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AMENDMENTS: 10

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Preventing the dissemination of terrorist content online

Draft proposal for a regulation COM(2018)0640 – C8-0405/2018 – 2018/0331(COD)

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Amendments per language:

EN: 10

Amendment 1
Axel Voss

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) In order to provide clarity about the actions that both hosting service providers and competent authorities should take to prevent the dissemination of terrorist content online, this Regulation should establish a definition of terrorist content for preventative purposes drawing on the definition of terrorist offences under Directive (EU) 2017/541 of the European Parliament and of the Council⁹. Given the need to address the most harmful terrorist propaganda online, the definition should capture material **and information** that incites, encourages or advocates the commission or contribution to terrorist offences, **provides instructions for the commission of such offences** or promotes the participation in activities of a terrorist group. Such information includes in particular text, images, sound recordings and videos. When assessing whether content constitutes terrorist content within the meaning of this Regulation, competent authorities as well as hosting service providers should take into account factors such as the nature and wording of the statements, the context in which the statements were made and their potential to lead to harmful consequences, thereby affecting the security and safety of persons. The fact that the material was produced by, is attributable to or disseminated on behalf of an EU-listed terrorist organisation or person constitutes an important factor in the assessment. Content disseminated for educational, **journalistic** or research purposes should be adequately protected. Furthermore, the expression of radical, polemic or controversial views in the public debate on sensitive political

Amendment

(9) In order to provide clarity about the actions that both hosting service providers and competent authorities should take to prevent the dissemination of terrorist content online, this Regulation should establish a definition of terrorist content for preventative purposes drawing on the definition of terrorist offences under Directive (EU) 2017/541 of the European Parliament and of the Council. Given the need to address the most harmful terrorist propaganda online, the definition should capture material that incites, encourages or advocates the commission or contribution to terrorist offences, or promotes the participation in activities of a terrorist group. **The definition should also cover content that provides guidance for the making and the use of explosives, firearms, any other weapons, noxious or hazardous substances as well as Chemical, Biological, Radiological and Nuclear (CBRN) substances and any guidance on other methods and techniques, including the selection of targets, for the purpose of committing terrorist offences.** Such information **material** includes in particular text, images, sound recordings and videos. When assessing whether content constitutes terrorist content within the meaning of this Regulation, competent authorities as well as hosting service providers should take into account factors such as the nature and wording of the statements, the context in which the statements were made and their potential to lead to harmful consequences, thereby affecting the security and safety of persons. The fact that the material was produced by, is attributable to or

questions should not be considered terrorist content.

disseminated on behalf of an EU-listed terrorist organisation or person constitutes an important factor in the assessment. Content disseminated for educational, *counter-narrative* or research purposes should be adequately protected, *by striking a fair balance between fundamental rights and public security needs. Especially in cases where the content provider holds an editorial responsibility, any decision as to the removal of the disseminated material should take into account the journalistic standards established by press or media regulation consistent with the law of the Union and the Charter of Fundamental Rights*. Furthermore, the expression of radical, polemic or controversial views in the public debate on sensitive political questions should not be considered terrorist content.

⁹ 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).

Or. en

Amendment 2

Axel Voss

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) Penalties are necessary to ensure the effective implementation by hosting service providers of the obligations pursuant to this Regulation. Member States should adopt rules on penalties, including,

Amendment

(38) Penalties are necessary to ensure the effective implementation by hosting service providers of the obligations pursuant to this Regulation. Member States should adopt rules on penalties, including,

where appropriate, fining guidelines. Particularly severe penalties shall be ascertained in the event that the hosting service provider systematically fails to remove terrorist content or disable access to it within one hour from receipt of a removal order. Non-compliance in individual cases could be sanctioned while respecting the principles of ne bis in idem and of proportionality and ensuring that such sanctions take account of systematic failure. In order to ensure legal certainty, the regulation should set out to what extent the relevant obligations can be subject to penalties. Penalties for non-compliance with Article 6 should only be adopted in relation to obligations arising from a request to report pursuant to Article 6(2) or a decision imposing additional proactive measures pursuant to Article 6(4). When determining whether or not financial penalties should be imposed, due account should be taken of the financial resources of the provider. Member States shall ensure that penalties do not encourage the removal of content which is not terrorist content.

where appropriate, fining guidelines. Particularly severe penalties shall be ascertained in the event that the hosting service provider systematically fails to remove terrorist content or disable access to it within one hour from receipt of a removal order. Non-compliance in individual cases could be sanctioned while respecting the principles of ne bis in idem and of proportionality and ensuring that such sanctions take account of systematic failure. In order to ensure legal certainty, the regulation should set out to what extent the relevant obligations can be subject to penalties. Penalties for non-compliance with Article 6 should only be adopted in relation to obligations arising from a request to report pursuant to Article 6(2) or a decision imposing additional proactive measures pursuant to Article 6(4). When determining whether or not financial penalties should be imposed, due account should be taken of the financial resources of the provider. ***Moreover, the competent authority should take into account whether the hosting service provider is a start-up or a small and medium sized business and should determine on a case-by-case basis if it had the ability to adequately comply with the issued order. In justified cases, the competent authority may decide to suspend or mitigate the penalty against the start-up or small and medium sized company.*** Member States shall ensure that penalties do not encourage the removal of content which is not terrorist content.

Or. en

Amendment 3
Axel Voss

Proposal for a regulation
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4 a

Consultation procedure for removal orders

- 1. The issuing authority shall submit a copy of the removal order to the competent authority referred to in Article 17(1)(a) of the Member State in which the main establishment of the hosting service provider is located at the same time it is transmitted to the hosting service provider in accordance with Article 4(5).**
- 2. In cases where the competent authority of the Member State in which the main establishment of the hosting service provider is located has reasonable grounds to believe that the removal order may impact fundamental interests of that Member State, it shall inform the issuing competent authority.**
- 3. The issuing authority shall take these circumstances into account and may, where necessary, withdraw or adapt the removal order.**

Or. en

Justification

If the actions by the issuing authority are directed against a hosting service in another Member State, the respective national authority should at least be informed about the proceedings on their territory. The possibility of 'foreign' actions without any knowledge of the affected sovereign state would create severe constitutional problems in many Member States. This is aggravated by the fact that there are strong differences across the European Union when it comes to legal traditions and to the interpretation of certain terms like 'terrorism'.

Amendment 4
Axel Voss

Proposal for a regulation
Article 13 – paragraph 3 – introductory part

Text proposed by the Commission

3. **Member States and** hosting service **providers may choose to** make use of dedicated tools, including, **where appropriate**, those established by **relevant** Union bodies such as Europol, to facilitate in particular:

Amendment

3. **To avoid duplication and to minimize the expenses for the affected** hosting service **provider, Member States shall** make use of dedicated tools, including those established by **competent** Union bodies such as Europol, to facilitate in particular:

Or. en

Amendment 5
Axel Voss

Proposal for a regulation
Article 13 – paragraph 4

Text proposed by the Commission

4. Where hosting service providers become aware of any evidence of terrorist offences, they shall promptly inform authorities competent for the investigation and prosecution in criminal offences in the concerned Member State **or** the point of contact in the Member State pursuant to Article **14(2)**, where they have their main establishment or a legal representative. **Hosting service providers may, in case of doubt**, transmit this information to Europol for appropriate follow up.

Amendment

4. Where hosting service providers become aware of any evidence of terrorist offences they shall promptly inform authorities competent for the investigation and prosecution in criminal offences in the concerned Member State. **Where it is impossible to identify the Member State concerned, the hosting service providers shall notify** the point of contact in the Member State pursuant to Article **14(3)**, where they have their main establishment or a legal representative, **and also** transmit this information to Europol for appropriate follow up.

Or. en

Amendment 6
Axel Voss

Proposal for a regulation
Article 15 – paragraph 1

Text proposed by the Commission

1. The Member State *in which the main establishment* of the *hosting service provider is located* shall have the jurisdiction for the purposes of Articles 6, 18, and 21. A hosting service provider which does not have its main establishment within one of the Member States shall be deemed to be under the jurisdiction of the Member State where the legal representative referred to in Article 16 resides or is established.

Amendment

1. The Member State of the *issuing competent authority* shall have the jurisdiction for the purposes of Articles 6, 18, and 21. A hosting service provider which does not have its main establishment within one of the Member States shall be deemed to be under the jurisdiction of the Member State where the legal representative referred to in Article 16 resides or is established.

Or. en

Amendment 7
Axel Voss

Proposal for a regulation
Article 15 – paragraph 2

Text proposed by the Commission

2. Where a hosting service provider fails to designate a legal representative, all Member States shall have jurisdiction.

Amendment

2. Where a hosting service provider fails to designate a legal representative, all Member States shall have jurisdiction. *Where a Member State decides to exercise this jurisdiction, it shall inform all other Member States.*

Or. en

Amendment 8
Axel Voss

Proposal for a regulation
Article 18 – paragraph 3 – point d

Text proposed by the Commission

(d) the financial strength of the legal person held liable;

Amendment

(d) the **capacities in terms of** financial strength, **human resources and expertise** of the legal person held liable;

Or. en

Justification

The 1h rule is one of the key elements of this regulation. Although it will help to remove terrorist online content more efficient, there will be also cases in which a hosting service provider is simply not able to react in time. This might happen especially to small hosting service provider, which do not have the means, organisation or experience to deal with that kind of situation. To prevent penalties that do not consider the specific circumstances of the case, more criteria - focussing on the ability to comply - should be added to paragraph 3.

Amendment 9
Axel Voss

Proposal for a regulation
Article 18 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) **the technical and organisational capabilities of the hosting service provider to react in time.**

Or. en

Justification

The 1h rule is one of the key elements of this regulation. Although it will help to remove terrorist online content more efficient, there will be also cases in which a hosting service provider is simply not able to react in time. This might happen especially to small hosting service provider, which do not have the means, organisation or experience to deal with that kind of situation. To prevent penalties that do not consider the specific circumstances of the case, more criteria - focussing on the ability to comply - should be added to paragraph 3.

Amendment 10
Axel Voss

Proposal for a regulation
Article 18 – paragraph 3 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

***In justified cases, the competent authority
may suspend or mitigate the penalty.***

Or. en

Justification

In line with proposed AMs on (d) and (ea) as well as Recital 38.