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General Secretariat

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online

Delegations will find in the Annex a courtesy translation of the comments from France to the merged "Article X".

## NOTE WITH COMMENTS FROM THE FRENCH AUTHORITIES

**Subject:**      **Note with comments – Comments by France following the meeting of JHA TCO counsellors on 7 October**

### **Presidency proposal for an Article X merging Articles 3, 6 and 9 on preventive measures:**

We support the Presidency as regards giving HSPs the option of putting in place automated tools in order to prevent the publication or reappearance of terrorist content. Such tools have proven to be effective and are an essential element in the fight against the dissemination of terrorist content online.

Regarding **paragraph 6**, the Presidency suggests including neither the sentence from the Council's general approach **stipulating that the competent authority can impose a measure nor the sentence from the EP text stipulating that the decision as to the choice of measures lies with the operator**.

The compromise text provides that the competent authority can issue a decision requiring the operator to take the necessary additional measures, but without specifying what they should be.

We do **not** find this solution **satisfactory**. Even though the competent authority can issue a binding decision if an operator fails to meet the relevant requirements, in practice this system allows operators to choose the measure that they deem appropriate. Yet that new additional measure could also prove inadequate, meaning the competent authority would have to issue another decision. Furthermore, in terms of legal certainty, being under an obligation to achieve a result when the authority's decision does not indicate how to achieve that result does not seem an easy position for the operator to be in.

This is why, **we reiterate our support for the system provided for in the Council text** (a dialogue phase between the operator and the competent national authority to agree on the measures to be taken and, if they disagree, the national authority has the final say).

**Exception for content disseminated for purposes related to journalism, education, research, etc.:**

The version proposed by the Parliament (Amendment 45) does not seem acceptable to us in that it could be seen as creating a systematic 'safe harbour' for journalistic content, including that of a purely polemical nature.

In contrast, the Commission's compromise proposal does not open up excessive scope for exceptions, rather it merely calls for the fundamental rights protected by EU law to be taken into account when assessing the content. Consequently, that proposal seems acceptable to us, including if it were to be set out in an article rather than a recital, as proposed by the Commission.

**Article 4 on removal orders:**

We would reiterate that we are flexible as regards the introduction of a 12-hour mediation period prior to a removal order being issued. Although the wording may seem unambiguous, we would nevertheless like it to be specified that this 12-hour period only applies where there has been no previous contact with the HSP. The following amendment could usefully be made to Article 4(1):

*'Lorsqu'elle envisage d'émettre pour la première fois une injonction de suppression à l'attention d'un fournisseur de services d'hébergement déterminé, l'autorité compétente concernée lui fournit des informations sur les procédures et délais applicables au moins douze heures avant l'émission de l'injonction de suppression.'*

*'When it considers issuing a removal order to a given/specific hosting service provider for the first time, the relevant competent authority shall provide this hosting service provider with information on procedures and applicable deadlines at least 12 hours before issuing the removal order.'*