

Council of Europe's Thematic Session on Terrorism and the Internet

14th November 2018, Strasbourg, Palais de l'Europe

*Session I: Countering terrorist propaganda, terrorist training
and recruitment through the internet*

Dr. Maximilian Schubert LL.M

Vice-President, Chair Cybersecurity Committee, EuroISPA
General Secretary, ISPA Austria



Agenda

- About EuroISPA
- Collaboration with the Council of Europe
- European ISPs' efforts to tackle terrorist content online
- EU proposal on terrorist content online



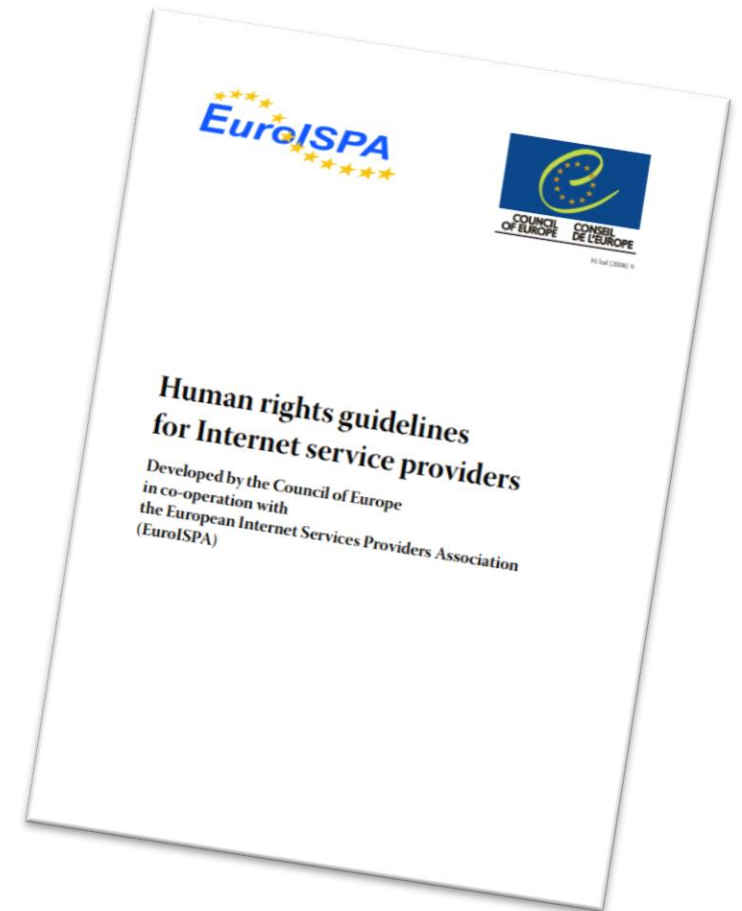
EuroISPA: The Voice of ISPs in Europe

- Established in 1997
- The world's largest association of Internet Service Providers (ISPs), representing over 2.500 ISPs across the EU and EFTA countries
- Representing many SME-ISPs
- Reflects the views of ISPs of all sizes from across its member base



Council of Europe & EuroISPA

- Long-standing collaboration
 - Partnership in drawing up Human rights guidelines for Internet Service Providers in 2008
 - Guidelines included in the 2018 Council of Ministers Recommendations on the roles and responsibilities of internet intermediaries
- Exchange of letters in May 2018
 - “Facilitating respect for democracy, human rights, and the rule of law on the Internet”



ISPs' role in tackling terrorist content online



National LEAs,
notice & take down



Industry hotlines
& priority flagger
partnerships



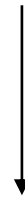
EU Internet
Referral Unit

EU proposal on preventing the dissemination of terrorist content online

New proposal to prevent the dissemination of terrorist content online



Removal orders
by competent authorities



Referrals
by Europol



Proactive measures
by ISPs



EU proposal on preventing the dissemination of terrorist content online

EuroISPA strongly objects to terrorist content and shares the objective of the proposal

However, the proposal raises several concerns in terms of fundamental rights and due process online



EU proposal on preventing the dissemination of terrorist content online

Privatisation of law enforcement

- With proactive measures, hosting providers are obliged to decide on the legality of content
- This would lead to over-removal of legitimate content
- Chilling effect on fundamental rights and freedoms
- Vague “duty of care” concept

CoE Recommendation on the roles and responsibilities of internet intermediaries (2018)

- *“State authorities should obtain an order by a judicial authority or other independent administrative authority [...] when demanding intermediaries to restrict access to content”*

EU proposal on preventing the dissemination of terrorist content online

Unfeasibly short timeframes

- One-hour timeframes for removal orders would lead to over-removal of legal content

CoE Recommendation on the roles and responsibilities of internet intermediaries (2018)

- *"State authorities should ensure that notice-based procedures are not designed in a manner that incentivises the take-down of legal content, for example due to inappropriately short timeframes"*

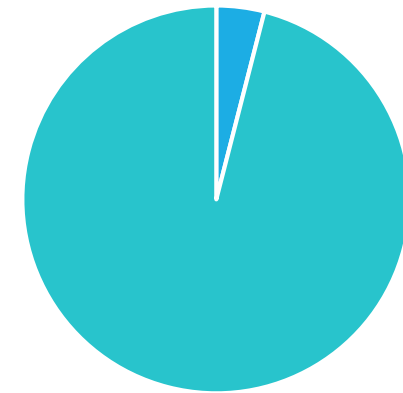


EU proposal on preventing the dissemination of terrorist content online

Lack of adaptability for small enterprises

- EC expects that only 1.5 - 4% of 10.000 European SMEs would be affected
- But all 10.000 ISPs would need to implement the Regulation (e.g. 24/7)
- Proposal might reinforce the relative market power of very large companies

Hosting service provider



■ Affected ■ Not affected

EU proposal on preventing the dissemination of terrorist content online

General obligation to monitor

- The proposal allows competent authorities to derogate from the principle of the “no-general obligation to monitor”, contradicting the e-Commerce Directive

CoE Recommendation on the roles and responsibilities of internet intermediaries (2018)

- *“State authorities should not directly or indirectly impose a general obligation on intermediaries to monitor content which they merely give access to, or which they transmit or store [...]”*



EU proposal on preventing the dissemination of terrorist content online

Further concerns

- Cost reimbursement schemes for financially burdensome proactive measures are needed
- **Robust verification systems** for removal orders are absolutely necessary (cf. e-evidence)
- Preserving data taken down proactively, without formal requests, would be **data retention**
- Clarifications on criteria to **appoint powerful competent authorities** are needed
- Difficulties to challenge **removal orders cross-border**
- Exclude hosting service providers offering **technical infrastructure services**



Conclusion

- EuroISPA is eager to work towards a European legislative framework which effectively fights terrorist content online
- EuroISPA would like to draw the CoE's attention to the diverging approach taken by the European Commission especially in respect to
 - privatisation of law enforcement
 - timeframes for removal
 - obligation to monitor
- Respect of fundamental human rights and the rule of law for users in the online sphere is paramount in any future-proof legislative approach



Thank You

EuroISPA

European Internet Services Providers Association
Rue de la Loi 38- 1000 Brussels
T: +32 (0)2 550 41 22

Email secretariat@euroispa.org
Web www.euroispa.org

EU Transparency Register No. 54437813115-56

Dr. Maximilian Schubert, General Secretary
ISPA - Internet Service Providers Austria
Währinger Straße 3/18 - 1090 Vienna
T: +43 1 409 55 76

Email maximilian.schubert@ispa.at
Web www.ispa.at

EU Transparency Register No. 56028372438-43

