



2018/0331(COD)

13.3.2019

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

(*): Associated committee – Rule 54 of the Rules of Procedure

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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

Title 1

Text proposed by the Commission

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on **preventing** the dissemination of terrorist
content online
A contribution from the European
Commission to the Leaders' meeting in
Salzburg on 19-20 September 2018

Amendment

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on **tackling** the dissemination of terrorist
content online
A contribution from the European
Commission to the Leaders' meeting in
Salzburg on 19-20 September 2018

Amendment 2

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) This Regulation aims at ensuring the smooth functioning of the digital single market in an open and democratic society, by preventing the misuse of hosting services for terrorist purposes. The functioning of the digital single market should be improved by reinforcing legal certainty for hosting service providers, reinforcing users' trust in the online

Amendment

(1) This Regulation aims at ensuring the smooth functioning of the digital single market in an open and democratic society, by preventing the misuse of hosting services for terrorist purposes **and providing a specific tool for countering such issues and helping to ensure freedom and security for citizens**. The functioning of the digital single market

environment, and by strengthening safeguards to the freedom of expression and information.

should be improved by reinforcing legal certainty for hosting service providers, reinforcing users' trust in the online environment, and by strengthening safeguards to the freedom of expression and information, ***and rights to privacy and protection of personal data, as well as freedom of the press and pluralism of the media.***

Amendment 3

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Terrorist content is part of a broader problem of illegal content online, which includes other forms of content such as child sexual exploitation, illegal commercial practises and breaches of intellectual property. Trafficking in illegal content is often undertaken by terrorist and other criminal organisations to launder and raise seed money to finance their operations. This problem requires a combination of legislative, non-legislative and voluntary measures based on collaboration between authorities and providers, in the full respect for fundamental rights. Though the threat of illegal content has been mitigated by successful initiatives such as the industry-led Code of Conduct on countering illegal hate speech online and the WEePROTECT Global Alliance to end child sexual abuse online, it is necessary to establish a legislative framework for cross-border cooperation between national regulatory authorities to take down illegal content.

Amendment 4

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Hosting service providers active on the internet play an essential role in the digital economy by connecting business and citizens and by facilitating public debate and the distribution and receipt of information, opinions and ideas, contributing significantly to innovation, economic growth and job creation in the Union. However, their services are in certain cases abused by third parties to carry out illegal activities online. Of particular concern is the misuse of hosting service providers by terrorist groups and their supporters to disseminate terrorist content online in order to spread their message, to radicalise and recruit and to facilitate and direct terrorist activity.

Amendment

(2) Hosting service providers active on the internet play an essential role in the digital economy by connecting business and citizens and by facilitating public debate and the distribution and receipt of information, opinions and ideas, contributing significantly to innovation, economic growth and job creation in the Union. However, their services are in certain cases abused by third parties to carry out illegal activities online, ***which are a criminal offence under Union law.*** Of particular concern is the misuse of hosting service providers by terrorist groups and their supporters to disseminate terrorist content online in order to spread their message, to radicalise and recruit and to facilitate and direct terrorist activity.

Amendment 5

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) The presence of terrorist content online has serious negative consequences for ***users, for*** citizens and society at large ***as well as*** for the online service providers hosting such content, since it undermines the trust of their users and damages their business models. In light of their central role and the technological means ***and capabilities*** associated with the services they provide, online service providers have particular societal responsibilities to protect their services from misuse by terrorists and to help tackle terrorist content disseminated through their services.

Amendment

(3) ***While not the only factor,*** the presence of terrorist content online has ***proven to be crucial in terms of radicalising individuals who have committed terrorist acts within the Union and beyond, which has had very*** serious negative consequences for citizens and society at large, ***but also*** for the online service providers hosting such content, since it undermines the trust of their users and damages their business models. ***Accordingly,*** in light of their central role and ***professional capabilities, in addition to*** the technological means associated with the services they provide, ***while taking account of the importance of safeguarding the fundamental freedoms***

of expression and information, online service providers have particular societal responsibilities to protect their services from misuse by terrorists and to help tackle terrorist content disseminated through their services.

Amendment 6

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) Efforts at Union level to counter terrorist content online commenced in 2015 through a framework of voluntary cooperation between Member States and hosting service providers *need* to be complemented by a clear legislative framework in order to further reduce accessibility to terrorist content online and adequately address a rapidly evolving problem. This legislative framework seeks to build on voluntary efforts, which were reinforced by the Commission Recommendation (EU) 2018/334⁷ and responds to calls made by the European Parliament to strengthen measures to tackle illegal and harmful content and by the European Council to improve the automatic detection and removal of content that incites to terrorist acts.

⁷ Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online (OJ L 63, 6.3.2018, p. 50).

Amendment

(4) Efforts at Union level to counter terrorist content online commenced in 2015 through a framework of voluntary cooperation between Member States and hosting service providers. ***Unfortunately, that cooperation turned out to be insufficient to counter this phenomenon. Union law therefore needs*** to be complemented by a clear legislative framework in order to further reduce accessibility to terrorist content online and adequately address a rapidly evolving problem. This legislative framework seeks to build on voluntary efforts, which were reinforced by the Commission Recommendation (EU) 2018/334⁷ and responds to calls made by the European Parliament to strengthen measures to tackle illegal and harmful content and by the European Council to improve the automatic detection and removal of content that incites to terrorist acts.

⁷ Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online (OJ L 63, 6.3.2018, p. 50).

Amendment 7

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 8

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(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, ***since Article 14 requires service providers to act expeditiously to remove or to disable access to illegal content upon obtaining knowledge of illegal activity or information.*** 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).

(6a) The obligations laid down in this Regulation should not affect the duty and ability of national authorities and courts to take appropriate, reasonable and proportionate actions against criminal offences in accordance with national law.

Amendment 9

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 10

Proposal for a regulation

Recital 8

Amendment

(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 **as defined in this Regulation** and hosting service providers should **adopt exclusively** 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, **the rights to privacy and personal data protection**, which **constitute** the essential foundations of a pluralist, democratic society, and is one of the values on which the Union is founded. Measures **taken under this Regulation** should be **necessary, appropriate and proportionate to the aim they pursue to contribute to the fight against terrorism**, 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.

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 ***be informed about redress, the possibility for content providers to appeal against removal decisions taken by the hosting service provider and 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.***

Amendment 11

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 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

Amendment

(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 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

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. **Obviously**, content disseminated for educational, journalistic or research purposes should be **identified and** adequately protected **and should not be equated with incitement to terrorism unless the dissemination of such content enables it to be used for terrorist purposes. A fair balance would thus be struck between freedom of expression and information and public security requirements. In particular, any decision to remove journalistic content should take account of journalists' codes of self-regulation and ethics, in accordance with Article 11 of the Charter of Fundamental Rights of the European Union. In the interest of consistency**, 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

Amendment 12

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 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

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 content*** available to ***the public, which means that the content providers do not predetermine 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 ***content*** available to ***the public***. ***For the purpose of this Regulation, web hosting service providers that provide the technical infrastructure to website operators, mere conduits and other electronic communication services, caching services, cloud IT infrastructure services, protection 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 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. 'Cloud***

isolation should not be a sufficient condition for the application of this Regulation.

infrastructure services' which consist in the provision of on demand physical or virtual resources that provide computing and storage infrastructure capabilities on which the service provider has no contractual rights as to what content is stored or how it is processed or made publicly available by its customers or by the end-users of such customers, and where the service provider has no technical capability to remove specific content stored by their customers or the end-users of their customers, should also be excluded from the scope of this Regulation. 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.

Amendment 13

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) Hosting service providers should apply certain duties of care, in order to prevent the dissemination of terrorist

Amendment

(12) Hosting service providers should apply certain duties of care, in order to prevent **and deter** the dissemination of

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.***

terrorist content on their services. These duties of care should not amount to a general monitoring obligation ***and should be without prejudice to Article 15 of Directive 2000/31/EC.*** 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. Freedom of expression and information ***should be duly respected when removing or disabling access. Effective and expeditious complaints and redress mechanisms should be made available by the hosting service providers in the case of unjustified removals of content.***

Amendment 14

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 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

Amendment

(13) ***Competent authorities of the Member States should assess whether content is terrorist content, and should 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.

disable access to the content for users in the Union.

Amendment 15

Proposal for a regulation

Recital 16

Text proposed by the Commission

(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.

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, ***effective and proportionate*** to take ***targeted*** 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 accordance with Article 15 of Directive 2000/31/EC. This should also be without prejudice to Directive (EU) 2018/1808, which requires video-sharing platforms (VSP) to take measures to protect the general public from content the dissemination of which constitutes an activity which is a criminal offence under Union law.*** 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.

Amendment 16

Proposal for a regulation

Recital 17

Text proposed by the Commission

(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 - 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.

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 - 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 **relevant** competent authority should be assessed with regard to the reliability of the underlying technology and the ensuing impact on fundamental rights. ***Hosting service providers should put in place effective and expeditious complaints and redress mechanisms to address cases of unjustified removals of content.***

Amendment 17

Proposal for a regulation

Recital 18

Text proposed by the Commission

(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

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 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).

hosting service providers having received a removal order, which has become final, to report on the proactive measures taken, **as well as on the functioning of the complaints and redress mechanisms**. These could consist of measures to **address the reappearance** of terrorist content, **which has been already** removed or **the access of which has been already** 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, for instance where it uses in part or whole terrorist content that is already subject to a definitive removal order or where it is uploaded by users who already uploaded** terrorist content, either using 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).

Amendment 18

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Following the request, the

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 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.

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 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 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, *only* 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.

Amendment 19

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

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

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.

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.

Amendment 20

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***

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

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

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.

Amendment 21

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) In order to ensure the effective and sufficiently coherent implementation of proactive measures, competent authorities in Member States should liaise with each other with regard to the discussions they have with hosting service providers *as to the identification, implementation and assessment of specific proactive measures. Similarly, such cooperation is also needed in relation to the adoption of rules on penalties, as well as the implementation and the enforcement of penalties.*

Amendment

(28) In order to ensure the effective and sufficiently coherent implementation of proactive measures, competent **judicial** authorities in Member States should liaise with each other with regard to the discussions they have with hosting service providers *and with educational institutions and civil society organisations, such as journalists' associations, youth organisations, media supervisory bodies and others, as to the assessment, identification and implementation of meaningful and sustainable proactive measures to combat terrorism and radicalisation.*

Amendment 22

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) Both hosting service providers and Member States should establish points of contact to facilitate the swift handling of

Amendment

(33) Both hosting service providers and Member States should establish points of contact to facilitate the swift handling of

removal orders and referrals. In contrast to the legal representative, the point of contact serves operational purposes. The hosting service provider's point of contact should consist of any dedicated means allowing for the electronic submission of removal orders and referrals and of technical and personal means allowing for the swift processing thereof. The point of contact for the hosting service provider does not have to be located in the Union and the hosting service provider is free to nominate an existing point of contact, provided that this point of contact is able to fulfil the functions provided for in this Regulation. With a view to ensure that terrorist content is removed or access to it is disabled *within one hour* from the receipt of a removal order, hosting service providers should ensure that the point of contact is reachable *24/7*. The information on the point of contact should include information about the language in which the point of contact can be addressed. In order to facilitate the communication between the hosting service providers and the competent authorities, hosting service providers are encouraged to allow for communication in one of the official languages of the Union in which their terms and conditions are available.

removal orders and referrals. In contrast to the legal representative, the point of contact serves operational purposes. The hosting service provider's point of contact should consist of any dedicated means allowing for the electronic submission of removal orders and referrals and of technical and personal means allowing for the swift processing thereof. The point of contact for the hosting service provider does not have to be located in the Union and the hosting service provider is free to nominate an existing point of contact, provided that this point of contact is able to fulfil the functions provided for in this Regulation. With a view to ensure that terrorist content is removed or access to it is disabled *promptly and without undue delay* from the receipt of a removal order, hosting service providers should ensure that the point of contact is reachable. The information on the point of contact should include information about the language in which the point of contact can be addressed. In order to facilitate the communication between the hosting service providers and the competent authorities, hosting service providers are encouraged to allow for communication in one of the official languages of the Union in which their terms and conditions are available

Justification

It is unrealistic to ask SMEs for the removal of content within 1 hour from receiving the removal order without giving time for the proper assessment of the request. Small companies will simply not be able to fulfil this condition, as in most cases they simply don't have enough human resources to be available 24/7 and to remove content within the hour

Amendment 23

Proposal for a regulation Recital 34

Text proposed by the Commission

Amendment

(34) In the absence of a general requirement for service providers to ensure a physical presence within the territory of the Union, there is a need to ensure clarity under which Member State's jurisdiction the hosting service provider offering services within the Union falls. As a general rule, the hosting service provider falls under the jurisdiction of the Member State in which it has its main establishment or in which it has designated a legal representative. Nevertheless, where another Member State issues a removal order, its **authorities** should be able to enforce **their** orders by taking coercive measures of a non-punitive nature, such as penalty payments. With regards to a hosting service provider which has no establishment in the Union and does not designate a legal representative, any Member State should, nevertheless, be able to issue penalties, provided that the principle of ne bis in idem is respected.

(34) In the absence of a general requirement for service providers to ensure a physical presence within the territory of the Union, there is a need to ensure clarity under which Member State's jurisdiction the hosting service provider offering services within the Union falls. As a general rule, the hosting service provider falls under the jurisdiction of the Member State in which it has its main establishment or in which it has designated a legal representative. Nevertheless, where another Member State issues a removal order, its **authority** should be able to enforce **its** orders by taking coercive measures of a non-punitive nature, such as penalty payments. With regards to a hosting service provider which has no establishment in the Union and does not designate a legal representative, any Member State should, nevertheless, be able to issue penalties, provided that the principle of ne bis in idem is respected.

Amendment 24

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,

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.** Severe penalties **should** be ascertained in the event that the hosting service provider systematically fails to remove terrorist content or disable access to it **without undue delay. Where a terrorist content is manifestly harmful or constitutes an immediate threat to public order, hosting service providers should remove or disable**

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.

access to the terrorist content upon receiving the duly justified 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, ***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. 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 25

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

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) rules on duties of care to be applied by hosting service providers in order to **prevent** the dissemination of terrorist content through their services and ensure, where necessary, its swift removal;

Amendment

(a) rules on duties of care to be applied by hosting service providers in order to **tackle** the dissemination of terrorist content **online to the public** through their services and ensure, where necessary, its swift removal;

Amendment 27

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

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

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

This Regulation shall not apply to content disseminated for educational, artistic, journalistic or research purposes and other editorial purposes, provided that it does not incite the commission of violence, or to content disseminated for awareness raising purposes against terrorist activities.

Amendment 29

Proposal for a regulation

Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation shall apply to hosting service providers offering services in the Union, irrespective of their place of main establishment.

Amendment

2. This Regulation shall apply to hosting service providers offering services **to the public** in the Union, irrespective of their place of main establishment.

Amendment 30

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 **online content** provided by and at the request of the content provider and in making the information stored available to **the public**;

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) '**competent authority**' means a **single designated national judicial authority in the Member State, or an independent administrative authority, with the relevant expertise**;

Amendment 32

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)

Amendment

(4) 'terrorist offences' means **one of the intentional acts listed** in Article 3(1) of

Amendment 33**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 ***online content which may contribute to the commission of intentional acts which constitute offences under national and Union law, as listed in Article 3(1)(a) to (i) of Directive 2017/541/EU, by:***

Amendment 34**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;

Amendment 35**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, meeting with, communicate with*** or support ***the criminal activities of*** a terrorist group within the meaning of Article 2(3) of Directive (EU) 2017/541, ***or by encouraging the dissemination of terrorist content;***

Amendment 36

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 **publicly** available to third parties on the hosting service providers’ services;

Amendment 37

Proposal for a regulation
Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘referral’ means a notice by a competent authority or, where applicable, a relevant Union body to a hosting service provider about **information** that may be considered terrorist content, for the provider’s voluntary consideration of the compatibility with its own terms and conditions aimed to prevent dissemination of terrorism content;

Amendment

(8) ‘referral’ means a notice by a competent authority or, where applicable, a relevant Union body to a hosting service provider about **content** that may be considered terrorist content, for the provider’s voluntary consideration of the compatibility with its own terms and conditions aimed to prevent dissemination of terrorism content;

Amendment 38

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**.

Amendment 39

Proposal for a regulation
Article 2 – paragraph 1 a (new)

The expression of radical, polemic or controversial views in the public debate on sensitive political questions, as well as content aiming at providing information or denouncing terrorist content shall not be considered terrorist content within the meaning of point (5) of the first paragraph of this Article.

Amendment 40

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

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, ***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***.

1. Hosting service providers shall take appropriate, reasonable and proportionate actions in accordance with this Regulation, against the dissemination of terrorist content ***to the public*** 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*** fundamental rights of the users, ***in particular*** freedom of expression and information.

Amendment 41

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

Amendment

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

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 take appropriate, effective and proportionate measures to tackle*** the dissemination of

terrorist content *on their services*.

Amendment 42

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 43

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 authority shall have the power to issue a **removal order** requiring the hosting service provider to remove terrorist content or disable access to it.

Amendment 44

Proposal for a regulation

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. *In cases where the competent authority of the Member State in which the main establishment of the hosting service provider or content provider is located has reasonable grounds to believe that the removal order may affect fundamental rights of the individual it shall inform the requesting competent*

authority. The requesting competent authority shall take those circumstances into account and shall, where necessary, withdraw or adapt the removal request.

Amendment 45

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

2. Hosting service providers shall remove terrorist content or disable access to it ***within one hour from*** receipt of the removal order.

Amendment

2. ***Without prejudice to Articles 14 and 15 of Directive 2000/31/EC***, hosting service providers shall remove terrorist content or disable access to it ***without undue delay following the*** receipt of the removal order. ***Member States may provide that where a terrorist content is manifestly harmful or constitutes an immediate threat to the public order, hosting service providers shall remove or disable access to the terrorist content from the moment of receipt of a duly justified removal order.***

Amendment 46

Proposal for a regulation Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) a statement of reasons explaining why the content is considered terrorist content, at least, by reference to the categories of terrorist content listed in Article 2(5);

Amendment

(b) a ***comprehensive*** statement of reasons explaining why the content is considered terrorist content, at least, by reference to the categories of terrorist content listed in Article 2(5);

Amendment 47

Proposal for a regulation Article 4 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) *a* Uniform Resource Locator (URL) and, *where necessary, additional* information enabling the identification of the content referred;

(c) *an exact online* Uniform Resource Locator (URL), *an identification of the online content provider* and *any other* information enabling the identification of the content referred;

Amendment 48

Proposal for a regulation

Article 4 – paragraph 3 – point f

Text proposed by the Commission

(f) information about redress available to the hosting service provider and to the content provider;

Amendment

(f) information about *redress and the deadline for* redress available to the hosting service provider and to the content provider;

Amendment 49

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. *The hosting service provider or content provider shall have the right to appeal the removal order by seeking redress in front of the relevant judicial authority in the Member State in which the main establishment of the hosting service provider or content provider is located.*

Amendment 50

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

5. The competent authorities shall address removal orders to the main establishment of the hosting service provider or to the legal representative designated by the hosting service provider

Amendment

5. The competent authorities shall address removal orders to the main establishment of the hosting service provider or to the legal representative designated by the hosting service provider

pursuant to Article 16 and transmit it to the point of contact referred to in Article 14(1). Such orders shall be sent by electronic means capable of producing a written record under conditions allowing to establish the authentication of the sender, including the accuracy of the date and the time of sending and receipt of the order.

pursuant to Article 16 and transmit it to the point of contact referred to in Article 14(1). Such orders shall be sent by electronic means capable of producing a written record under conditions allowing to establish the authentication of the sender, including the accuracy of the date and the time of sending and receipt of the order. ***Such orders shall be made in one of the languages specified in accordance with Article 14(2).***

Amendment 51

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 ***technical*** 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 52

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

Amendment 53

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Cross-border cooperation

- 1. The competent authority issuing the removal order to the hosting service provider shall submit immediately a copy of that removal order to the competent authority referred to in Article 17(1)(a) of the Member State in which the main establishment of the hosting service provider or its designated representative is located.***
- 2. In cases where the competent authority of the Member State in which the main establishment of the hosting service provider, its designated representative or the content provider is located has reasonable grounds to believe that the removal order may affect fundamental rights of the individual, it shall inform the requesting competent authority.***
- 3. The requesting competent authority shall take those circumstances into account and shall, where necessary, withdraw or adapt the removal request.***

Amendment 54

Proposal for a regulation Article 5 – paragraph 4

Text proposed by the Commission

Amendment

4. The referral shall contain sufficiently detailed information, including the reasons why the content is considered

4. The referral shall contain sufficiently detailed information, including ***a comprehensive list of*** the reasons why

terrorist content, a URL and, where necessary, additional information enabling the identification of the terrorist content referred.

the content is considered terrorist content, a URL and, where necessary, additional information enabling the identification of the terrorist content referred.

Amendment 55

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

1. Hosting service providers shall, **where appropriate**, take proactive measures to protect their services against the dissemination of terrorist content. The measures shall be effective and proportionate, taking into account the risk and level of exposure to terrorist content, the fundamental rights of the users, **and the fundamental importance of the** freedom of expression and information **in an open and democratic society**.

Amendment

1. **Without prejudice to Directive (EU) 2018/1808 and Directive 2000/31/EC**, hosting service providers shall, **depending on the risk and level of exposure to terrorist content**, take proactive measures to protect their services against the dissemination of terrorist content. The measures shall be effective, **targeted** and proportionate, taking into account the risk and level of exposure to terrorist content, **and with due respect to** the fundamental rights of the users, **in particular** freedom of expression and information.

Amendment 56

Proposal for a regulation Article 6 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Where it has been informed according to Article 4(9), the competent authority referred to in Article 17(1)(c) shall request the hosting service provider to submit a report, within three months after receipt of the request and thereafter at least on an annual basis, on the specific proactive measures it has taken, including by using automated tools, with a view to:

Amendment

Where it has been informed according to Article 4(9), the **relevant** competent authority referred to in Article 17(1)(c) shall request the hosting service provider to submit a report, within three months after receipt of the request and thereafter at least on an annual basis, on the specific proactive measures it has taken, including by using automated tools, with a view to:

Amendment 57

Proposal for a regulation

Article 6 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) ***preventing 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;

Amendment

(a) ***effectively address the reappearance*** of content which has previously been removed or to which access has been disabled because it is considered to be terrorist content;

Amendment 58

Proposal for a regulation

Article 6 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The reports shall include all relevant information allowing the competent authority referred to in Article 17(1)(c) to assess whether the proactive measures are effective and proportionate, including to evaluate the functioning of any automated tools used as well as the human oversight and verification mechanisms employed.

Amendment

The reports shall include all relevant information allowing the ***relevant*** competent authority referred to in Article 17(1)(c) to assess whether the proactive measures are effective and proportionate, including to evaluate the functioning of any automated tools used as well as the human oversight and verification mechanisms employed.

Amendment 59

Proposal for a regulation

Article 6 – paragraph 3

Text proposed by the Commission

3. Where the competent authority referred to in Article 17(1)(c) considers that the proactive measures taken and reported under paragraph 2 are insufficient in mitigating and managing the risk and level of exposure, it may request the hosting service provider to take specific additional proactive measures. For that purpose, the hosting service provider shall cooperate with the competent authority

Amendment

3. Where the ***relevant*** competent authority referred to in Article 17(1)(c) considers that the proactive measures taken and reported under paragraph 2 are ***disproportionate or*** insufficient in mitigating and managing the risk and level of exposure, it may request the hosting service provider ***to adapt the measures already taken or*** to take specific additional proactive measures. For that purpose, the

referred to in Article 17(1)(c) with a view to identifying the specific measures that the hosting service provider shall put in place, establishing key objectives and benchmarks as well as timelines for their implementation.

hosting service provider shall cooperate with the **relevant** competent authority referred to in Article 17(1)(c) with a view to identifying **the changes or** the specific measures that the hosting service provider shall put in place, establishing key objectives and benchmarks as well as timelines for their implementation.

Amendment 60

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where no agreement can be reached within the three months from the request pursuant to paragraph 3, the competent authority referred to in Article 17(1)(c) may issue a decision imposing specific additional necessary and proportionate proactive measures. The decision shall take into account, in particular, the economic capacity of the hosting service provider and the effect of such measures on the fundamental rights of the users **and the fundamental importance of the** freedom of expression and information. Such a decision shall be sent to the main establishment of the hosting service provider or to the legal representative designated by the service provider. The hosting service provider shall regularly report on the implementation of such measures as specified by the competent authority referred to in Article 17(1)(c).

Amendment

4. Where no agreement can be reached within the three months from the request pursuant to paragraph 3, the **relevant** competent authority referred to in Article 17(1)(c) may issue a decision imposing specific additional necessary and proportionate proactive measures. The decision shall take into account, in particular, the **type of content hosted on the service, the technical feasibility of the measures, the** economic capacity of the hosting service provider and the effect of such measures on the fundamental rights of the users, **in particular** freedom of expression and information. Such a decision shall be sent to the main establishment of the hosting service provider or to the legal representative designated by the service provider. The hosting service provider shall regularly report on the implementation of such measures as specified by the **relevant** competent authority referred to in Article 17(1)(c).

Amendment 61

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

5. A hosting service provider may, at any time, request the competent authority referred to in Article 17(1)(c) a review and, where appropriate, to revoke a request or decision pursuant to paragraphs 2, 3, and 4 respectively. The competent authority shall provide a reasoned decision within a reasonable period of time after receiving the request by the hosting service provider.

Amendment

5. A hosting service provider may, at any time, request the **relevant** competent authority referred to in Article 17(1)(c) a review and, where appropriate, to revoke a request or decision pursuant to paragraphs 2, 3, and 4 respectively. The **relevant** competent authority shall provide a reasoned decision within a reasonable period of time after receiving the request by the hosting service provider.

Amendment 62

**Proposal for a regulation
Article 6 – paragraph 5 a (new)**

Text proposed by the Commission

Amendment

5a. Article 6 and Article 9 shall not apply to providers of cloud infrastructure services which consist in the provision of on demand physical or virtual resources that provide computing and storage infrastructure capabilities on which the service provider has no rights as to what content is stored or how it is processed or made publicly available by its customers or by the end-users of such customers, and where the service provider has no specific control of the content stored by their customers or the end-users of their customers.

Amendment 63

**Proposal for a regulation
Article 8 – paragraph 1**

Text proposed by the Commission

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

Amendment

1. Hosting service providers shall **clearly** set out in their terms and conditions their policy to **tackle** the dissemination of terrorist content, including, where

appropriate, a meaningful explanation of the functioning of proactive measures including the use of automated tools.

appropriate, a meaningful explanation of the functioning of proactive measures including the use of automated tools **and to collaborate with the relevant competent authorities**.

Amendment 64

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

2. Hosting service providers shall publish annual transparency reports on action taken against the dissemination of terrorist content.

Amendment

2. Hosting service providers, **the relevant competent authorities and Union bodies** shall publish annual transparency reports on action taken against the dissemination of terrorist content **to the public**.

Amendment 65

Proposal for a regulation Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

3. Transparency reports shall include at least the following information:

Amendment

3. Transparency reports **of the hosting service providers** shall include at least the following information:

Amendment 66

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

Text proposed by the Commission

(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;

Amendment

(b) **detailed** information about the hosting service provider's measures to **address the reappearance** of content which has previously been removed or to which access has been disabled because it is considered to be terrorist content;

Amendment 67

Proposal for a regulation

Article 8 – paragraph 3 – point d

Text proposed by the Commission

(d) overview and *outcome of* complaint *procedures*.

Amendment

(d) overview and *assessment of the effectiveness of the* complaint *and redress mechanisms*.

Amendment 68

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 *access to* content considered to be terrorist content, are accurate and well-founded.

Amendment 69

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Safeguards shall consist, in particular, of human oversight and verifications *of the appropriateness of the decision to remove or deny access to content, in particular with regard to the right to freedom of expression and information. Human oversight shall be required* 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.

Amendment 70

Proposal for a regulation Article 10 – title

Text proposed by the Commission

Complaint mechanisms

Amendment

Complaint **and redress** mechanisms

Amendment 71

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. ***Without prejudice to the judicial remedies available to content providers under national law***, hosting service providers shall establish ***expeditious, effective and accessible complaints and redress*** 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 measures pursuant to Article 6, to submit a ***substantiated*** complaint against the action of the hosting service provider requesting reinstatement of the content.

Amendment 72

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

In cases where content has been removed or access to it disabled as a result of a removal order to Article 4, a referral pursuant to Article 5 or proactive measures pursuant to Article 6, the content provider concerned can initiate judicial proceedings at any time requesting re-instatement of the content. Initiation of judicial proceedings is not

conditional on the initiation of complaint mechanisms referred to in Article 10.

Amendment 73

Proposal for a regulation Article 13 – paragraph 4

Text proposed by the Commission

4. Where hosting service providers become aware of any evidence of terrorist offences, they shall promptly inform **authorities** competent for the investigation and prosecution in criminal offences in the concerned Member State or the point of contact in the Member State pursuant to Article 14(2), where they have their main establishment or a legal representative. Hosting service providers may, in case of doubt, transmit this information to Europol for appropriate follow up.

Amendment

4. Where hosting service providers become aware of any evidence of terrorist offences, they shall promptly inform **the authority** competent for the investigation and prosecution in criminal offences in the concerned Member State or the point of contact in the Member State pursuant to Article 14(2), where they have their main establishment or a legal representative. Hosting service providers may, in case of doubt, transmit this information to Europol for appropriate follow up.

Amendment 74

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:

Amendment 75

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

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

Amendment 76

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

(g) Article 9 (safeguards **with regard to the use and implementation of** proactive measures);

Amendment 77

Proposal for a regulation

Article 18 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall ensure that, when determining the type and level of penalties, the competent authorities take into account all relevant circumstances, including:

Amendment

3. Member States shall ensure that, when determining the type and level of penalties, the **relevant** competent authorities take into account all relevant circumstances, including:

Amendment 78

Proposal for a regulation

Article 18 – paragraph 3 – point e

Text proposed by the Commission

(e) the level of cooperation of the hosting service provider with the competent authorities.

Amendment

(e) the level of cooperation of the hosting service provider with the **relevant** competent authorities.

Amendment 79

Proposal for a regulation

Article 18 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the nature and size of the hosting service providers, in particular microenterprises or small-sized enterprises, within the meaning of Commission Recommendation 2003/361/EC.

Amendment 80

Proposal for a regulation

Article 18 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that a 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.

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

Amendment 81

Proposal for a regulation

Article 19 – paragraph 1

Text proposed by the Commission

Amendment

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.

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

Amendment 82

Proposal for a regulation
Article 19 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The Commission shall be empowered to adopt such delegated acts to amend Annexes I, II and III in order to **competently** 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.

Amendment 83

Proposal for a regulation
Article 20 – paragraph 2

Text proposed by the Commission

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].

Amendment

2. The power to adopt delegated acts referred to in Article 19 shall be conferred on the Commission for **a determinate** period of **3 years** from [date of application of this Regulation].

Amendment 84

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

Justification

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

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Preventing the dissemination of terrorist content online
References	COM(2018)0640 – C8-0405/2018 – 2018/0331(COD)
Committee responsible Date announced in plenary	LIBE 22.10.2018
Opinion by Date announced in plenary	CULT 22.10.2018
Associated committees - date announced in plenary	31.1.2019
Rapporteur Date appointed	Julie Ward 11.12.2018
Date adopted	11.3.2019
Result of final vote	+: 17 -: 2 0: 1
Members present for the final vote	Andrea Bocskor, Silvia Costa, Petra Kammerevert, Krystyna Łybacka, Svetoslav Hristov Malinov, Luigi Morgano, Momchil Nekov, Michaela Šojdrová, Helga Trüpel, Sabine Verheyen, Julie Ward, Milan Zver
Substitutes present for the final vote	Marie-Christine Boutonnet, Eider Gardiazabal Rubial, Marc Joulaud, Ilhan Kyuchyuk, Emma McClarkin, Martina Michels
Substitutes under Rule 200(2) present for the final vote	Jarosław Wałęsa, Damiano Zoffoli

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

17	+
ALDE	Ilhan Kyuchyuk
ECR	Emma McClarkin
PPE	Andrea Bocskor, Marc Joulaud, Svetoslav Hristov Malinov, Michaela Šojdrová, Sabine Verheyen, Jarosław Wałęsa, Milan Zver
S&D	Silvia Costa, Eider Gardiazabal Rubial, Krystyna Lybacka, Luigi Morgano, Momchil Nekov, Julie Ward, Damiano Zoffoli
VERTS/ALE	Helga Trüpel

2	-
GUE/NGL	Martina Michels
S&D	Petra Kammerevert

1	0
ENF	Marie-Christine Boutonnet

Key to symbols:

+ : in favour

- : against

0 : abstention