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Dear President Michel,

We are contacting you to draw your attention to the ongoing inter-institutional negotiations on the Regulation on preventing the dissemination of terrorist content online (2018/0331 (COD), ‘TCO Regulation’).

The decapitation of French teacher Samuel Paty in Conflans-Sainte-Honorine outside Paris by a young Islamist two weeks ago, the recent Islamist-inspired killing of three persons in Nice as well as yesterday’s terrible attack in Vienna, are the latest incidents in a series of horrendous terrorist attacks on EU soil over the past few years which has demonstrated the urgent need for action against terrorist propaganda on the internet. Although the big online platforms have stepped up their efforts to prevent the misuse of their services by terrorists, voluntary measures alone are not sufficient to tackle the problem.

The Commission proposal of September 2018 entails a two-fold approach to address the dissemination of terrorist content online:

- 1) it sets out specific rules and obligations for hosting service providers to detect, identify and remove terrorist content on their services;
- 2) it empowers competent authorities of the Member States to send removal orders to hosting service providers offering services in the Union, obliging them to remove terrorist content within one hour.

More than two years after the presentation of the Commission proposal for a TCO Regulation and one year after the launch of inter-institutional negotiations under the Finnish Presidency of the Council it is crucial that the co-legislators finally adopt this important piece of legislation. Therefore, I am glad to see the commitment of the German Council Presidency to reach a political agreement before the end of the year.

The main issue of contention is article 4 on removal orders. While the Council supports the direct effect of cross-border removal orders, the Parliament’s first reading position maintains the legal status quo whereby national competent authorities may order providers established in another Member State (‘host Member State’) to disable access to terrorist content from their territory, but they have to request the host Member State to require the provider to remove the terrorist content or to disable access to it from the Union territory.

In September, the German Presidency presented a compromise proposal on article 4 which aimed to strike a balance between the positions of the co-legislators. It foresees a stronger involvement of the host Member State by allowing it to request the issuing authority to review the removal order based on fundamental rights concerns or fundamental interests. Moreover, it specifies for cases of non-compliance on the side of the hosting service provider that the enforcement of the removal order rests with the host Member State.

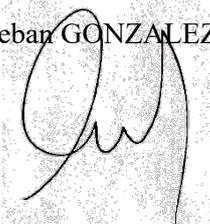
While the EPP group considered this proposal a viable solution, the majority of groups refused to accept the compromise. Instead, they continue to insist on a confirmation of cross-border removal orders by the host Member State, thus practically removing their cross-border effect. In preparation of the political trilogue on October 29th, shadow rapporteurs discussed two options based on proposals by the Renew shadow rapporteur Maite Pagazaurtundúa. Both options foresee that access to the content has to be disabled within one hour of receipt. According to the first option (supported by S&D, ‘as a minimum’ by ECR, Renew and ‘as a maximum’ by the Greens), the content will only be removed following an active confirmation by the host Member State. The second option (supported by ECR, EPP and Renew) foresees tacit confirmation but allows the host Member State to refuse the removal order based on fundamental rights concerns of fundamental interests. It was finally agreed to share the compromise proposal including active confirmation with the German Presidency.

During yesterday’s political trilogue, the German Presidency made it very clear that the Council will not accept a package with cross-border removal orders that need to be actively validated by the host Member State before taking effect. A procedure with tacit confirmation, i.e. the second option discussed among shadows before the trilogue, could however be acceptable. Nevertheless, the shadow rapporteurs of S&D, ID, Greens and GUE were not willing to reach a political agreement but rather demanded that the Presidency would have to introduce additional safeguards, namely suspensive effect until the deadline for refusal has lapsed, and concede to Parliament on all other outstanding issues. The three institutions finally agreed to have another trilogue in the near future.

As we cannot afford further delays on the TCO Regulation I urge you to support the efforts of my Group to break the political stalemate on removal orders and thus on the TCO Regulation altogether. To this end, it is important to convince the other political groups to accept a text that is balanced and workable in practice. This requires, at the very least, the tacit confirmation of removal orders by the host Member State without suspensive effect, since terrorist content online spreads very quickly. Moreover, the host Member State should only be able to refuse a removal order if it manifestly or seriously breaches fundamental rights or contains factual errors.

Sincerely,

Esteban GONZALEZ PONS, Vice-Chair of the EPP Group in the European Parliament



Roberta METSOLA, Coordinator of the EPP Group in the LIBE committee

