

Report

Monitoring report under Article 21(1) Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online and section 3 of the Act addressing terrorist content online



Bundesnetzagentur

**Monitoring report under Article 21(1)
Regulation (EU) 2021/784 on
addressing the dissemination of
terrorist content online and section 3
of the Act addressing terrorist content
online**

Reporting year 2022

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1 Foreword

Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online ("Terrorist Content Online Regulation") entered into force on 7 June 2021. The Regulation aims to address the misuse of hosting services for terrorist purposes and thus contribute to public safety in the European Union.

Hosting service providers are companies that store and publish online content for others, so they play a key role on the internet. They connect companies and people, enable public debates and the dissemination and receipt of information, opinions and ideas. However, third parties sometimes use hosting service providers to conduct illegal activities on the internet. Particularly worrying is the misuse of these services by terrorist groups and their supporters with the objective of disseminating terrorist content online and thus spreading their message, radicalising people and recruiting supporters, as well as enabling and directing terrorist activities.

For several years, voluntary cooperation efforts have been made at Union level between the member states and the hosting service providers to address online terrorist content. The Terrorist Content Online Regulation gives these efforts a clear regulatory framework that aims to address the misuse of hosting services for terrorist purposes and further curb access to online terrorist content.

The Terrorist Content Online Regulation imposes new obligations on hosting service providers and gives the competent authorities additional tools. The main tool is a removal order, which can be issued by a competent authority to a hosting service provider. Hosting service providers must remove terrorist content within one hour of receiving a removal order. The content must be removed promptly because terrorist content is disseminated very rapidly through online services.

Hosting service providers are subject to further obligations if their web space is used repeatedly to distribute terrorist content. In such cases the hosting service providers must take "specific measures" (content moderation) so that they are better protected from terrorist content in the future. Tools that can be implemented include computer programs that identify terrorist content or contact options for users to report such content.

The "Act addressing terrorist content online"(TerrOIBG) was issued to fully comply with the European Regulation obligations throughout all of Germany. The Act assigned tasks to the Bundeskriminalamt and the Bundesnetzagentur for enforcing the Terrorist Content Online Regulation.

The Bundeskriminalamt is responsible for issuing removal orders and assessing cross-border removal orders. Removal orders can also be addressed directly to hosting service providers in other EU countries.

The Bundesnetzagentur's responsibilities include administrative fine proceedings, which can be initiated whenever companies do not comply with the Bundeskriminalamt's removal orders. Furthermore, the Bundesnetzagentur monitors the implementation of "specific measures" by the providers of platforms where there is an increased amount of online terrorist content. Here, too, penalties and administrative fines can be imposed. The Bundesnetzagentur's responsibility is limited to hosting service providers based in Germany.

Germany is one of the first EU member states to designate competent authorities to implement the Terrorist Content Online Regulation. There are 22 EU member states in which a competent authority has not yet been

tasked with implementing the Regulation.¹ Accordingly, no removal orders have been issued from other EU countries to hosting service providers based in Germany, and the PERCI IT system, which is planned to be used for transmitting removal orders between the national authorities, Europol and the hosting service providers, has not yet been brought into service.

¹ See the related European Commission press release at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_132 and https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142.

2 Monitoring Report

Pursuant to Article 21(1) of the Terrorist Content Online Regulation and section 3 of the Act addressing terrorist content online, member states collect information from their competent authorities and the hosting service providers under their jurisdiction about the actions they took in accordance with this Regulation in the previous calendar year and send the information to the Commission by 31 March each year.

As set out in Article 21(1) sentence 2 of the Terrorist Content Online Regulation, the information should include:

- the number of removal orders issued and the number of items of terrorist content which have been removed or access to which has been disabled and the speed of the removal or disabling;
- the specific measures taken pursuant to Article 5, including the number of items of terrorist content which have been removed or access to which has been disabled and the speed of the removal or disabling;
- the number of access requests issued by competent authorities regarding content preserved by hosting service providers pursuant to Article 6;
- the number of complaint procedures initiated and actions taken by the hosting service provider pursuant to Article 10;
- the number of administrative or judicial review proceedings initiated and the number of decisions taken by the competent authority in accordance with national law.

2.1 Bundeskriminalamt information (section 3(1) of the Act addressing terrorist content online)

In 2022 the Bundeskriminalamt issued no removal orders on the basis of the Terrorist Content Online Regulation. The Bundeskriminalamt also did not receive any removal orders from offices outside of Germany for legal assessment.

The Bundeskriminalamt uses a legal instrument called a referral request prior to issuing a removal order. A referral request is a request to scrutinise for the deletion of criminal content. Referral requests thus do not address only terrorist content. In 2022 the Bundeskriminalamt transmitted a total of 10,472 referral requests to hosting service providers to remove or disable content voluntarily. In 9,207 cases the provider responded by removing or disabling the content in question, which corresponds to a deletion rate of 88%. A removal order may not be issued because, for example, the referral request refers to content that has criminal implications but does not constitute terrorist content within the meaning of the Terrorist Content Online Regulation, or the hosting service provider is based outside the EU, which makes it more difficult to apply the Regulation.

In 2022 no administrative or judicial review proceedings were initiated that fell within the meaning of the complaint mechanisms described in Article 10 of the Terrorist Content Online Regulation. These mechanisms allow content providers whose content has been removed or access to which has been disabled to submit a complaint concerning that removal or disabling, requesting the reinstatement of the content or access. There were no such complaints from the content providers in the reporting period.

In 2022 no German hosting service provider was required to put in place any "specific measures" as set out in Article 5 of the Terrorist Content Online Regulation. In the reporting period no hosting service provider was

rated as being exposed to terrorist content (Article 5(4) of the Terrorist Content Online Regulation). This would be the case if, for example, the hosting service provider received two or more final removal orders in the previous 12 months and the decision was notified to the hosting service provider.

2.2 Hosting service provider information (section 3(2) of the Act addressing terrorist content online)

Pursuant to section 3(2) of the Act addressing terrorist content online, hosting service providers are generally required to report to the Bundesnetzagentur. However, in 2022 hosting service providers based in Germany had no information to submit to the Bundesnetzagentur since no removal orders were issued, thus the obligation to submit a report did not apply in 2022.

The hosting service providers are also required to provide the number of access requests by competent authorities regarding content preserved by hosting service providers pursuant to Article 6 of the Terrorist Content Online Regulation. Because no removal orders were issued nor were hosting service providers required to put any "specific measures" in place, there was no relevant content subject to the preservation requirement.

3 Summary/outlook

In 2022 the Bundeskriminalamt identified and then intervened to a considerable extent in terrorist content on hosting service platforms. The hosting service providers in question have been cooperating with the Bundeskriminalamt and in the majority of cases they have responded to the Bundeskriminalamt's referral request by deleting content voluntarily. For this reason no further action by the Bundesnetzagentur regarding fines and/or administrative procedures has been necessary.

Because the implementation of the Terrorist Content Online Regulation has just begun and many EU member states have not yet designated a competent authority, conclusions cannot yet be drawn about the outlook for the coming years.

It is generally presumed that there will be an increased need for administrative intervention by the Bundeskriminalamt and the Bundesnetzagentur when the new PERCI system is brought into service and removal orders are issued from other EU member states once more EU states create their respective competent authorities.

Publisher's details

Publishers

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