

[IE] Decision framework for addressing dissemination of terrorist content online

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On 13 June 2024, Coimisiún na Meán (“the Commission”), the Irish media regulatory authority, published a Decision Framework on hosting service providers’ (HSP) exposure to terrorist content. Designated as a competent authority under Regulation (EU) 2021/784 addressing the dissemination of terrorist content online (“TCOR”), the Commission is required to determine whether an HSP is exposed to terrorist content, and if this is the case, to notify the said HSP. The Framework therefore sets out (1) a step-by-step approach to deeming an HSP as exposed to terrorist content and (2) the key obligations of an HSP following such a decision.

The definition of terrorist content is included in the Annex to the Framework. Terrorist content therefore means one or more of the following types of material, namely material that:

- (a) incites the commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541, where such material, directly or indirectly, such as by the glorification of terrorist acts, advocates the Commission of terrorist offences, thereby causing a danger that one or more such offences may be committed;
- (b) solicits a person or a group of persons to commit or contribute to the Commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;
- (c) solicits a person or a group of persons to participate in the activities of a terrorist group, within the meaning of point (b) of Article 4 of Directive (EU) 2017/541;
- (d) provides instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques for the purpose of committing or contributing to the Commission of one of the terrorist offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;
- (e) constitutes a threat to commit one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541.

The Commission's decision-making process follows two stages. The first consists of a preliminary decision and engagement with the provider. The Commission shall start engaging on the issue when it becomes aware that an HSP in its jurisdiction has received two or more final removal orders in the previous 12 months. It is to issue a letter to the HSP, setting out reasons and inviting it to provide comments within three weeks. The second stage consists of taking a decision that the HSP is or is not exposed to terrorist content.

If a hosting service provider is found to be exposed to terrorist content, it will be obliged to undertake specific measures as provided under Article 5 of the TCOR. These can include:

- taking steps to protect its services from being used for the dissemination to the public of terrorist content
- reporting to Coimisiún na Meán on the specific measures it has taken – and will take – to comply with its obligations
- where applicable, including in its terms and conditions provisions to address the misuse of its services for the dissemination to the public of terrorist content

The HSP decides which specific measures it will take, as long as they satisfy certain conditions as prescribed in Article 5(3) TCOR. The requirement to take specific measures is without prejudice to Article 15(1) of the E-Commerce Directive (now provided for in Article 8 of the Digital Services Act). It shall not entail a general obligation either to monitor information transmitted by an HSP or to actively seek facts and circumstances indicating illegal activity. This requirement shall not include an obligation for an HSP to use automated tools.

In any event, the Commission has a review function and, if it considers that the specific measures taken do not meet the HSP's obligations under Articles 5(2) and (3), it must address a decision to the HSP requiring the necessary measures be taken to ensure that those obligations are complied with.

An HSP deemed exposed to terrorist content may, at any time, request the Commission to review and, where appropriate, amend or revoke a decision (Article 5(7) TCOR).

Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online

<https://eur-lex.europa.eu/eli/reg/2021/784/oj>

Coimisiún na Meán Decision Framework on Hosting Service Provider Exposure to Terrorist Content

https://www.cnam.ie/wp-content/uploads/2024/06/TCOR_Decision-Framework_ENG.pdf

