

SUMMARY OF THE OVERALL COMPROMISE PROPOSAL

- ARTICLE 1: In relation to **fundamental rights**, the compromise text in Article 1 together with the corresponding recitals address the concerns to *strengthen fundamental right safeguards* in a balanced way by providing for a case-by-case assessment of the content. The proposed draft regulation *protects content disseminated for educational, journalistic, artistic or research purposes or for awareness-raising purposes against terrorist activity*.
- ARTICLE 2: In terms of a **clear scope**, the *definition of "terrorist content"* in Article 2(5) is strictly *aligned with the existing Directive on combating terrorism*. Additionally, the concept of “dissemination to the public” is further clarified in the corresponding recitals.
- ARTICLE 4 and ARTICLE 4a: **Removal orders with cross-border effects** are an essential part of this new regulation. The aim of the draft regulation is a swift removal of terrorist content and to establish one instrument for all Member States, which enables the competent authority to issue a removal order directly to a hosting service provider, regardless of its establishment within the Union. The present proposal addresses the main concerns from the EP while also taking into account the interests of the Member States and builds upon a Commission compromise proposal. The proposal includes *a structured and transparent procedure for cross-border removal orders*, which *strengthens the role of the Member State* where the hosting service provider is established and *strengthens fundamental rights safeguard* throughout the new mechanism.
 - **A procedure with a strong role of the host Member State:** The host Member State is entitled to scrutinise cross-border removal orders; thereby, the host Member State does not only give an opinion but takes a binding decision. However, the responsibility for the removal order remains with the issuing Member State.
 - **A procedure with clear consequences:** Where the host Member State adopts a decision which finds that the removal order contains manifest errors or involves serious and manifest breaches of fundamental rights and freedoms guaranteed by the Charter, the removal order must be withdrawn by the issuing Member State.
 - **A procedure with strong safeguards against fundamental rights violations:** Based on the possibility to scrutinise removal orders, the host Member State shall request

the withdrawal of the removal order in case of fundamental rights violations or manifest errors. This check of serious and manifest violations will contribute to a common understanding of terrorist content and increased trust between the Member States.

- **A procedure to restore content after withdrawal of removal order:** The HSP must reinstate the content within 12 hours if the removal order is withdrawn, without prejudice to the HSP's right to enforce its own terms of service in accordance with Union and national law.
- **A procedure with redress possibilities for the HSP in the host Member State:** The HSP has the possibility to request the host Member State to carry out a review of possible interference with fundamental rights as well as possibility to challenge any rejection of its claims before the courts of the host Member State.
- **A procedure with effective remedies for the HSP and Content Provider:** The HSP has the right to contest the removal order as such before the courts of the issuing Member State. The right of the content provider to challenge the removal order also includes the right to contest the decision of the host Member State before the courts of the host Member States.
- **ARTICLE 5:** In the spirit of compromise, the Presidency proposes to delete Article 5 on **referrals**. Since referrals have proven an effective and swift means they should ***remain as a voluntary measure***. Therefore the Presidency has drafted a new recital (30a) based on your suggested wording to keep the notion of "referrals" in the text.
- **ARTICLE 3/6/9 (new Article X):** Regarding **specific measures**, the new Article X provides for the obligation of hosting service providers exposed to terrorist content to apply measures to effectively address the misuse of their service for the dissemination of terrorist content online. The draft Regulation makes it clear that the ***decision as to the choice of measures remains with the hosting service provider*** and that the hosting service provider can use different measures to meet the objective of this Regulation. Taking into account the strong concerns of the European Parliament regarding upload-filter, the text clearly states that there is ***no general obligation to use automated tools***.

- ARTICLE 9a: In relation to the clarification of effective remedies, the new Article 9a is introduced which addresses **effective remedies** for hosting service provider and content provider. This article clarifies that decisions of the competent authorities pursuant to the Regulation can be challenged before the courts of the Member State, which issued the decision. The removal order as such can be challenged before the courts of the issuing Member State. Additionally, through the possibility for the host Member State to scrutinise the removal order on own motion or by request of the HSP, the HSPs has redress possibilities in the host Member State to challenge the adopted decision.
- ARTICLE 12 and ARTICLE 17: Regarding the competent authorities, the view of the Council and the European Parliament on this issue were far apart. The Presidency proposal introduces changes to Article 12, which integrate concerns raised by the European Parliament but also takes into account Member State's strong position on this issue. The new paragraph (2) shall emphasise that the *competent authorities of the Member States shall not take any instructions in exercising the tasks assigned by this regulation whereas Article 17 leaves to choice of the competent authority to the Member States.*
- ARTICLE 18: When it comes to **penalties**, the draft Regulation is very clear that *not each and every infringement should necessarily be sanctioned*. The proposal contains several changes in order to underline that Member States can choose from a wide range of different penalties, to **strengthen the proportionality and to alleviate the burden and penalties for SMEs and Microenterprises**. Paragraph 3 clarifies that **minor breaches of first time offenders may not lead to a sanction at all and thus alleviates the burden for SME's**. Additionally, the proposed changes to recital (38) clarify that penalties can take different forms, including formal warnings for instance in cases of minor breaches or financial penalties in relation to more severe and systematic breaches.