



2018/0331(COD)

16.1.2019

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council
on preventing the dissemination of terrorist content online
(COM(2018)0640 – C8-0405/2018 – 2018/0331(COD))

Rapporteur for opinion: Julie Ward

PA_Legam

SHORT JUSTIFICATION

On 12 September 2018, the Commission (EC) published its proposal to tackle the dissemination of terrorist content online by setting up a clear and harmonised legal framework to prevent the misuse of hosting services.

The Rapporteur takes note of this proposal which seeks to clarify the legal responsibilities of hosting service providers, which must take all appropriate, reasonable and proportionate actions necessary to ensure the safety of their services and to swiftly and effectively detect and remove terrorist content online.

The Rapporteur is concerned by several aspects of the EC's approach in particular with regard to the degree of respect given to fundamental rights, such as freedom of expression and access to information, as well as media pluralism. The proposal as it stands also poses several legal problems with existing norms, in particular with regard to its consistency with Directive 2000/31/EC¹ and with Directive 2018/1808/ EU².

The Rapporteur considers it crucial that the proposed Regulation does not jeopardise nor derogate from fundamental rights and the EU existing legal framework. In order to address these concerns, the Rapporteur suggests a series of amendments which aim to clarify legally some of the issues at stake.

The main points of the draft opinion:

(i) Definitions (Article 2)

- Hosting services providers

The proposed definition of 'hosting services providers' is too broad and legally unclear, and may unintentionally cover a significant number of providers, which should not fall within the scope of this Regulation. The Rapporteur suggests narrowing down the definition to exclusively cover hosting providers that enable their users to make content available to the general public.

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), *OJ L 178, 17.7.2000, p. 1–16*

² Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, *OJ L 303, 28.11.2018, p. 69–92*

- Terrorist content

Equally, the proposed definition of 'terrorist content' should be further clarified. The Rapporteur suggests aligning the proposed definition with Directive 2017/541/EU, as well as to explicitly exclude all material used for educational, journalistic and research purposes.

(ii) Removal orders (Article 4)

- Competent authorities

Paragraph 1 requires that the competent authority has the power to issue a decision requiring the hosting service provider to remove terrorist content or disable access to it. The Rapporteur considers that only judicial authorities, which have sufficient expertise to issue a valid removal order, should be empowered to take such decisions.

- Deadline to comply with removal orders

Paragraph 2 requires that hosting service providers remove terrorist content or disable access to it within one hour of receipt of the removal order. Although providers should act as soon as possible to remove or disable access to terrorist content, one hour seems to be a too short period of time to comply with a removal order. Most providers, in particular SMEs, do not have the adequate resources to do so within that timeframe. Such a short deadline, along with the severe penalties imposed on providers in Article 18, in case of no compliance, also implies that parties affected by removal orders would, in practice, be deprived of any right or chance to question such an order. This could potentially lead to abusive situations, whilst also insufficiently protecting fundamental rights. It should also be noted that some moving image or sound file content could last longer than one hour.

Sufficient time is therefore needed to comply with removal orders. 'One hour' should be replaced by 'without undue delay' which would enable providers to address removal orders in a balanced and appropriate manner.

- Exceptions

Paragraphs 7 and 8 foresee possible exceptions for providers not to comply with the removal order in case of force majeure, de facto impossibility, manifest errors or lack of sufficient information. The Rapporteur considers however such exceptions too limited, and therefore suggests to add exceptions based on technical or operational reasons.

(iii) Proactive measures (Article 6)

Article 6 requires that hosting services providers, where appropriate, take proactive measures to protect their services against the dissemination of terrorist content online. It also requires that they submit a report on the specific proactive measures taken to prevent the re-upload of terrorist content which has previously been removed or to which access has been disabled.

The Rapporteur considers this Article highly problematic as it would lead to the imposition of a general monitoring obligation on hosting service providers, in contradiction with Article 15 of Directive 2000/31/EC.

Although the EC intends to circumvent this problem by giving some legal reassurance by specifying in Recital 19 that *'specific proactive measures should not in principle lead to the imposition of a general obligation to monitor'* this is clearly insufficient to guarantee that no general obligation to monitor will be imposed. On the contrary, the Commission argues that given the *'grave risks associated with the dissemination of terrorist content'*, states could be allowed to *'exceptionally derogate from this principle under an EU framework'*. This would create a major shift in the existing legal approach with regard to the obligations of online hosting services and their liability regime, as well as dramatically impact on fundamental rights.

Moreover, Article 6 poses some problems with regard to Directive 2018/1808/EU. Video-sharing platforms providers (VSPs) falling within the scope of the proposed Regulation would have to take proactive measures. Article 28b(1) of the Directive requires VSPs to *'take appropriate measures to protect the general public from programmes (...) containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive 2017/541/EU'*. It also clearly states that such measures *'shall not lead to any ex-ante control measures or upload-filtering of content which do not comply with Article 15 of Directive 2000/31/EC'*. Proactive measures would therefore seem to be incompatible with the prohibition of ex-ante control and uploading filtering as provided for in the AVMSD.

In that context, considering the legal contradictions between the proposed Regulation and Directives 2000/31/EC and Directive 2018/1808/EU, the Rapporteur suggests deleting Article 6.

(iv) Penalties

Article 18 foresees a series of penalties applicable to breaches of the obligations by hosting service providers under the Regulation. Severe financial penalties are foreseen in case of a systematic failure of hosting service providers to comply with removal orders. The Rapporteur considers that Member States should establish penalties at national level, in a proportionate and practicable manner. They should also decide whether to impose financial penalties on providers. The Rapporteur therefore suggests removing the financial penalties as proposed by the Commission, both in order to avoid overburdening smaller providers, which could not survive such financial sanctions, as well as to avoid creating a situation where companies may overly block and remove content in order to protect themselves against possible financial penalties.

Along these main points, the Rapporteur makes a series of amendments to clarify legally different issues, with regard to the respect for fundamental rights, redress mechanisms and the right to appeal.

Finally, the Rapporteur would like to reiterate some basic principles essential to preventing radicalisation to terrorism and violent extremism which go far beyond any measures the Union could take to tackle the dissemination of terrorism content online. The importance of media and digital literacy for all citizens of all ages cannot be understated. In that regard, among the main actions to be taken to prevent radicalisation, the Union should ensure coherence in its policy and try to foster closer cooperation with civil society and online

service providers to address challenges faced online. Efforts must be stepped up to encourage young people to think critically about extremist messages available online. Good practices and research on the inclusion of media literacy in formal education and training, as well as in non-formal and informal learning are also of utmost importance.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) ***The application of*** this Regulation should ***not affect the application of*** Article 14 of Directive 2000/31/EC⁸. In particular, ***any measures taken by*** the hosting service ***provider*** in compliance with this Regulation, ***including any proactive measures, should not in themselves lead to that service provider losing the benefit of the liability exemption provided for in that provision.*** This Regulation ***leaves*** unaffected the powers of national authorities and courts to establish liability of hosting service providers in specific cases where the conditions under Article 14 of Directive 2000/31/EC for liability exemption are not met.

⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

Amendment

(5) This Regulation should ***apply without prejudice to*** Article 14 of Directive 2000/31/EC⁸. In particular, the ***liability exemption granted to*** hosting service ***providers should not be affected by any measures they take*** in compliance with this Regulation. This Regulation ***should leave*** unaffected the powers of national authorities and courts to establish liability of hosting service providers in specific cases where the conditions under Article 14 of Directive 2000/31/EC for liability exemption are not met.

⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

Or. en

Justification

It is essential to ensure the legal consistency within the EU existing legal framework.

Amendment 2

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) This Regulation contributes to the protection of public security ***while establishing appropriate and robust safeguards to ensure*** protection of the fundamental rights at stake. This includes the rights to respect for private life and to the protection of personal data, the right to effective judicial protection, the right to freedom of expression, including the freedom to receive and impart information, the freedom to conduct a business, and the principle of non-discrimination. Competent authorities and hosting service providers should only adopt measures which are necessary, appropriate and proportionate within a democratic society, ***taking into account the particular importance accorded to*** the freedom of expression and information, which ***constitutes one of*** the essential foundations of a pluralist, democratic society, and ***is one of*** the values on which the Union is founded. ***Measures constituting interference in the freedom of expression and information should be strictly targeted, in the sense that they must serve to prevent the dissemination of terrorist content, but without thereby affecting the right to lawfully receive and impart information, taking into account the central role of hosting service providers in facilitating public debate and the distribution and receipt of facts, opinions and ideas in accordance with the law.***

Amendment

(7) This Regulation contributes to the protection of public security ***whilst ensuring*** protection of the fundamental rights at stake. This includes the rights to respect for private life and to the protection of personal data, the right to effective judicial protection, the right to freedom of expression, including the freedom to receive and impart information, the freedom to conduct a business, and the principle of non-discrimination. Competent ***judicial*** authorities and hosting service providers should only adopt measures which are necessary, appropriate and proportionate within a democratic society, ***with due respect for*** the freedom of expression, ***the right to share*** information, ***as well as media pluralism***, which ***are amongst*** the essential foundations of a pluralist, democratic society, and the values on which the Union is founded.

Or. en

Justification

It should be clear that this Regulation should be applied in strict respect of fundamental rights. Under no circumstances, this Regulation should endanger or undermine the respect for freedom of expression and information as well as media pluralism.

Amendment 3

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) The right to an effective remedy is enshrined in Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union. Each natural or legal person has the right to an effective judicial remedy before the competent national court against any of the measures taken pursuant to this Regulation, which can adversely affect the rights of that person. The right includes, in particular the possibility for hosting service providers and content providers to effectively contest the removal orders before the court of the Member State whose authorities issued the removal order.

Amendment

(8) The right to an effective remedy is enshrined in Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union. Each natural or legal person has the right to an effective judicial remedy before the competent national court against any of the measures taken pursuant to this Regulation, which can adversely affect the rights of that person. The right includes, in particular the possibility for hosting service providers and content providers to effectively contest the removal orders before the court of the Member State whose authorities issued the removal order *as well as the possibility for hosting service providers to contest any decision imposing penalties before the courts of the Member State where they are established or have a legal representative.*

Or. en

Amendment 4

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) In order to provide clarity about the actions that both hosting service providers and competent authorities should take to prevent the dissemination of terrorist

Amendment

(9) In order to provide clarity about the actions that both hosting service providers and competent *judicial* authorities should take to prevent the dissemination of

content online, this Regulation should establish a definition of terrorist content **for preventative purposes** drawing on the definition of terrorist offences under Directive (EU) 2017/541 of the European Parliament and of the Council⁹. **Given the need to address the most harmful terrorist propaganda online, the definition should capture material and information that incites, encourages or advocates the commission or contribution to terrorist offences, provides instructions for the commission of such offences or promotes the participation in activities of a terrorist group. Such information includes in particular** text, images, sound recordings and videos. **When assessing whether content constitutes terrorist content within the meaning of this Regulation, competent authorities as well as hosting service providers should take into account factors such as the nature and wording of the statements, the context in which the statements were made and their potential to lead to harmful consequences, thereby affecting the security and safety of persons. The fact that the material was produced by, is attributable to or disseminated on behalf of an EU-listed terrorist organisation or person constitutes an important factor in the assessment.** Content disseminated for educational, journalistic or research purposes should **be adequately protected.** **Furthermore,** the expression of radical, polemic or controversial views in the public debate on sensitive political questions should not be considered terrorist content.

⁹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

terrorist content online, this Regulation should establish a definition of terrorist content drawing on the definition of terrorist offences under Directive (EU) 2017/541 of the European Parliament and of the Council⁹, **and which should include** text, images, sound recordings and videos. Content disseminated for educational, journalistic or research purposes should **not however be considered as terrorist content, and should therefore be excluded from the scope of this Regulation.** **Equally,** the expression of radical, polemic or controversial views in the public debate on sensitive political questions should not be considered terrorist content.

⁹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

Justification

This aims to clarify the scope of the Regulation and what could be considered 'terrorist content' for the purposes of this Regulation. The definition should explicitly exclude material used for educational, journalistic and research purposes as well as any controversial opinions or views which contribute to the democratic debate in a pluralist society. Freedom of expression should be ensured when implementing this Regulation.

Amendment 5

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In order to cover those online hosting services where terrorist content is disseminated, this Regulation should apply to information society services which store information provided by a recipient of the service at his or her request and ***in making the information stored*** available to ***third parties, irrespective of whether this activity is of a mere technical, automatic and passive nature***. By way of example such providers ***of information society services*** include social media platforms, ***video*** streaming services, ***video***, image and audio sharing services, file sharing and other cloud services to the extent they make the ***information*** available to ***third parties and websites where users can make comments or post reviews***. The Regulation should also apply to hosting service providers established outside the Union but offering services within the Union, since a significant proportion of hosting service providers exposed to terrorist content on their services are established in third countries. This should ensure that all companies operating in the Digital Single Market comply with the same requirements, irrespective of their country of establishment. The determination as to whether a service provider offers services in the Union

Amendment

(10) In order to cover those online hosting services where terrorist content is disseminated, this Regulation should ***only*** apply to information society services which store information provided by a recipient of the service at his or her request and ***make such material*** available to ***the general public, which means that the content providers do not pre-determine the scope of potential users of the content***. By way of example such providers include ***video-sharing platforms***, social media platforms, streaming services, image and audio sharing services, file sharing ***services, and other cloud and storage services, with the exception of business-to-business cloud hosting service providers*** to the extent they make the ***material*** available to ***the general public***. ***For the purpose of this Regulation, “mere conduits” and other electronic communication services within the meaning of European Electronic Communications Code, providers of caching services, other services provided in other layers of the Internet infrastructure, such as registries and registrars, domain name systems (DNS), adjacent services, such as payment services, distributed denial of service (DDoS), protection services, interpersonal***

requires an assessment whether the service provider enables legal or natural persons in one or more Member States to use its services. However, the mere accessibility of a service provider's website or of an email address and of other contact details in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation.

communication services that enable direct interpersonal and interactive exchange of information between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) should be therefore excluded from its scope. The Regulation should also apply to hosting service providers established outside the Union but offering services within the Union, since a significant proportion of hosting service providers exposed to terrorist content on their services are established in third countries. This should ensure that all companies operating in the Digital Single Market comply with the same requirements, irrespective of their country of establishment. The determination as to whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in one or more Member States to use its services. However, the mere accessibility of a service provider's website or of an email address and of other contact details in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation.

Or. en

Justification

It is important to clarify which hosting service providers are encompassed by the definition. It should only include service providers storing material which is disseminated to the general public.

Amendment 6

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Hosting service providers should

Amendment

(12) ***Without prejudice to Article 15 of***

apply certain duties of care, in order to **prevent** the dissemination of terrorist content on their services. **These duties of care should not amount to a general monitoring obligation.** Duties of care should include that, when applying this Regulation, hosting services providers act in a diligent, proportionate and non-discriminatory manner in respect of content that they store, in particular when implementing their own terms and conditions, with a view to avoiding removal of content which is not terrorist. **The removal or disabling of access has to be undertaken in the observance of freedom of expression and information.**

Directive 2000/31/EC, hosting service providers should apply certain duties of care, in order to **deter** the dissemination of terrorist content on their services. Duties of care should include that, when applying this Regulation, hosting services providers act in a diligent, proportionate and non-discriminatory manner in respect of content that they store **and make available to the general public**, in particular when implementing their own terms and conditions, with a view to avoiding removal of content which is not terrorist **content.** Freedom of expression and information **should be duly respected when removing or disabling access.**

Or. en

Justification

The legal consistency of the proposed Regulation with Directive 2000/31/EC has to be ensured.

Amendment 7

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) ***The procedure and obligations resulting from legal orders requesting*** hosting service providers to remove ***terrorist*** content or disable access to it, ***following an assessment by the competent authorities, should be harmonised.*** ***Member States should remain free as to the choice of the competent authorities allowing them to designate administrative, law enforcement or judicial authorities with that task.*** Given the speed at which terrorist content is disseminated across online services, ***this provision imposes obligations on*** hosting service providers ***to*** ensure that terrorist content identified in the removal order is removed or access to

Amendment

(13) ***Competent judicial authorities of the Member States should assess whether content is terrorist content, and to issue a legal order to request*** hosting service providers to ***either*** remove ***such*** content or ***to*** disable access to it. Given the speed at which terrorist content is disseminated across online services, hosting service providers ***should*** ensure that ***such*** terrorist content identified in the removal order is removed or access to it is disabled ***without undue delay after having received*** the removal order. It is for the hosting service providers to decide whether to remove the content in question or disable access to the content for users in the Union.

it is disabled *within one hour from receiving* the removal order. It is for the hosting service providers to decide whether to remove the content in question or disable access to the content for users in the Union.

Or. en

Amendment 8

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) The competent *authority* should transmit the removal order directly to the addressee and point of contact by any electronic means capable of producing a written record under conditions that allow the service provider to establish authenticity, including the accuracy of the date and the time of sending and receipt of the order, such as by secured email and platforms or other secured channels, including those made available by the service provider, in line with the rules protecting personal data. This requirement may notably be met by the use of qualified electronic registered delivery services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council¹².

¹² Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

Amendment

(14) The competent *judicial authorities* should transmit the removal order directly to the addressee and point of contact by any electronic means capable of producing a written record under conditions that allow the service provider to establish authenticity, including the accuracy of the date and the time of sending and receipt of the order, such as by secured email and platforms or other secured channels, including those made available by the service provider, in line with the rules protecting personal data. This requirement may notably be met by the use of qualified electronic registered delivery services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council¹².

¹² Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

Or. en

Amendment 9

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) Given the scale and speed necessary for effectively identifying and removing terrorist content, proportionate proactive measures, including by using automated means in certain cases, are an essential element in tackling terrorist content online. With a view to reducing the accessibility of terrorist content on their services, hosting service providers should assess whether it is appropriate to take proactive measures depending on the risks and level of exposure to terrorist content as well as to the effects on the rights of third parties and the public interest of information. Consequently, hosting service providers should determine what appropriate, effective and proportionate proactive measure should be put in place. This requirement should not imply a general monitoring obligation. In the context of this assessment, the absence of removal orders and referrals addressed to a hosting provider, is an indication of a low level of exposure to terrorist content.

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Or. en

Amendment 10

Proposal for a regulation Recital 17

Text proposed by the Commission

Amendment

(17) When putting in place proactive measures, hosting service providers should ensure that users' right to freedom of expression and information - including to freely receive and impart information -

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is preserved. In addition to any requirement laid down in the law, including the legislation on protection of personal data, hosting service providers should act with due diligence and implement safeguards, including notably human oversight and verifications, where appropriate, to avoid any unintended and erroneous decision leading to removal of content that is not terrorist content. This is of particular relevance when hosting service providers use automated means to detect terrorist content. Any decision to use automated means, whether taken by the hosting service provider itself or pursuant to a request by the competent authority, should be assessed with regard to the reliability of the underlying technology and the ensuing impact on fundamental rights.

Or. en

Amendment 11

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) In order to ensure that hosting service providers exposed to terrorist content take appropriate measures to prevent the misuse of their services, the competent authorities should request hosting service providers having received a removal order, which has become final, to report on the proactive measures taken. These could consist of measures to prevent the re-upload of terrorist content, removed or access to it disabled as a result of a removal order or referrals they received, checking against publicly or privately-held tools containing known terrorist content. They may also employ the use of reliable technical tools to identify new terrorist content, either using

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those available on the market or those developed by the hosting service provider. The service provider should report on the specific proactive measures in place in order to allow the competent authority to judge whether the measures are effective and proportionate and whether, if automated means are used, the hosting service provider has the necessary abilities for human oversight and verification. In assessing the effectiveness and proportionality of the measures, competent authorities should take into account relevant parameters including the number of removal orders and referrals issued to the provider, their economic capacity and the impact of its service in disseminating terrorist content (for example, taking into account the number of users in the Union).

Or. en

Amendment 12

Proposal for a regulation

Recital 19

Text proposed by the Commission

Amendment

(19) Following the request, the competent authority should enter into a dialogue with the hosting service provider about the necessary proactive measures to be put in place. If necessary, the competent authority should impose the adoption of appropriate, effective and proportionate proactive measures where it considers that the measures taken are insufficient to meet the risks. A decision to impose such specific proactive measures should not, in principle, lead to the imposition of a general obligation to monitor, as provided in Article 15(1) of Directive 2000/31/EC. Considering the particularly grave risks associated with the dissemination of terrorist content, the

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decisions adopted by the competent authorities on the basis of this Regulation could derogate from the approach established in Article 15(1) of Directive 2000/31/EC, as regards certain specific, targeted measures, the adoption of which is necessary for overriding public security reasons. Before adopting such decisions, the competent authority should strike a fair balance between the public interest objectives and the fundamental rights involved, in particular, the freedom of expression and information and the freedom to conduct a business, and provide appropriate justification.

Or. en

Amendment 13

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) Complaint procedures constitute a necessary safeguard against erroneous removal of content protected under the freedom of expression and information. Hosting service providers should therefore establish user-friendly complaint mechanisms **and** ensure that complaints are dealt with promptly and in full transparency towards the content provider. The requirement for the hosting service provider to reinstate the content where it has been removed in error, does not affect the possibility of hosting service providers to enforce their own terms and conditions on other grounds.

Amendment

(25) Complaint procedures constitute a necessary safeguard against erroneous removal of content protected under the freedom of expression and information. Hosting service providers should therefore establish **effective and** user-friendly complaint **and redress** mechanisms **to** ensure that complaints are dealt with promptly and in full transparency towards the content provider. The requirement for the hosting service provider to reinstate the content where it has been removed in error, does not affect the possibility of hosting service providers to enforce their own terms and conditions on other grounds. **Member States should also guarantee that hosting service providers and content providers can effectively exercise their right to judicial redress. Furthermore, content providers whose content has been removed following a removal order should have the right to an effective judicial**

remedy in accordance with Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union. Effective appeal mechanisms should be established at national level to ensure that any party subject to a removal order issued by a competent judicial authority should have the right to appeal to a judicial body. The appeal procedure is without prejudice to the division of competences within national judicial systems.

Or. en

Amendment 14

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) Effective legal protection according to Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union requires that persons are able to ascertain the reasons upon which the content uploaded by them has been removed or access to it disabled. For that purpose, the hosting service provider should make available to the content provider meaningful information enabling the content provider to contest the decision. ***However, this does not necessarily require a notification to the content provider. Depending on the circumstances, hosting service providers may replace content which is considered terrorist content, with a message that it has been removed or disabled in accordance with this Regulation. Further information about the reasons as well as possibilities for the content provider to contest the decision should be given upon request.*** Where competent authorities decide that for reasons of public security including in the context of an investigation, it is considered

Amendment

(26) ***More generally,*** effective legal protection according to Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union requires that persons are able to ascertain the reasons upon which the content uploaded by them has been removed or access to it disabled. For that purpose, the hosting service provider should make available to the content provider meaningful information enabling the content provider to contest the decision. Hosting service providers ***should, where possible, inform content providers through any means available of any content the hosting service provider has removed.*** ***However,*** where competent ***judicial*** authorities decide that for reasons of public security including in the context of an investigation, it is considered inappropriate or counter-productive to directly notify the content provider of the removal or disabling of content, they should inform the hosting service provider.

inappropriate or counter-productive to directly notify the content provider of the removal or disabling of content, they should inform the hosting service provider.

Or. en

Amendment 15

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) Penalties ***are necessary*** to ensure the effective implementation by hosting service providers of the obligations pursuant to this Regulation. Member States should adopt rules on penalties, ***including, where appropriate, fining guidelines***. ***Particularly*** severe penalties shall be ascertained in the event that the hosting service provider systematically fails to remove terrorist content or disable access to it ***within one hour from receipt of a removal order***. Non-compliance in individual cases could be sanctioned while respecting the principles of ne bis in idem and of proportionality ***and*** ensuring that such sanctions take account of systematic failure. In order to ensure legal certainty, the regulation should set out to what extent the relevant obligations can be subject to penalties. ***Penalties for non-compliance with Article 6 should only be adopted in relation to obligations arising from a request to report pursuant to Article 6(2) or a decision imposing additional proactive measures pursuant to Article 6(4). When determining whether or not financial penalties should be imposed, due account should be taken of the financial resources of the provider. Member States shall ensure that penalties do not encourage the removal of content which is not terrorist content.***

Amendment

(38) ***Member States should establish*** penalties to ensure the effective implementation by hosting service providers of the obligations pursuant to this Regulation. Member States should adopt rules on ***such*** penalties, ***which should be proportionate and practicable, taking into account the size and the nature of the hosting services provider concerned. When determining whether financial penalties should be imposed, Member States should take due account of the financial resources of the provider concerned.*** Severe penalties shall be ascertained in the event that the hosting service provider systematically fails to remove terrorist content or disable access to it. Non-compliance in individual cases could be sanctioned while respecting the principles of ne bis in idem and of proportionality ensuring that such sanctions take account of systematic failure, ***but do not encourage the arbitrary removal of content which is not terrorist content.*** In order to ensure legal certainty, the Regulation should set out to what extent the relevant obligations can be subject to penalties.

Justification

Member States should set up a national level penalties to be imposed on hosting service providers which do not comply with a removal order. Such penalties should be practicable and proportionate and should take into account the size of the provider concerned. Smaller hosting services providers may be dramatically affected by heavy financial penalties, which could overburden them and endanger their sustainability.

Amendment 16**Proposal for a regulation****Article 1 – paragraph 1 – introductory part***Text proposed by the Commission*

1. This Regulation lays down **uniform** rules to prevent the misuse of hosting services for the dissemination of terrorist content online. It lays down in particular:

Amendment

1. ***Without prejudice to the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU***, this Regulation lays down rules to prevent the misuse of hosting services for the dissemination of terrorist content online. It lays down in particular:

Or. en

Justification

It is of utmost importance to recall here that the proposed Regulation and its scope should be implemented in strict respect to fundamental rights, in particular freedom of expression and information, as well as media pluralism. Under no circumstances, should the proposed Regulation undermine, prevail or endanger such rights.

Amendment 17**Proposal for a regulation****Article 1 – paragraph 1 – point b***Text proposed by the Commission*

(b) a set of measures to be put in place by Member States to identify terrorist content, to enable its swift removal by hosting service providers and to facilitate cooperation with the competent authorities

Amendment

(b) a set of measures to be put in place by Member States to identify terrorist content, to enable its swift removal by hosting service providers and to facilitate cooperation with the **relevant** competent

in other Member States, hosting service providers and where appropriate relevant Union bodies.

judicial authorities in other Member States, hosting service providers and where appropriate relevant Union bodies.

Or. en

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

(1) 'hosting service provider' means a provider of information society services consisting in the storage of **information** provided by and at the request of the content provider and in making the information stored available to **third parties**;

Amendment

(1) 'hosting service provider' means a provider of information society services consisting in the storage of **material** provided by and at the request of the content provider and in making the information stored available to **the general public**;

Or. en

Justification

The definition of 'hosting service providers' as it is proposed by the Commission is too wide. It should be clarified, and should focus only on 'the making available of material to the general public'. The dissemination of content to a limited number of users, or in a private context should be excluded from the scope.

Amendment 19

Proposal for a regulation

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) 'terrorist offences' means **offences as defined** in Article 3(1) of Directive (EU) 2017/541;

Amendment

(4) 'terrorist offences' means **one of the intentional acts listed** in Article 3(1) of Directive (EU) 2017/541;

Or. en

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point 5 – introductory part

Text proposed by the Commission

(5) 'terrorist content' means ***one or more of the following information:***

Amendment

(5) 'terrorist content' means ***any material, other than material used for educational, journalistic and research purposes, which may contribute to the commission of intentional acts, which constitute offences under national law, as listed in Article 3(1)(a) to (i) of Directive 2017/741/EU, by:***

Or. en

Amendment 21

Proposal for a regulation

Article 2 – paragraph 1 – point 5 – point a

Text proposed by the Commission

(a) inciting or advocating, ***including by glorifying,*** the commission of terrorist offences, thereby causing a danger that such acts be committed;

Amendment

(a) ***inciting or advocating*** the commission of terrorist offences, thereby causing a danger that such acts be committed;

Or. en

Amendment 22

Proposal for a regulation

Article 2 – paragraph 1 – point 5 – point b

Text proposed by the Commission

(b) ***encouraging the contribution*** to terrorist offences;

Amendment

(b) ***soliciting persons or a group of persons to contribute*** to terrorist offences;

Or. en

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 – point 5 – point c

Text proposed by the Commission

(c) promoting the activities of a terrorist group, in particular by ***encouraging the participation*** in or support ***to*** a terrorist group within the meaning of Article 2(3) of Directive (EU) 2017/541;

Amendment

(c) ***promoting*** the activities of a terrorist group, in particular by ***soliciting persons or a group of persons to participate*** in or support ***the criminal activities of*** a terrorist group within the meaning of Article 2(3) of Directive (EU) 2017/541;

Or. en

Amendment 24

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘dissemination of terrorist content’ means making terrorist content available to ***third parties on the hosting service providers’ services***;

Amendment

(6) ‘dissemination of terrorist content’ means making terrorist content available to ***the general public***;

Or. en

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) ‘main establishment’ means the head office or registered office within which the principal financial functions and operational control are exercised.

Amendment

(9) ‘main establishment’ means the head office or registered office within which the principal financial functions and operational control are exercised ***in the Union***.

Or. en

Amendment 26

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

1. Hosting service providers shall take appropriate, reasonable and proportionate actions in accordance with this Regulation, against the dissemination of terrorist content and to protect users from terrorist content. In doing so, they shall act in a diligent, proportionate and non-discriminatory manner, **and** with due **regard** to the fundamental rights of the users **and take into account the fundamental importance of the** freedom of expression and information **in an open and democratic society**.

Amendment

1. Hosting service providers shall take appropriate, reasonable and proportionate actions in accordance with this Regulation, against the dissemination of terrorist content and to protect users from terrorist content. In doing so, they shall act in a diligent, proportionate and non-discriminatory manner, with due **respect** to the fundamental rights of the users, **in particular** freedom of expression and information.

Or. en

Amendment 27

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

2. Hosting service providers shall include in their terms and conditions, **and apply, provisions to prevent** the dissemination of terrorist content.

Amendment

2. **Without prejudice to Articles 14 and 15 of Directive 2000/31/ EC**, hosting service providers shall include in their terms and conditions **that they shall not store terrorist content, and shall take appropriate measures to address** the dissemination of terrorist content.

Or. en

Amendment 28

Proposal for a regulation Article 3 – paragraph 2 a (new)

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Text proposed by the Commission

Amendment

2a. Video-sharing platforms providers who meet the criteria of the definition of 'hosting service providers' as referred to Article 1(1) shall take appropriate measures to address the dissemination of terrorist content in accordance with Article 28b, paragraph 1(c) and paragraph 3 of Directive 2018/1808/EU.

Or. en

Justification

The revised AVMSD addresses the issue of dissemination of terrorist content online on VSPs. VSPs are required to take appropriate measures to protect the general public from content containing public provocation to commit a terrorist offence. The AVMSD explicitly excludes the possibility for VSP when taking such measures of any ex-ante control measures or upload-filtering of content which do not comply with Article 15 of Directive 2000/31/EC.

Amendment 29

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. The competent **authority** shall have the power to issue a decision requiring the hosting service provider to remove terrorist content or disable access to it.

1. The competent **judicial authorities** shall have the power to issue a decision requiring the hosting service provider to remove terrorist content or disable access to it.

Or. en

Amendment 30

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Hosting service providers shall remove terrorist content or disable access

2. **Without prejudice to Articles 14 and 15 of Directive 2000/31/EC**, hosting

to it ***within one hour from*** receipt of the removal order.

service providers shall remove terrorist content or disable access to it ***without undue delay following the*** receipt of the removal order.

Or. en

Justification

The proposed duration of 'one hour' for hosting service providers to comply with a removal order is not realistic nor feasible in practice for most providers. Although the proposed Regulation foresees in Article 4 reasons for not complying for the provider concerns within the deadline proposed, it is necessary to ensure that this provision can be implemented in an efficient manner.

Amendment 31

Proposal for a regulation Article 4 – paragraph 7

Text proposed by the Commission

7. If the hosting service provider cannot comply with the removal order because of force majeure ***or*** of de facto impossibility not attributable to the hosting service provider, it shall inform, without undue delay, the competent authority, explaining the reasons, using the template set out in Annex III. ***The deadline set out in paragraph 2 shall apply as soon as the reasons invoked are no longer present.***

Amendment

7. If the hosting service provider cannot comply with the removal order because of force majeure, of de facto impossibility not attributable to the hosting service provider, ***or for technical or operational reasons***, it shall inform, without undue delay, the competent authority, explaining the reasons, using the template set out in Annex III.

Or. en

Justification

Apart from cases of force majeure or reasons outside the control of the provider concerned, there may also be other reasons, such as technical or operational issues, which could prevent the provider concerned to comply with a removal order.

Amendment 32

Proposal for a regulation Article 4 – paragraph 8

Text proposed by the Commission

8. If the hosting service provider cannot comply with the removal order because the removal order contains manifest errors or does not contain sufficient information to execute the order, it shall inform the competent authority without undue delay, asking for the necessary clarification, using the template set out in Annex III. ***The deadline set out in paragraph 2 shall apply as soon as the clarification is provided.***

Amendment

8. If the hosting service provider cannot comply with the removal order because the removal order contains manifest errors or does not contain sufficient information to execute the order, it shall inform the competent authority without undue delay, asking for the necessary clarification, using the template set out in Annex III.

Or. en

Justification

See amendment on Article 4, paragraph 2.

Amendment 33

Proposal for a regulation
Article 4 – paragraph 9

Text proposed by the Commission

9. ***The competent authority which issued the removal order shall inform the competent authority which oversees the implementation of proactive measures, referred to in Article 17(1)(c) when the removal order becomes final. A removal order becomes final where it has not been appealed within the deadline according to the applicable national law or where it has been confirmed following an appeal.***

Amendment

deleted

Or. en

Justification

See amendment deleting Article 6.

Amendment 34

Proposal for a regulation

Article 4 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. *If the hosting service provider cannot comply with the removal order because of operational or technical issues, it shall inform the competent judicial authority, explaining the reasons why, as well as describing the actions it intends to take to achieve full compliance with the removal order, using the template set out in Annex III.*

Or. en

Justification

To be consistent with amendment on Article 4, paragraph 7.

Amendment 35

Proposal for a regulation

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

1. *The competent judicial authority as referred to in Article 4(1) shall submit a copy of the removal order to the competent judicial authority referred to in Article 17(1)(a) of the Member State in which the main establishment of the hosting service provider is located at the same time it is transmitted to the hosting service provider in accordance with Article 4(5).*

2. *In cases where the competent judicial authority of the Member State in which the main establishment of the hosting service provider is located has reasonable grounds to believe that the removal order may impact fundamental*

interests of that Member State, it shall inform the issuing competent authority.

3. The competent judicial authority shall take these circumstances into account and shall, where necessary, withdraw or adapt the removal order.

Or. en

Amendment 36

Proposal for a regulation Article 6

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

Article 6 as proposed by the Commission appears to be incompatible with Directive 2000/31/EC and Directive 2018/1808/EU. The Rapporteur supports fully the prevention of dissemination of terrorist content online but it cannot be supported or implemented this way, in complete disregard of the current legislation into force.

Amendment 37

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Hosting service providers shall set out in their terms and conditions their policy to prevent the dissemination of terrorist content, *including, where appropriate, a meaningful explanation of the functioning of proactive measures including the use of automated tools.*

1. Hosting service providers shall set out in their terms and conditions their policy to prevent the dissemination of terrorist content.

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 38

**Proposal for a regulation
Article 8 – paragraph 3 – point b**

Text proposed by the Commission

Amendment

(b) information about the hosting service provider's measures to prevent the re-upload of content which has previously been removed or to which access has been disabled because it is considered to be terrorist content; **deleted**

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 39

**Proposal for a regulation
Article 8 – paragraph 3 – point c**

Text proposed by the Commission

Amendment

(c) number of pieces of terrorist content removed or to which access has been disabled, following removal *orders*, referrals, *or proactive measures*, respectively; **(c) number of pieces of terrorist content removed or to which access has been disabled, following removal *order or* referrals;**

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 40

Proposal for a regulation Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Safeguards regarding the use and implementation of proactive measures

1. Where hosting service providers use automated tools pursuant to this Regulation in respect of content that they store, they shall provide effective and appropriate safeguards to ensure that decisions taken concerning that content, in particular decisions to remove or disable content considered to be terrorist content, are accurate and well-founded.

2. Safeguards shall consist, in particular, of human oversight and verifications where appropriate and, in any event, where a detailed assessment of the relevant context is required in order to determine whether or not the content is to be considered terrorist content.

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 41

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Hosting service providers shall establish ***effective and accessible*** mechanisms allowing content providers whose content has been removed or access to it disabled ***as a result of a referral pursuant to Article 5 or of proactive***

1. Hosting service providers shall establish mechanisms allowing content providers whose content has been removed or access to it disabled, to submit a complaint against the action of the hosting service provider requesting reinstatement

measures pursuant to Article 6, to submit of the content.
a complaint against the action of the
hosting service provider requesting
reinstatement of the content.

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 42

**Proposal for a regulation
Article 12 – paragraph 1**

Text proposed by the Commission

Member States shall ensure that their competent authorities have the necessary capability and sufficient resources to achieve the aims and fulfil their obligations under this Regulation.

Amendment

Member States shall ensure that their competent **judicial** authorities have the necessary capability and sufficient resources to achieve the aims and fulfil their obligations under this Regulation.

Or. en

Amendment 43

**Proposal for a regulation
Article 17 – paragraph 1 – point c**

Text proposed by the Commission

(c) *oversee the implementation of proactive measures pursuant to Article 6;*

Amendment

deleted

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 44

Proposal for a regulation

Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall **lay down the rules on penalties applicable to** breaches of the obligations by hosting service providers under this Regulation and shall take all necessary measures to ensure that they are implemented. Such penalties shall be limited to infringement of the obligations pursuant to:

Amendment

1. Member States shall **establish** penalties **for** breaches of the obligations by hosting service providers under this Regulation and shall take all necessary measures to ensure that they are implemented. Such penalties shall be limited to infringement of the obligations pursuant to:

Or. en

Amendment 45

Proposal for a regulation

Article 18 – paragraph 1 – point d

Text proposed by the Commission

(d) **Article 6(2) and (4) (reports on proactive measures and the adoption of measures following a decision imposing specific proactive measures);**

Amendment

deleted

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 46

Proposal for a regulation

Article 18 – paragraph 1 – point g

Text proposed by the Commission

(g) **Article 9 (safeguards in relation to proactive measures);**

Amendment

deleted

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 47**Proposal for a regulation
Article 18 – paragraph 4**

Text proposed by the Commission

Amendment

4. Member States shall ensure that a *deleted* systematic failure to comply with obligations pursuant to Article 4(2) is subject to financial penalties of up to 4% of the hosting service provider's global turnover of the last business year.

Or. en

Justification

Such financial penalties seem to be disproportionate and may overburdened smaller providers. It is essential that penalties set up by Member States are proportionate and practicable.

Amendment 48**Proposal for a regulation
Article 19**

Text proposed by the Commission

Amendment

Article 19 *deleted*

Technical requirements and amendments to the templates for removal orders

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to supplement this Regulation with technical requirements for the electronic means to be used by competent authorities for the transmission of removal orders.

2. The Commission shall be empowered to adopt such delegated acts to amend Annexes I, II and III in order to effectively address a possible need for improvements regarding the content of removal order forms and of forms to be used to provide information on the impossibility to execute the removal order.

Or. en

Amendment 49

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

Exercise of delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.**
- 2. The power to adopt delegated acts referred to in Article 19 shall be conferred on the Commission for an indeterminate period of time from [date of application of this Regulation].**
- 3. The delegation of power referred to in Article 19 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day after the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.**
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on**

Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 19 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Or. en

Amendment 50

Proposal for a regulation Article 21 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) information about the specific proactive measures taken pursuant to Article 6, including the amount of terrorist content which has been removed or access to it disabled and the corresponding timeframes; *deleted*

Or. en

Justification

This amendment ensures legal consistency with the proposed deletion of Article 6.

Amendment 51

Proposal for a regulation Annex III – section B – point i – paragraph 3 – indent 1 (new)

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Text proposed by the Commission

Amendment

- ***technical or operational issues***

Or. en

Justification

This amendment ensures legal consistency with the proposed amendment on Article 4, paragraph 7.

Amendment 52

Proposal for a regulation

Annex III – section B – point iii a (new)

Text proposed by the Commission

Amendment

(iiia) Please provide a description of the actions you intend to take to solve the above-mentioned technical or operational issues in order to comply with the removal order

Or. en

Justification

This amendment ensures legal consistency with the proposed amendment on Article 4, paragraph 7.