



Dear LIBE Members,

La Quadrature du Net has been analysing the directive on combatting terrorism [1] and following the negotiations in LIBE committee. We have seen the last version of compromise amendments and are still worried on few amendments:

#### **COMP4**

The recital 11 take into account the notion of intention and only a small change would enable to make it acceptable:

"clear intention or knowledge"=> should become "clear intention ***\*and\**** knowledge"

Such a change would ensure to keep the right balance between freedoms and tools to fight against terrorism threats.

#### **COMP6**

The compromise amendment 6 remains very dangerous for freedom of expression and would enable Member States to implement censorship.

It is of utmost importance to ensure an oversight from a judicial authority - and not only an administrative authority.

A comparative study recently published by the Council of Europe [2] on blocking, filtering and removal of illegal content on the Internet should be mentioned here as the section on France states that: *"the compatibility of administrative blocking of websites inciting to terrorist offences or glorifying terrorism, with the emerging jurisprudence of the European Court of Human Rights does not exist yet. Indeed, "if the possibility of restricting freedom of expression without the prior intervention of a judge seems certain to the Constitutional Court for websites that "disseminate child- pornography content", it remains that this blockage on administrative is based on a objective observation: the presence of images of pornography involving children. The qualification of the notions of inciting to terrorism however, can be much more difficult in that it is a much more subjective topic."*

The conclusion of the Council of Europe is that it's even more important to get very strong safeguards for terrorism than it was for child pornography - and especially a judicial oversight in addition to judicial review - to frame such a provision, which is not the case in the last version of the COMP6.

Thus, we suggest the following changes:

(7a) An effective mean of combatting terrorism on the Internet is to remove illegal terrorist content at source. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States, such as detecting and flagging illegal content. Member States should take all necessary measures to remove or to block access to webpages publicly inciting to commit terrorist offences. Where such measures are taken, ***\*they should be limited to what is necessary and proportionate,\**** they must be set by transparent procedures and provide adequate safeguards ***\*and executed on the basis of a prior judicial authorisation\****. ~~under the control of independent authorities. Member-~~

~~States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory.~~ However when removal of illegal content at its source is not possible, Member States may put in place measures to block access from the Union's territory to Internet pages identified as containing or disseminating terrorist content. Member States should consider legal action against internet and social media companies and service providers, which deliberately refuse to comply with a **\*judicial\*** ~~legal~~ order to delete from their internet platforms illegal content extolling terrorism after being duly notified about such specific content. Such refusal should be punishable with effective, proportionate and dissuasive sanctions. The right to judicial review should be guaranteed to the internet and social media companies and service providers.

### **COMP9**

This compromise would be now acceptable if art. 21c could be modified as follow:

"In accordance with national law and subject to appropriate legal safeguards,"=> should become "In accordance with national law and subject to appropriate **\*judicial\*** safeguards,"

### **COMP10**

This compromise amendment should be removed as not relevant in this directive. The gathering, sharing and admissibility of electronic evidence shall not lead to undermining the right to privacy. Here is our analysis on this issue:

[https://wiki.laquadrature.net/Directive\\_Terrorisme/en#Search\\_of\\_electronic\\_evidences](https://wiki.laquadrature.net/Directive_Terrorisme/en#Search_of_electronic_evidences)

The European Parliament has a strong responsibility for safeguarding rights and freedoms in the European Union and this directive shall not be a way to endorse the infringements already taking place in several Member States. It is thus essential to push for strong safeguards.

Furthermore, the whole Parliament in plenary session should have the opportunity to debate on such a text before starting negotiations with the EU Council as the only way to ensure a real and democratic mandate for a dialogue.

We are available to discuss and share our views with you at any time.

[1] [https://wiki.laquadrature.net/Directive\\_Terrorisme/en](https://wiki.laquadrature.net/Directive_Terrorisme/en)

[2] <https://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet>

Best regards,

La Quadrature du Net  
<https://laquadrature.net/>