



## EUROPEAN COMMISSION

*Brussels, 27.2.2019  
C(2019) 1553 final*

*Dear Chair,*

*The Commission would like to thank the Assembleia da República for its 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}.*

*Preventing and countering terrorism both offline and online 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 Assembleia da República shares the view that action at Union level is required to prevent the spread of terrorist content in an effective manner, in particular given that terrorist content is most harmful in the first hours after it is disseminated. Given the high terrorist threat and the particularly damaging impact of terrorist propaganda, the proposal focuses on terrorist content and does not cover other types of illegal or harmful content online.*

*Ms Regina Bastos  
Chair of the European Affairs Committee  
Assembleia da República  
Palacio de S. Bento  
P-1249-068 LISBOA*

*cc. Mr Eduardo Ferro Rodrigues  
President of the  
Assembleia da República  
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*The Commission notes the Assembleia da República's concerns about the legal basis and is pleased to have this opportunity to provide clarifications that will allay hopefully these concerns.*

*The Commission considers that Article 114 of the Treaty on the Functioning of the European Union is the most appropriate legal basis to harmonise the conditions for hosting service providers to provide services across the Digital Single Market and to address existing and future differences between Member State provisions that might otherwise obstruct the functioning of the internal market. The proposed measures will increase legal certainty and foreseeability, increase trust of users in online services and ultimately provide an appropriate regulatory environment for the development of innovative online services while safeguarding fundamental public interests. As in other European Union acts based on Article 114 of the Treaty on the Functioning of the European Union (such as the Anti-Money Laundering Directive<sup>1</sup> or the Directive on security of network and information systems<sup>2</sup>), objectives such as the prevention of criminal activities or more broadly public security are compatible with the chosen legal basis.*

*In addition, the Commission would like to reassure the Assembleia da República that the proposed Regulation has been designed in a flexible way to ensure it remains effective in view of the development of new technologies in the Digital Single Market. In particular, the definition of hosting service providers covers all those providers of information society services that store information provided by and at the request of the content provider and making it available to third parties.*

*Similarly, the proposal leaves a certain degree of flexibility to Member States as to the choice of authorities competent to carry out the different tasks and obligations set out in the proposed Regulation and the establishment of rules on penalties. The proposal indicates that Member States can designate administrative, law enforcement or judicial authorities for issuing removal orders. At the same time, the proposal defines how these tasks should be carried out and establishes a number of specific criteria for Member States to take into account when determining the type and level of penalties in order to ensure its effectiveness and proportionality. Both issues will be considered by the Commission as part of its programme for monitoring the outputs, results and impacts of this Regulation and will be analysed in the subsequent reports on the implementation and on the evaluation of this Regulation.*

*The Opinion of the Assembleia da República will form part of the information used by the Commission when discussing the proposal with the co-legislators, the European*

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance); OJ L 141, 5.6.2015, p. 73–117.

<sup>2</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union; OJ L 194, 19.7.2016, p. 1–30.

*Parliament and the Council. 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 will be reached as soon as possible.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Assembleia da República and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Dimitris Avramopoulos  
Member of the Commission*