European Commission: Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online

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On 9 September, 2018, the European Commission published its proposal for a Regulation on preventing the dissemination of terrorist content online. The proposal addresses the need for a higher level of protection against the misuse of the Internet to prepare, inspire and facilitate terrorist activity; to groom and recruit supporters; and to instil fear in the general public. The Regulation aims to overcome the limitations encountered by the EU Internet Forum, which was launched in December 2015 under the European Agenda on Security to stimulate the voluntary cooperation of EU member states and hosting service providers in order to detect and respond to online terrorist content. Furthermore, in March 2018, the European Commission issued a Recommendation on measures to effectively tackle illegal content online (see IRIS 2018-4/9), which included a specific chapter outlining measures to stem the uploading and sharing of terrorist propaganda online.

As stated in its Explanatory Memorandum, the proposal seeks to establish a clear and harmonised legal framework to prevent the misuse of hosting services for the dissemination of terrorist content online in order to guarantee the smooth functioning of the Digital Single Market and ensure trust and security. The proposal aims to clarify the responsibility of hosting service providers in taking appropriate, reasonable and proportionate actions to ensure their services' safety and to be able to detect and remove, in an efficient and swift manner, terrorist content online, while still offering remedies and complaint mechanisms so that users may challenge the removal of their content. In this sense, it sets a minimum set of obligations for hosting service providers and member states, and offers safeguards, taking into account the need to respect fundamental rights such as freedom of expression and information, as well as judicial redress possibilities. The duties of transparency aim to increase trust among citizens and Internet users, as well as to improve the accountability and transparency of companies' actions. The member states' obligations, besides contributing to these objectives, benefit the relevant authorities when taking appropriate action against terrorist content online. Member states may impose penalties to non-compliant hosting service providers.

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The scope of the proposal affects hosting service providers offering their services within the European Union, irrespective of their place of establishment or their size. The proposal, drawing on the Directive to Combat Terrorism, defines terrorist content as information which is used to incite and glorify the commission of terrorist offences, encouraging the contribution to and providing instructions for committing terrorist offences, as well as promoting the activities of and participation in terrorist groups. The Regulation also gives the member states' competent authorities power to issue, through an administrative or judicial decision, removal orders requiring the hosting service provider to remove terrorist content or disable access to it, which the hosting service provider has an obligation to do within one hour. In addition, the Regulation establishes minimum requirements in order for the member states' competent authorities or EU bodies to send referrals to hosting service providers concerning terrorist content, so that the latter may assess the content identified in the referral against its own terms and conditions and decide whether to remove or disable access to it. Furthermore, the proposal requires that hosting service providers, where appropriate, take effective and proportionate proactive measures to remove terrorist material from their services, including by deploying automated detection tools, taking into account factors such as the risk and level of exposure to terrorist content and the fundamental rights of the users. All terrorist content removed or disabled on the basis of these provisions must be preserved for a period of six months, which acts both as a safeguard against incorrect removal of non-terrorist content and as insurance for evidence in the prevention, detection, investigation and prosecution of terrorist offences.

The proposal also provides for a number of transparency obligations aimed at ensuring accountability towards users, citizens and public authorities, as well as safeguards regarding the use and implementation of proactive measures, such as human oversight and verifications where appropriate. Besides that, the proposal allows users to challenge the removal of their content, establishing that hosting service providers shall examine complaints that they receive and reinstate the content without undue delay where the removal or disabling of access is found to be unjustified. Lastly, there are also provisions concerning cooperation between competent authorities, Union bodies and hosting service providers, and obligations for member states to ensure that their competent authorities have the necessary capability and resources to fulfil their obligations under the Regulation.

European Commission, Recommendation on measures to effectively tackle illegal content online, 1 March 2018, COM(2018) 640

https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-preventing-terrorist-content-online-regulation-640_en.pdf

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Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online, COM(2018) 640 final, 12 September 2018

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