



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Poslanecká sněmovna for its reasoned Opinion on the 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 {COM(2018) 640 final}.

Combating terrorism is a priority for the Commission. This proposal complements the work of the European Union Internet Forum to reduce accessibility to terrorist content online. Despite the progress achieved through voluntary cooperation, terrorist content online remains a clear and present danger to our societies. Terrorist propaganda is spread across multiple platforms, increasingly smaller ones, and disseminated at great speed: one third of all links to Da'esh propaganda, for example, are shared within the first hour of being released.

To address these challenges, the Commission proposal aims at preventing the misuse of hosting services for terrorist purposes, protecting the security of the citizens and ensuring the smooth functioning of the digital single market. The proposal establishes a definition of terrorist content for preventative purposes and sets obligations on hosting service providers to act upon removal orders and referrals and, where appropriate, to put in place proportionate proactive measures. The proposal also sets out strong and robust safeguards to ensure the protection of fundamental rights, in particular freedom of speech.

The issues and concerns expressed by the Poslanecká sněmovna were carefully considered already when preparing the proposal.

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The proposal fully respects the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union. Measures are targeted at preventing the dissemination of terrorist content, in accordance with the definition of terrorist offences under the Terrorism Directive¹ and without affecting freedom of expression beyond what is strictly necessary. The proposal introduces solid safeguards to protect fundamental rights and to avoid erroneous removals (including complaint mechanisms). All measures taken pursuant to the Regulation are subject to effective judicial remedy before the competent national courts. Ancillary requirements such as the obligation to preserve the content removed are, in line with the relevant case law, limited to what is necessary to ensure the effectiveness of redress mechanisms and investigations into terrorist offences.

The obligations imposed on hosting service providers are proportionate. First of all, it is useful to clarify that the definition of hosting service providers limits the scope of online service providers to those offering storage of data on the request of a content provider for further dissemination to a third party or user. Inter-personal or encrypted communications do not fall under the definition.

Removal orders will have to be fully assessed by the competent authority before issuing, and thus the hosting service provider only needs to technically remove the content without assessing it. This will allow the hosting service providers, in particular small and medium sized ones, to react within one hour. Furthermore, it is primarily for the hosting service providers to decide on the proactive measures to be put in place, taking into account the risk and level of exposure to terrorist content. Any decision by a competent authority to impose such specific measures needs to take into account the economic capacity of the hosting service provider. This will avoid that hosting service providers incur in disproportionate costs when putting in place proactive measures.

This proposal respects the principle of subsidiarity. Due to the intrinsic cross-border nature of the internet and the transnational dimension of the problem, an effective action against terrorist content online can be better achieved by the European Union rather than by Member States individually. Given the cross-border character of the internet and the speed at which terrorist content is spread, it is important that the competent authority in any given Member State can, in order to protect its citizens, issue removal orders to hosting service providers regardless of where the latter has chosen to establish itself.

The Poslanecká sněmovna's reasoned Opinion has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators, the European Parliament and the Council, and will inform these discussions.

Discussions between the Commission and the co-legislators concerning the proposal are now underway. The Council adopted a General Approach on 6 December 2018 and the European Parliament has started the preparation of its report. Given the importance and

¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; OJ L 88, 31.3.2017, p. 6–21.

urgency of adopting this proposal, the Commission remains hopeful that an agreement will be reached before the end of this Parliament's term.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Poslanecká sněmovna and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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First Vice-President*

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Member of the Commission*