

December 2019

Dear Minister,

I am writing to you on behalf of Access Now, a non-profit organisation that defends and extends digital rights of users at risk around the world, and European Digital Rights (EDRI), a network of 42 NGOs that promote and defend human rights in the online environment.

We urge you to develop and support a position at the Council on the proposed Terrorist Content Regulation that respects constitutional traditions of the Member States and maintains the exception for protected forms of expression. We particularly highlight the need for judicial redress for both hosting service providers and content providers, and to prevent situations where a competent authority of one Member State is bound by removal orders issued by another Member States

The LIBE Committee [delivered](#) a balanced and well-rounded report with important improvements made to the original Commission's text based on a great collaborative work with the Committees on Internal Market and Consumer Protection and Culture and Education.

We seize the opportunity before the holiday season to recall the crucial elements of the European Parliament's position that will keep the Regulation in line with the Charter of Fundamental Rights and the EU acquis, notably adequate cross-border cooperation mechanism that respects constitutional traditions of the Member States and the exception for protected forms of expression.

First, the EU Charter as well as European Convention on Human Rights (ECHR) provide every individual with a right to an effective remedy before the competent national tribunal against any measure that potentially violates their fundamental rights. In cases of cross-border removal orders, the current proposal creates a system in which a competent authority of any Member States can issue a removal order to any hosting service provider established or represented in the EU. However, **in the current Council proposal, removal orders can only be challenged** in that Member State whose authority issued the order. **The Regulation should allow removal orders to be contested in the Member State in which the hosting service provider has its legal establishment to ensure meaningful access to an effective remedy.**

Second, the proposed system limits the possibilities and effectiveness of judicial redress for both hosting service providers and content providers. **The proposal should include a cross border mechanism that enables online users as well as hosting service providers to challenge the removal orders before a competent authority of the Member State in which the hosting service provider is established or represented.** Such a mechanism will help to prevent situations where a competent authority of one Member State is bound by removal

orders issued by another Member States, which is in contrary to the constitutional traditions of several Member States of the Union.

Finally, it is crucial that the **exception for certain protected forms of expression, such as education, journalistic and research materials is maintained** in the proposal. The jurisprudence of the European Court of Human Rights (ECtHR) specifically requires a particular caution to such protected forms of speech and expression. Even the content that initially appears as unlawful can be used in certain cases for legitimate purposes, especially when informing the public about matters of public interest, promoting education, scientific and academic research as well as artistic expression.

We remain at your disposal for any support you may need from us in the future.

Access Now
EDRi