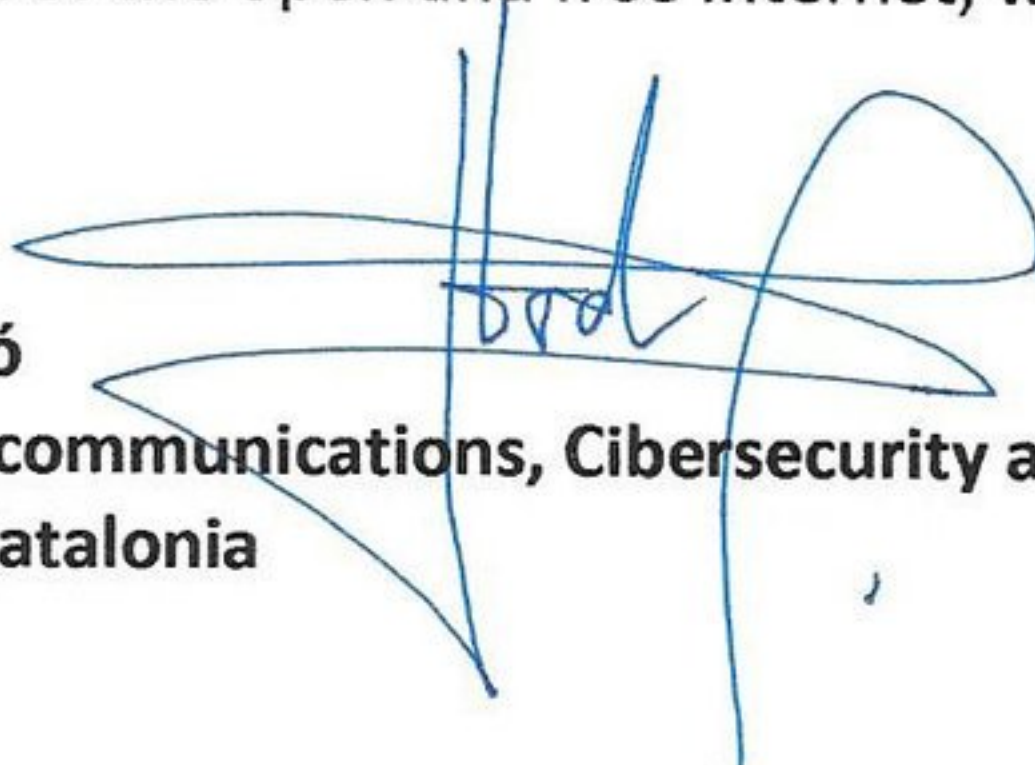
(i) The order sent to puntCat foundation asking the private entity to censor any kind of political speech around the referendum, and the subsequent process.

(ii) the order sent to telecom operators asking to block proxy servers that might host and serve all sorts of purposes.

High-ranking European Commission officials have recently admitted they are "very worried" and "watching closely" the events unfolding in Catalonia.

This is why the Catalan Government is respectfully requesting you to make these facts rapidly visible within the institution, so it can fulfil its legal and political role as the ultimate guardian of the open and free Internet, which is truly at the stake right now.

Yours Sincerely,


Mr Jordi Puigneró
Secretary of Telecommunications, Cybersecurity and Digital Society
Government of Catalonia