

Position of the Association for Internet Progress in the Czech Republic (SPIR) and the Independent ICT Industry Committee (VNICTP) on the Proposal for a regulation on preventing the dissemination of terrorist content online

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SPIR and the VNICTP agree that illegal content supporting terrorism should not be disseminated on the internet and should be removed. However, the tools for achieving this objective must be chosen sensitively and bearing in mind the serious negative impacts which inappropriately selected tools could have on freedom of expression and the business environment in the digital sector, especially **all hosting services and media houses which allow third parties to record content.**

Therefore, SPIR and the VNICTP support the intention of the legislative proposal, but the individual proposed measures must be amended in line with the following items:

Article 4

The obligation to provide a service (or a specific representative) that will **respond to removal orders from the designated state authority 24/7 and remove terrorist content within 1 hour from receipt of the removal order** is unproportional, in view of smaller companies for which this means unproportional costs and in view of further measures contained in the proposal, specifically in **Article 6 – the obligation to introduce so-called proactive measures**, including automated tools and human verification.

Legal uncertainty will also be created by the fact that **an order may be delivered by any competent authority from any member state.** The order should always be delivered by the competent national authority.

Article 5

The proposal transfers liability for identification and harmfulness verification of content from the state to private entities (service providers). The removal order should be issued by the competent authority and should clearly declare that the content is harmful, and the service provider should then fulfil this order. The state has the necessary capacities and expertise to analyse potential harmfulness of the content. For private entities, such a new obligation would involve substantial personnel costs and considerable uncertainty regarding the accuracy of the adopted decisions. Unlike the service providers, the state also has enforcement powers in the event that the content was not removed, or remedies in the event that the removed content is legal.

Article 6

Measures under Article 6.2(a) will be very costly (particularly the prevention of the re-upload of content) and if this obligation is not observed the company risks penalties.

The proposal does not consider situations such as recording of content in a different language than the language of the respective service. In such a case the content identification will mean considerable personnel and technical costs.

It is not clear from Article 6.4 if the decision can already be enforced upon delivery or only by legal authority. The level of **companies' proactive measures should not reflect only their economic performance, but rather the extent to which the service in question is being operated.** If large companies will have to introduce costly measures even due to a small and, in terms of the overall activity, insignificant service, **it might be easier for them to cancel such a service. The proposed measure may, therefore, bring a major restriction to competition.**

Article 7

We consider the 6-month time limit for preserving removed content for judicial and administrative purposes or for the needs of investigation to be reasonable (although one of the admissible purposes should also be the protection of the provider's rights). But the service provider should not be forced to preserve this content for longer. If it is necessary, **the competent authority that demands the preservation of the content should ensure it**, which is a totally legitimate requirement.

Article 8

The publication of reports according to Article 8 will not have any real positive impact, instead there is the risk that **these reports will allow terrorists to better orientate themselves in the internet environment** and determine which provider is consistently devoted to the removal of the respective content and which services to avoid (and vice versa). This would create an unjustified and disproportionate administrative burden.

Article 9 and Article 11.2

These articles also create new burdens for providers who will have **to hire criminal law experts** to ensure that their decisions are "accurate and well-founded" and avoid a possible fine of which there is a risk in the opposite case. **The state therefore unjustifiably transfers its obligations to private entities.**

Article 10

This article does not correspond to reality at all. In addition, it is not clear what the minimum time would be for which the provider would be obliged to preserve such content on the interface of a service. **The obligation "to reinstate"** the content that has once been removed indirectly means imposing the obligation to operate the service. Common practice (at least for free services) is such that providers decide at their discretion what to remove. If they have doubt about the nature of the content, they do not publish it again. Likewise, **providers are not obliged to publish any content if they decide to remove it for other reasons.** If this obligation is to be preserved in the proposal, it is necessary to address the issue of compensation to providers for such a newly imposed obligation.

Article 15

The provisions of Article 15.3 do not again correspond to reality. It is not clear how it will work in practice. It is difficult to imagine for example a situation when **a different member state orders a Czech service provider to remove content and subsequently enforces remedies in this different member state under its national law.** From the point of view of the Czech Republic, it is not really desirable this way to lose control over the activities of its own residents within the borders of the Czech Republic.

CONCLUSION

SPiR and the VNICTP are of the opinion that the proposed regulation does not reflect the reality of the Czech (and equally European) market and introduces a series of measures that with respect to the real risk level are disproportionate and create unjustified and unproportional administrative and financial burdens for private sector, moreover in some case under the threat of very high penalties. The proposal transfers many obligations from the state to private entities that do not have – and cannot have – necessary expertise and tools.

SPiR and the VNICTP are ready to collaborate with national authorities and European institutions with the aim of finding a more appropriate solution that will better respect and reflect risks and needs of the Czech and European internet environment.