



EUROPEAN COMMISSION

Brussels, 4.4.2019
C(2019)2524 final

Dear President,

The Commission would like to thank the Senát 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 and the proposal complements the work of the European Union Internet Forum to reduce access to terrorist content online. Despite the progress achieved through voluntary cooperation, terrorist content online remains a clear and present danger to our society. 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 our 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 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 Commission is pleased that the Senát shares the view that action is required to prevent the spread of terrorist content, while noting its concerns about a number of issues. The Commission is pleased to have this opportunity to provide clarifications that will hopefully allay the concerns of the Senát.

First, the Commission would like to clarify the jurisdiction of relevant national authorities for issuing removal orders to hosting service providers. 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

*Jaroslav KUBERA
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

protect its citizens, issue removal orders to hosting service providers regardless of where the latter has chosen to establish itself.

Second, the Commission would like to clarify that it is primarily for hosting service providers to determine proactive measures, taking into account the exposure to terrorist material, the specificities of their services as well as the financial resources, and this to make sure that hosting service providers are able to adopt the most appropriate measures. It is only after a dialogue between the hosting service provider and the competent authority on the necessary proactive measures, and where the authority considers that the proposed measures are insufficient, that specific proactive measures can be imposed on a hosting service provider. This decision should not in principle lead to a general monitoring obligation. Only for overriding security reasons and after having struck a fair balance between the public interest objectives and the fundamental rights involved, the Member State could if necessary derogate from Article 15 (1) of the e-Commerce Directive¹.

Third, as regards small and medium sized companies, the Commission would like to highlight that terrorists have misused not only large social media platforms, but increasingly smaller providers offering different types of hosting services globally. At the same time, the proposal takes into account the burden on hosting service providers to ensure that the obligations imposed on them are proportionate. Removal orders will have to be fully assessed by the competent authority, 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, while it is primarily for the hosting service providers to decide on their proactive measures, 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.

Finally, the Commission proposed a deadline for application of six months considering the need for implementing measures while also recognising the urgency for full application of the rules of the proposed Regulation.

The Sénat's 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 urgency of adopting this proposal, the Commission remains hopeful that an agreement

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

will be reached before the end of the Parliament's term. The Commission hopes that the clarifications provided in this reply address the issues raised by the Sénat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*