

Preventing the dissemination of terrorist content online

2018/0331(COD) - 19/03/2021 - Council position

The Council adopted its position at first reading with a view to the adoption of the Regulation of the European Parliament and of the Council on addressing the dissemination of terrorist content online.

A clear legal framework

The proposed regulation establishes a clear legal framework that sets out the responsibilities of Member States and hosting service providers with a view to addressing the misuse of hosting services for the dissemination of terrorist content online, in particular concerning:

- the responsibilities of hosting service providers to ensure the safety of their services and to swiftly and effectively combat, identify and remove or block access to terrorist content online;
- the measures to be put in place by Member States, in accordance with Union law and subject to appropriate safeguards to protect fundamental rights, in particular freedom of expression and information in an open and democratic society, to identify terrorist content and to ensure its prompt removal by hosting service providers.

Europol could support the implementation of the provisions of the Regulation.

Scope of application

The Regulation should apply to hosting service providers offering services in the Union, irrespective of their principal place of business, insofar as they disseminate information to the public.

Material disseminated for educational, journalistic, artistic or research purposes or for awareness-raising purposes to prevent or counter terrorism should not be considered terrorist content. This also includes content expressing polemic or controversial views in a public debate on sensitive political questions.

Removal orders

The competent authority in each Member State should have the power to issue a removal order requiring hosting service providers to remove or block access to terrorist content in all Member States. The Council position provides for the removal of terrorist content within a maximum of one hour after receipt of the removal order.

Except in duly justified emergency cases, a 12-hour advance notification including information on the applicable procedures and deadlines, should be given to those hosting service providers that have not previously received a removal order from that authority.

Thorough examination of removal orders

The Council position strengthens the role of the host Member State in relation to removal orders that have cross-border with implications by introducing a scrutiny procedure.

The competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established may, on its own initiative, scrutinise the removal order to determine whether it seriously or manifestly infringes this Regulation or the fundamental rights and freedoms guaranteed by the Charter of Fundamental Rights of the European Union.

Upon a reasoned request from a hosting service provider or content provider, the host Member State should be obliged to carry out a thorough examination to determine whether such a breach exists.

Specific measures

Hosting service providers should take specific, reasonable and proportionate measures to protect their services against the dissemination of terrorist content online, the choice of such measures being left to each hosting service provider.

The Council's position makes it clear that the hosting service provider could adopt different measures to combat the dissemination of terrorist content, including automated measures, which may be adapted according to the abilities of the hosting service provider and the nature of the services offered.

If the competent authority considers that the specific measures put in place are insufficient to address the risks, it may require the adoption of appropriate, effective and proportionate additional specific measures. This requirement should not, however, lead to a general obligation to monitor or engage in active fact-finding or to an obligation to use automated tools.

In order to ensure transparency, hosting service providers should publish annual transparency reports on the measures taken against the dissemination of terrorist content.

Content and data retention

Terrorist content which has been removed or access to which has been disabled as a result of removal orders or of specific measures must be preserved for six months from the removal or disabling, a period which can be prolonged if and for as long as necessary in relation to a review.

Remedies and complaints

In addition to the possibilities of judicial redress guaranteed by the right to an effective remedy, the Regulation should put in place a number of safeguards and mechanisms allowing content providers to lodge a complaint about the removal or blocking and requesting the restoration of content or access to it.

Penalties

Member States should lay down rules on penalties applicable to infringements by the hosting service providers of the Regulation. Penalties could take different forms, including formal warnings in the case of minor infringements or financial penalties in relation to more severe infringements. The Council position sets out which infringements are subject to penalties and which circumstances are relevant for assessing the type and level of such penalties. Hosting service providers could face sanctions of up to 4% of their global turnover if they systematically or persistently fail to abide by the one-hour rule to remove or disable access to terrorist content.