



EUROPEAN COMMISSION

*Brussels, 4.4.2019  
C(2019) 2523 final*

*Dear President,*

*The Commission would like to thank the Senat 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. 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 notes the concerns of the Senat about a number of issues and is pleased to have this opportunity to provide clarifications that will hopefully allay the Senat's concerns.*

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*First, as regards the principle of proportionality, the Commission considers that the proposal is limited to what is necessary to achieve the policy objectives, guaranteeing the effectiveness of measures, legal certainty and impact on fundamental rights, including in particular the freedom of expression but also the freedom to conduct a business. The Commission would also like to clarify that the definition of terrorist content provides for a uniform definition which is based on the definition of terrorist offences in the Directive on Combating Terrorism<sup>1</sup> thereby providing sufficient guidance as to its interpretation and application in practice. The deadline for transposition of the Directive on Combating Terrorism expired on 8 September 2018; the Commission looks forward to the notification by Romania of full transposition of the Directive. Regarding sanctions, the Commission would like to highlight that the proposal provides several more specific criteria for Member States to take into account when determining the type and level of penalties, thereby providing sufficient elements ensuring a sufficiently uniform interpretation and application in practice. Once adopted, the Commission will assess the fining rules to be adopted by Member States in light of the requirements set out in the proposal and explore whether and to what extent further exchanges among Member States and possibly additional guidance from the Commission is necessary to ensure a sufficiently coherent Union wide practice.*

*Secondly, the Commission assures the Senat that 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 line with the definition of terrorist offences under the Terrorism Directive and without affecting the freedom of expression more than 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 removed content 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.*

*As part of these safeguards, the content providers whose content is removed will be informed about the removal decision and they will have access to complaint procedures or judicial redress. Furthermore, hosting service providers are required to put in place safeguards where they use proactive measures such as human oversight and verifications in order to ensure that content is not removed erroneously. In addition to a definition of terrorist content in line with the Terrorism Directive, the proposal ensures adequate protection for content disseminated for journalistic purposes and provides guidance as to the factors to be taken into account, including the nature and wording of the statements and the context in which the statements were made, in order to avoid erroneous removal.*

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<sup>1</sup> 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

*Thirdly, the Commission would like to highlight that given the speed and scale at which terrorist content is disseminated, efforts by national authorities alone are not sufficient to effectively tackle the dissemination of terrorist content online. This is why the proposal stipulates obligations for hosting service providers to put in place, where appropriate, proportionate proactive measures, including by using automated means in certain cases, with a view to reducing the accessibility of terrorist content on their services.*

*The Senat's Opinion will form part of the information used by the Commission when discussing the proposal with the co-legislators, the European 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 before the end of the Parliament's term.*

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

*Yours faithfully*

*Frans Timmermans  
First Vice-President*

*Dimitris Avramopoulos  
Member of the Commission*