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Master's Thesis

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**Platform governance triangle: The case of the EU
Regulation on preventing the dissemination of illegal
terrorist content online**

Master's thesis

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Year of the defence: 2021

Declaration

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In Prague on May 4 2021

Karolína Miksová

References

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Abstract

The thesis focuses on the relationship between the European Union and platform companies, and it tries to explore a debate about binding regulations regarding the moderation of illegal content online. The Regulation on preventing the dissemination of illegal terrorist content online from 2018 was applied as the case to test the arguments. The thesis applies the concept of platform governance triangle to analyse whether the Regulation has the potential to be effective. The research argues that the effectiveness of the Regulation depends on the actors competencies, the legitimation of the Regulation and how it was contested during the decision-making process, and finally on the power relations between actors and the tools to monitor and enforce the Regulation. The research shows that the EU has extensive competencies in areas of independence, representativeness and expertise due to the work of EU specialised agencies. Platform companies, on the other hand, possess unique technical competencies to moderate terrorist content online. Furthermore the specific design of the Regulation, and the fact that it was designed under the ordinary legislative procedure and was contested by various actors, suggest the Regulation is legitimate. Finally, the monitoring and enforcement tools in terms of sanctions could play a relevant factor in the effectiveness of the Regulation.

Abstrakt

Magisterská diplomová práce se zabývá vztahem mezi Evropskou unií a soukromými aktéry a soustředí se na představení debaty kolem Nařízení Evropské unie o prevenci šíření teroristického obsahu online. Magisterská diplomová práce aplikuje analytický rámec „platform governance triangle“ a snaží se odpovědět na otázku, zdali je možné, aby Nařízení Evropské unie bylo efektivní. Výzkum tvrdí, že efektivita Nařízení závisí na kompetencích jednotlivých aktérů, legitimity Nařízení a toho, zda bylo diskutováno během rozhodovacího procesu a v neposlední řadě na tom, jaká byla dynamika mezi aktéry během negociací a jaké monitorovací a donucovací prostředky jsou nastaveny. Výzkum ukazuje, že Evropská unie je velmi kompetentní v nezávislosti, reprezentativnosti a expertíze díky práci Evropských specializovaných agentur. Soukromí aktéři mají zase jedinečné kompetence omezit šíření teroristického obsahu na Internetu. Díky obsahu Nařízení a tomu, že se do rozhodovacího procesu zapojili různí aktéři, by bylo možné považovat Nařízení za legitimní. Na závěr,

Evropská unie nastavila takové monitorovací a donucovací mechanismy, díky kterým by bylo možné považovat Nařízení za efektivní.

Keywords

counter-terrorism policy, European Union, private actors, platform governance triangle, terrorist content online

Klíčová slova

protiteroristická politika, Evropská unie, soukromé subjekty, platform governance triangle, teroristický obsah online

Title

Platform governance triangle: The case of the EU Regulation on preventing the dissemination of illegal terrorist content online

Název práce

Platform governance triangle: Příklad Nařízení Evropské unie o prevenci šíření teroristického obsahu online

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LIST OF ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
AVMSD	Audio-Visual Media Services Directive
CULT	Committee on Culture and Education
DG CONNECT	Directorate-General for Communications Network, Content and Technology
EAW	European Arrest Warrant
ECJ	European Court of Justice
EU IRU	European Union Internet Referral Unit
FRA	Fundamental Rights Agency
GIFCT	Global Internet Forum to Counter Terrorism
ICT	Information and communications technology
IMCO	Committee on the Internal Market and Consumer Protection
JHA	Justice and Home Affairs
LIBE	Committee on Civil Liberties, Justice and Home Affairs
NGO	Non-governmental organisation
QMV	Qualified majority voting
TERREG	Regulation on preventing the dissemination of terrorist illegal content

Introduction

The topic of the thesis to be addressed is the preventive counter-terrorism policy of the European Union (the EU). Specifically, the issue at hand is exploring and analysing how the EU tackles the dissemination of illegal terrorist content on the Internet. The thesis focuses on the relationship between the EU and platform companies, and it tries to explore a debate about binding regulations regarding the moderation of illegal content online. The Regulation on preventing the dissemination of illegal terrorist content online from 2018 was applied as the case to test the arguments. The thesis aims to analyse whether the Regulation has the potential to be effective.

The European Union had entrenched counter-terrorism efforts in European politics even before the terrorist attacks on September 11 2001. Many of the Member States experienced various terrorism, whether left-wing, right-wing, separatist or domestic. The cooperation in the counter-terrorism domain began within strictly intergovernmental settings in the 1970s with the establishment of the TREVI Group that brought the Member States into exchanging information on international terrorism¹. However, it was not until the terrorist attacks on September 11 that the EU started to enhance its capacity in the counter-terrorism domain. The events of September 11 remarked an era when the EU developed a common approach in counter-terrorism². The perception of terrorism threat wholly changed, and the EU reacted by adopting new measures to increase police and judicial cooperation, introduced the legal provision on combatting terrorism, and established specialised EU agencies such as Europol or Eurojust³.

With the adoption of the Lisbon Treaty in 2007, much of the counter-terrorism became a specific, separate and multi-dimensional policy domain within the broader Justice and Home Affairs pillar. Combatting terrorism has become a security priority among priorities such as establishing an internal market and monetary union. Moreover, EU institutions like the European Union and the European Commission were granted new

¹ COOLSAET, Rik. EU counterterrorism strategy: Value added or chimera? *International Affairs*. 2010, roč. 86, č. 4. DOI: 10.1111/j.1468-2346.2010.00916.x

² BUREŠ, Oldrich. EU Counterterrorism Policy : A Paper Tiger ? *Terrorism and Political Violence*. 2006, roč. 18, č. 1. DOI: 10.1080/095465500174905

³ BIGO, Didier. Eu police cooperation: National sovereignty framed by European security? In: GEYER, Florian a Elspeth GUILD, eds. *Security versus Justice?: Police and Judicial Cooperation in the European Union*. Ashgate Publishing, 2008.

powers and responsibilities, and counter-terrorism legislation was decided in the ordinary legislative procedure⁴.

The EU considers the root causes of terrorism, radicalisation, and incitement to commit terrorist attacks particularly relevant. Therefore, significant efforts were shifted to prevent terrorism. One of the approaches is to tackle the dissemination of terrorist content on the Internet. The EU had put forward several measures to moderate content online. However, the majority were based on a voluntary self-regulation approach. That changed with the adoption of the Regulation on preventing the dissemination of illegal terrorist content online (in short, TERREG), which established legally binding duties for platform companies to take down the illegal content from their services. Furthermore, to ensure the removal of illegal terrorist content, the TERREG Regulation introduces a removal order issued either as an administrative or judicial decision by a competent authority in a Member State or by the EU agencies⁵.

The proposed measures by the European Commission raised were contested among the EU institutions, platform companies, business associations and non-governmental organisations. One of the major concerns was the scope of proposed laws that would essentially make platform companies (i.e. the hosting service providers) legally obliged to provide a secure online environment by removing illegal terrorist content from their platforms and take proactive measures. These provisions made the stakeholders worried about protecting the freedom of expression and over-removal of the content⁶.

Therefore, the thesis aims to understand and explore the conditions under which the TERREG Regulation was established (i.e., the historical conditions of emergence and its effects on subjects, their interests or norms governing their actions) under what conditions can the TERREG Regulation effective.

The first chapter describes the historical conditions, interests, and norms of the governmental actors. This part focuses on how had European security been coordinated,

⁴ KAUNERT, Christian. The area of freedom, security and justice in the Lisbon Treaty: commission policy entrepreneurship? *European Security*. 2010, roč. 19, č. 2. DOI: <https://doi.org/10.1080/09662839.2010.531705>

⁵ EUROPEAN PARLIAMENT. Preventing the dissemination of terrorist content online. In: *Legislative Observatory of the European Parliament* [online]. 2019. Dostupné z: <https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1582332&t=e&l=en>

⁶ EUROPEAN COMMISSION. *Summary report of the public consultation on measures to further improve the effectiveness of the fight against illegal content online* [online]. 2018. Dostupné z: <https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-measures-further-improve-effectiveness-fight-against-illegal>

managed and regulated. According to the security governance approaches, European security policy-making includes supranational, state and non-state actors. Overall, the security governance approach describes and analyses historical and institutional changes and their consequences⁷.

This chapter draws on Rik Coolsaet's article⁸ that extensively studies terrorism perception in the EU since the 1970s and analyses the institutionalisation of EU counter-terrorism policy. Moreover, Oldřich Bureš's contribution⁹ focuses on the origins of the EU counter-terrorism policy and its significant developments before the attacks on September 11. Also, it explores the measures the EU has taken to combat terrorism after September 11 (e.g. the European Arrest Warrant, intelligence sharing, the power of Europol and Eurojust, the adoption of an EU definition of terrorism, and the identification of terrorist and freezing of their assets).

It is necessary to mention literature concerning the role of EU institutions in the counter-terrorism domain. Adriadna Ripoll Servant¹⁰ focuses on the role of the European Parliament in Justice and Home Affairs and the gradual decision-making powers that the European Parliament received over issues of migration, data protection and counter-terrorism. Natasha Zaun¹¹ describes the role of the European Commission in the early cooperation on Justice and Home Affairs issues and monitors the Commission's gradual decision-making power in certain communitarized policy domains. Equally, Christof Roos¹² explains the role of the European Council and the Council of the EU in Justice and Home Affairs politics.

The second chapter presents the conceptual framework for this thesis. First, it provides a review of secondary literature focusing on regulation, content moderation, and platform governance. Then, the analytical framework is described. It draws on Robert

⁷ KRAHMANN, Elke. Security governance and networks: New theoretical perspectives in transatlantic security. *Cambridge Review of International Affairs*. 2005. DOI: 10.1080/09557570500059514

⁸ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

⁹ BUREŠ, Oldřich. *EU Counterterrorism Policy: A Paper Tiger?*.

¹⁰ SERVENT, Ripoll. The European Parliament in justice and home affairs: Becoming more realistic at the expense of human rights? In: SERVENT, Ripoll a Florian TRAUNER, eds. *The Routledge Handbook of Justice and Home Affairs Research*. London: Routledge, 2017.

¹¹ ZAUN, Natascha. The European Commission in justice and home affairs: Pushing hard to be a motor of integration. In: SERVENT, Ripoll a Florian TRAUNER, eds. *The Routledge Handbook of Justice and Home Affairs Research*. London: Routledge, 2017.

¹² ROOS, Christof. The Council and European Council in EU Justice and Home Affairs Politics. In: SERVENT, Ripoll a Florian TRAUNER, eds. *The Routledge Handbook of Justice and Home Affairs Research*. London: Routledge, 2017.

Gorwa's "platform governance triangle" concept, enabling us to study the relationship dynamics between different actors in the regulatory arrangements. By applying the concept of platform governance triangle, the thesis focuses on analysing three key areas that influence the dynamics in the policy-making context and have the potential to indicate the effectiveness of the regulation:

- The importance of the varying regulatory competencies that different actors bring to the table;
- The legitimisation politics based on the specific design of the regulation and how the regulation was contested among stakeholders;
- The power relations between actors in the implementation and enforcement process of governance measures.

Concerning the chosen theoretical approach and the established analytical framework, the thesis outlines the following research questions:

RQ1: How have the Regulation on preventing the dissemination of illegal terrorist content online came to be? In essence, what are the policy-making process and the dynamics of institutional competition behind the adoption of the Regulation, and what are the historical conditions of its emergence?

RQ2: What is the role of the European institutions (the European Commission, the European Parliament and the Council) within the decision-making process of adopting the Regulation on preventing the dissemination of illegal terrorist content online?

RQ3: What is the role of private business actors within the decision-making process of the Regulation on preventing the dissemination of illegal terrorist content online?

RQ4: What are the conditions for the Regulation on preventing the dissemination of illegal terrorist content online to be effective?

The thesis is a qualitative single case study using a conceptual model of the platform governance triangle that is applied on the empirical data. The research method was chosen to provide a level of detail and understanding of the nature of a particular phenomenon, namely the adoption of the TERREG Regulation. The thesis draws mainly on text-based data that consists of open public consultations among the European decision-makers and relevant stakeholders (i.e. hosting service providers) that took place between 2017 and 2018 and dealt with the measures to improve the effectiveness of tackling illegal content. Those data are

provided by the Directorate-General for Communications Network, Content and Technology (hereinafter as DG CONNECT).

Moreover, opinions and positions of the European Parliament will be taken into account, especially reports and amendments to the TERREG produced by the Committee on Civil Liberties, Justice and Home Affairs (hereinafter as the LIBE Committee), the Committee on the Internal Market and Consumer Protection (hereinafter as the IMCO Committee) and the Committee on Culture and Education (hereinafter as the CULT Committee) throughout 2019. Furthermore, the thesis will use text-based data released by platform companies like Facebook, Twitter, YouTube to present their positions regarding the adoption of the Regulation on Terrorist Content.

The third chapter focuses on the EU Regulation on preventing the dissemination of illegal content online. It consists of three sub-chapters, each applying three arguments developed by R. Gorwa, respectively. First, the varying competencies of the European Union and platform companies are described. It highlights the EU's robust competencies in independence, representativeness, expertise and administrative capacity in the regulatory process. It shows that the EU regulatory framework for content moderation is extensive, reflecting the growing powers of platforms. It draws on several EU regulations, such as the 2000 E-Commerce Directive, the 2015 European Agenda on Security, the 2018 Audio-Visual Media Services Directive, and the Directive 2017/541 on combatting terrorism adopted in 2017. Each regulation helps to understand the legal background of EU content moderation activities and proves that the EU can impose effective regulations. Then, platform companies are described. The process of algorithmic moderation tools is explained in detail. It is shown that platforms possess unique technical expertise and operational capacity to moderate content online effectively.

Second, the legitimization argument is analysed. The sub-chapter presents the specific design of the TERREG Proposal from September 2018 and explains how had governmental actors reacted to the Proposal. It is shown that the Council had no significant issues with the Proposal. On the contrary, the European Parliament and specifically the Committees responsible for the Regulation raised concerns mainly about protecting fundamental rights, excluding journalistic content, time-frame for removing the illegal content, and the possible clashes with the existing directives on audio-visual content and e-commerce. The sub-chapter is concluded by stating the amended Proposal to display how the contestation among EU institutions occurred.

Finally, the last sub-chapter aims to look at the negotiation process of the TERREG Regulation, the monitoring and enforcement tools. It focuses on data provided from open public consultations conducted by the European Commission with firm stakeholders. It is shown that platform companies expressed several concerns about the Regulation but overall welcomed the Commission's efforts to improve the current state of tackling the illegal content online. The sub-chapter concludes by pointing out that the EU can leverage the platform companies in the form of sanctions in case of non-compliance. It is important to note that the sanctions are both normative, in the essence of naming and shaming, and financial fines.

1. Historical and institutional norms governing the EU counter-terrorism policy

The first chapter describes the historical and institutional development of the EU counter-terrorism policy before and after the terrorist attacks of September 11 2001. It focuses on the historical conditions, threat perception, and norms of the governmental actors in the counter-terrorism domain. The chapter focuses on how had European counter-terrorism been coordinated, managed and regulated.

1.1. Counter-terrorism policy before September 11

The European Union had entrenched counter-terrorism efforts in European politics even before the terrorist attacks on September 11 2001. Many of the Member States experienced various terrorism, whether left-wing, right-wing, separatist or domestic¹³. The reaction to the terrorist incidents committed by Western European and Middle Eastern organisations in the late 1960s and early 1970s, combined with dissatisfaction with the existing international policies that dealt with terrorism, led to the establishment of the European Political Cooperation in the early 1970s. That is also when the European Union's counter-terrorism policy originated¹⁴.

The counter-terrorism policy began making its way into the European integration process in the early 1970s with the establishment of the TREVI Group in 1976, being the first organised platform for European counter-terrorism cooperation. TREVI Group was functioning under the intergovernmental structure. Still, it allowed the justice and interior ministers of European Community Member States to exchange intelligence information, analyse external terrorist threats, facilitate the arrest and prosecution of terrorist. A working group of police and interior officials of the Member States was set up, and its meetings concluded in non-binding consultations¹⁵.

However, TREVI Group was considered valuable and effective in setting the basis for information exchange on international terrorism. Moreover, it became clear that such

¹³ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

¹⁴ BUREŠ, Oldrich. *EU Counterterrorism Policy: A Paper Tiger?*.

¹⁵ UÇARER, Emek M. The Area of Freedom, Security, and Justice. In: CINI, Michelle a Nieves PÉREZ-SOLÓRZANO BORRAGÁN, eds. *European Union Politics*. Oxford: Oxford University Press, 2016. DOI: 10.1093/hepl/9780198806530.003.0022

issues needed to be discussed within the European Community to complete the internal market¹⁶.

1.1.1. Institutional context before September 11

In 1993 with the implementation of the Treaty of the European Union, efforts to combat issues such as international organised crime, terrorism, drug trafficking, and international fraud were incorporated into the so-called Maastricht pillar structure. These issues specifically were organised under the so-called third pillar of the European Union that dealt with Justice and Home Affairs (hereinafter the JHA)¹⁷. The third pillar was based on intergovernmental cooperation, with the European Commission and the Member States being the primary policy initiators. Newly, opinions of the European Parliament were also taken into account in the third pillar, along with the obligation of the Council and the European Commission to keep the European Parliament informed. However, due to the policy issues' sensitivity, the Member States kept significant powers in agenda-setting and unanimous decision-making in the Council of the EU¹⁸.

One of the most critical reforms concerning JHA was the Amsterdam Treaty, which came into force on May 1, 1999. The Treaty aimed at making the EU more relevant to its citizens and more responsive to their concerns by creating an Area of Freedom, Security and Justice (hereinafter the AFSJ). Moreover, it transferred immigration, visa and asylum matters to the first pillar of the Treaty of the European Union, which means that the police and judicial cooperation in criminal matters was kept in the third pillar¹⁹.

The Treaty also specified a new decision-making process. A transition period of five years was set up, during which the Council was deciding unanimously after the consultations with the European Parliament. After the transition period, the European Commission received a right of initiative; hence the Member States lost their right to launch policy instruments²⁰.

However, the powers of the European Parliament were intensified in the area of uniform visa rules and the procedure for issuing visas, which followed the co-decision

¹⁶ BUREŠ, Oldřich. *EU Counterterrorism Policy : A Paper Tiger ?*.

¹⁷ UÇARER, Emek M. *The Area of Freedom, Security, and Justice*.

¹⁸ FIALA, Petr a Markéta PITROVÁ. *Evropská unie*. Brno: Centrum pro studium demokracie a kultury, 2009.

¹⁹ *Ibid.*, s. 677.

²⁰ UÇARER, Emek M. *The Area of Freedom, Security, and Justice*.

procedure. The European Parliament could have either accepted, amended, or rejected the Council decision (also referred to as the "common position"). In case the European Parliament rejects, the status quo prevails. Amendments are sent to the Council, and if the Council accepts the amendments, the common position as amended by the Parliament becomes EU policy. If the Council does not accept the amendments, a Conciliation Committee is convened, consisting of the Member States and the European Parliament. Both the institutions must agree, and the joint text must be approved by a qualified majority in the Council and a simple majority in the European Parliament. If the Conciliation Committee disagrees on a joint text, an EU policy can still be adopted. The Council can confirm its common position, which then becomes EU policy if the European Parliament accepts. Nevertheless, if the European Parliament rejects, the status quo prevails²¹.

The cooperation in criminal matters, which was left in the third pillar, included combating crime, terrorism, trafficking in persons and offences against children, illicit drugs and arms trafficking, corruption and fraud. In addition, the Amsterdam Treaty expected closer cooperation between national police forces, customs, judicial authorities, and Europol, created in 1994 as the EU police coordination unit. While the third pillar remained largely intergovernmental in terms of decision-making, after adopting the Amsterdam Treaty, the European Commission obtained a shared right of initiative for the first time. In addition, the European Parliament gained the right to be consulted. However, the Council retained its dominant decision-making function, and unanimity remained the decision rules used in the third pillar legislation²².

1.2. Counter-terrorism policy after September 11

According to Rik Coolsaet²³, the European counter-terrorism policy can be described as an event-driven domain reacting to major terrorist attacks occurring in the transatlantic region. Terrorist attacks on September 11 2001, definitely was a watershed for counter-terrorism policies in Europe, resulting in new initiatives, decisions, and mechanisms that could enhance the capacity of the EU in combating terrorism in all its aspects and strengthen cooperation and political integration on a European level.

²¹ CROMBEZ, Christophe. The Co-Decision Procedure in the European Union. *Legislative Studies Quarterly* [online]. 1997, roč. 22, č. 1. Dostupné z: <https://www.jstor.org/stable/440293>

²² UÇARER, Emek M. *The Area of Freedom, Security, and Justice*.

²³ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

The events of September 11 was the first event, after which the EU started to push for establishing a common approach in counter-terrorism. Before, most texts adopted by the Council in the internal security domain were non-binding, taking mainly the form of "resolutions", "recommendations", and "conclusions". However, in the aftermath of September 11, there was a shift towards using the fully binding legal instruments introduced by the Treaty of Amsterdam: the Council "framework decisions" and "decisions"²⁴. As a result, the Extraordinary European Council meeting was convened on September 21, 2001, which approved a comprehensive EU Plan of Action to fight terrorism²⁵.

In the document, the European Council called for the adoption of instruments and measures in areas such as enhancing police and judicial cooperation, developing international legal instruments, stopping the funding of terrorism, strengthening air security, and coordinating the EU's global action²⁶. This development served as the necessary basis for intra-EU judicial and police cooperation by its inclusion into the Member States' legal systems.

In the wake of September 11, the principal EU legal provision on combatting terrorism was established. The Council Framework Decision 2002/475/JHA on combatting terrorism was adopted and applied to all 25 Member States of the EU. This document is significant also because it brought the common EU definition of terrorism. The document defines terrorism explicitly as actions which may "seriously damage a country or an international organisation", have "the aim of seriously intimidating a population", "unduly compelling a government or international organisation to perform or abstain from performing any act", or "seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation."²⁷

These actions were then explicitly categorised into offences linked with terrorist activities. Offences against persons include the doing or the threatening to attack an individual in a way that may cause death, attack the physical integrity of a person, and kidnapping or hostage-taking. Offences against institutions or property include the doing or threatening to cause extensive destruction to a government or public facility, a transport

²⁴ MONAR, Jörg. EU internal security governance: the case of counter-terrorism. *European Security*. 2014, roč. 23, č. 2. DOI: 10.1080/09662839.2013.856308

²⁵ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

²⁶ BUREŠ, Oldrich. *EU Counterterrorism Policy: A Paper Tiger ?*.

²⁷ O'NEILL, Maria. A Critical Analysis of the EU Legal Provisions on Terrorism. *Terrorism and Political Violence*. 2007, roč. 20, č. 1. DOI: <https://www.tandfonline.com/action/showCitFormats?doi=10.1080/09546550701723591>

system, an infrastructure facility, including an information system, a public space or private property likely to endanger human life or result in significant economic loss. Furthermore, offences such as manufacturing, possession, acquisition, transport supply or the use of weapons, explosives or nuclear, biological and chemical weapons were also deemed to be a terrorist offence under this Council Decision²⁸. In addition, to the definition of terrorism-related offences, the document set the requirement for Member States' national laws to be amended according to the Council's provisions. Nevertheless, no specific penalties for terrorism were set out²⁹.

The attacks on September 11 also led to a change in threat perception. And consequently to a change in security discourse in the EU. As Didier Bigo³⁰ puts it: "a lot of discourses acknowledged a new balance between security and liberty where liberty was, if uncontrolled, a danger, and security was the first freedom to be defended." Hence, following the introduction of the joint EU Plan of Action, the EU established new instruments to increase police cooperation. One of them was an EU-wide coordination body called Eurojust (the European Union Agency for Criminal Justice Cooperation). Eurojust was set up to enhance the effectiveness of the competent judicial authorities of the Member States when dealing with the investigation and prosecution of serious cross-border and organised crime³¹.

Another example of the newly established instrument in the internal security domain was the European Arrest Warrant. Even though the idea of a European Arrest Warrant (hereinafter the EAW) originated from the Tampere European Council in 1999 and its implementation would be viewed as a significant step towards the realisation of a European judicial area, it was accepted only after the events of September 11 in December 2001, and established in 2002. The incentive for the acceptance was that the Member States realised that the EU's open borders and legal systems allowed terrorist and other criminals to evade arrest and prosecution³². The EAW was an instrument of cross-border operational cooperation between national authorities. It allowed the arrest and transfer of wanted persons by the police and judicial authorities of one Member State on demand by the judicial

²⁸ THE COUNCIL OF THE EUROPEAN UNION. Council Framework Decision of 13 June 2002 on combating terrorism. *Official Journal of the European Union* [online]. 2002, roč. 45, č. L 164. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2002:164:FULL&from=EN>

²⁹ O'NEILL, Maria. *A Critical Analysis of the EU Legal Provisions on Terrorism*.

³⁰ BIGO, Didier. *Eu police cooperation: National sovereignty framed by European security?*.

³¹ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

³² BUREŠ, Oldrich. *EU Counterterrorism Policy: A Paper Tiger ?*.

authorities of another Member State with the exclusion of any governmental interference by the Ministers of Justice or Foreign Affairs³³. Thus, the EAW represented a pretty significant departure from traditional national sovereignty- and territoriality-based law enforcement element.

The second influence September 11 events had on the evolution of EU counter-terrorism policy was to strengthen its institutional component. Thus, the Extraordinary Council of September 21 2001, undertook several institutional innovations such as installing a 24-hour alert Counter-terrorism Unit within Europol, later known as the Counter-Terrorist Task Force. The unit was comprised of national liaison officers from police and intelligence services and was designed to collect and analyse all relevant information and intelligence concerning current terrorist threats and assess the threats according to the information given³⁴.

Between 2001 and 2002, Europol's staff increased from 323 to 386, which was the most considerable annual increase of the decade³⁵. Europol was also granted the authority related to the externalisation of the European counter-terrorism policy, which was to ask police forces of EU Member States to launch investigations and share information with the United States and other third parties. Moreover, Europol was assigned to develop the so-called terrorist profiles to identify terrorist targets and organisations active in the EU. Member States were obliged by the December 2002 Council Decision on combatting terrorism to provide Europol with information related to identifying plausible persons or groups related to relevant cases of terrorist offences or any acts under investigation and their specific circumstances³⁶.

The perception of a threat of terrorism was later reinforced by the 2004 Madrid and 2005 London terrorist attacks. In March 2004, after the Madrid terrorist attacks, counter-terrorism-related institutional change also reached the Council in the form of establishing the new position and office of the EU's Counter-terrorism Coordinator working under the authority of the Council's Secretary-General³⁷. Although the EU Counter-terrorism Coordinator was not given much authority over the diverse actors that played a part in EU

³³ MONAR, Jörg. *EU internal security governance: the case of counter-terrorism*.

³⁴ ARGOMANIZ, Javier, Oldřich BUREŠ a Christian KAUNERT. A Decade of EU Counter-Terrorism and Intelligence: A Critical Assessment. *Intelligence and National Security*. 2015, roč. 30, č. 2–3. DOI: 10.1080/02684527.2014.988445

³⁵ MONAR, Jörg. *EU internal security governance: the case of counter-terrorism*.

³⁶ BUREŠ, Oldřich. *EU Counterterrorism Policy: A Paper Tiger?*

³⁷ MONAR, Jörg. *EU internal security governance: the case of counter-terrorism*.

counter-terrorism policy and his role comprised mainly of "shaming" laggard Member States into speeding up their implementation processes, his power later increased. Third countries now perceive him to be their main interlocutor within the EU on counter-terrorism matters³⁸.

Meanwhile, the focus was primarily on improving the exchange of information between the Member States related to all offences and convictions linked to terrorism by initiating new measures embodied in the European Commission "Communication on the Fight Against Terrorism" adopted in March 2004³⁹. The text also considers other aspects of counter-terrorism, explicitly preventing the financing of terrorism, mechanisms underpinning the recruitment of individuals into terrorism, and the so-called "root causes" of terrorism⁴⁰.

Consequently, following the terrorist attacks in London, the then United Kingdom Council presidency sought to create a single framework to combat terrorism and proposed an overall EU Counter-terrorism Strategy in December 2005. The EU Strategy was based on four strategic objectives, called "pillars": prevent, protect, pursue, and respond⁴¹. First, prevent pillar focus on measures of how to tackle terrorist recruitment and its root causes. Second, protect pillar aimed at safeguarding citizens and infrastructure from new terrorist attacks. Third, pursue pillar focused on investigating terrorists and their networks across EU borders. Finally, the respond pillar intended to strengthen capabilities to react in an attack in one of the Member States⁴².

The inclusion of the new preventive dimension is particularly relevant because it extended EU involvement to new areas such as addressing incitement and recruitment, developing a media and communication strategy, developing a non-emotive vocabulary, and promoting intercultural dialogue⁴³. Others soon complemented the general strategy on radicalisation and recruitment into terrorism and terrorist financing. As a result, the Strategy for Combating Radicalisation and Recruitment to Terrorism was adopted in parallel with the EU Counter-terrorism Strategy.

³⁸ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

³⁹ BUREŠ, Oldrich. *EU Counterterrorism Policy: A Paper Tiger?*.

⁴⁰ COOLSAET, Rik. *EU counterterrorism strategy: Value added or chimera?*.

⁴¹ Ibid.

⁴² COUNCIL OF THE EUROPEAN UNION. *The European Counter-Terrorism Strategy* [online]. Brussels, 2005. Dostupné z: <https://data.consilium.europa.eu/doc/document/ST-14469-2005-REV-4/EN/pdf>

⁴³ ARGOMANIZ, Javier. *Post-9/11 Institutionalisation of European Union Counter-terrorism: Emergence, Acceleration and Inertia* [online]. Lisbon, 2009. Dostupné z: <https://ecpr.eu/Filestore/paperproposal/1ddc130d-e5fd-4cb9-aeae-cccad4d91e98.pdf>

1.2.1. Institutional context after September 11

From an institutional point of view, counter-terrorism arose as a specific, separate and multi-dimensional policy domain within the broader JHA pillar after the terrorist attacks in the United States, Madrid in 2004, and 2005 in London. Although the EU created new instruments, mechanisms, and strategies to combat terrorism, the Treaty of Nice, which came into force in February 2003⁴⁴, and the Lisbon Treaty that came into force in December 2009⁴⁵ made changes in the formal decision-making process.

In May 2004 Treaty of Nice introduced provisions mainly focusing on police and judicial cooperation in criminal matters. In addition, new measures proceeding from the Treaty of Nice constituted, for instance, the establishment of Eurojust. In addition, however, by amending Protocol 35 to Article 37 of the Treaty establishing the European Community, the Treaty of Nice amended a decision-making mechanism for ensuring administrative cooperation between the competent authorities of the Member States and the European Commission. To clarify, the Protocol mentioned above introduced a qualified majority voting in the Council on the European Commission's proposal, and after the consultation with the European Parliament. The application of the co-decision procedure with the qualified majority voting in JHA was later complemented by the decision of the European Council summit in November 2004 and after in December 2004⁴⁶.

In December 2007, the European Union signed the new Reform Treaty, now known as the Lisbon Treaty, which amended the existing European Treaties. The Lisbon Treaty had a significant impact on the internal dimension of the counter-terrorism realm. First, the Treaty elevated the AFSJ to a cornerstone of the EU and promoted peace, European values, and establishing an internal market and monetary union. Second, the Treaty of Lisbon abolished the Maastricht pillar structure. Third, an explicit principle of solidarity stipulates that in the case of a terrorist attack, the EU shall collaborate to mobilise all instruments possible to deal with such events. Fourth, it made the decision-making process in the JHA

⁴⁴ EUROPEAN UNION. Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Nice, 26 February 2001 - Contents. *Official Journal of the European Communities*, C 080 [online]. 2001, roč. 44. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2001:080:TOC>

⁴⁵ EUROPEAN UNION. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. *Official Journal of the European Union*, C 306 [online]. 2007, roč. 50. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:306:TOC>

⁴⁶ FIALA, Petr a Markéta PITROVÁ. *Evropská unie*.

more straightforward and more flexible⁴⁷. The EU legal competencies in the AFSJ fell within the shared competencies between the EU and the Member States, meaning that the Member States can legislate and adopt legally binding acts where the EU does not or decides not to do it⁴⁸. Moreover, it was decided that the standard decision-making process in the AFSJ became co-decision (officially named the ordinary legislative procedure, also known as the so-called "community method"), in which the Council voted by the qualified majority⁴⁹.

Next, the European Parliament's co-decision powers were extended from visa-related policies to the police and judicial cooperation in criminal matters, covering issues such as data protection or counter-terrorism. In addition, the European Parliament was also granted the power to scrutinise the activities of EU agencies Europol, Eurojust and Frontex (which were given a legal personality by the Treaty of Lisbon). This development is crucial because the European Parliament often advocates for more liberal and human rights enhancing positions than the European Commission and the Member States, especially on matters related to security, fundamental liberties, and the maintenance of a balance between security and freedom⁵⁰.

Also, after abolishing the pillar structure, the jurisdiction of the European Court of Justice (hereinafter the ECJ) was extended. Before, the ECJ was largely excluded from the third-pillar jurisdiction since it was based on a voluntary declaration of the Member States⁵¹. However, after the Lisbon Treaty came into force, the ECJ was granted jurisdiction in all AFSJ issues, including internal and external counter-terrorism policies. That meant the ECJ could press the so-called laggard Member States to implement counter-terrorism measures adopted by the EU and ensure the effectiveness of EU law⁵². It is necessary to point out that the ECJ is upholding the rule of law and protects the freedom of the EU citizens. For

⁴⁷ KAUNERT, Christian. *The area of freedom, security and justice in the Lisbon Treaty: commission policy entrepreneurship?*.

⁴⁸ EUR-LEX. Division of competences within the European Union. 2016. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0020>

⁴⁹ RENARD, Thomas. *EU Counterterrorism Policies and Institutions After the Lisbon Treaty* [online]. 2012. Dostupné z: https://www.files.ethz.ch/isn/153959/Renard_policybrief_1216.pdf

⁵⁰ SERVENT, Ripoll. *The European Parliament in justice and home affairs: Becoming more realistic at the expense of human rights?*.

⁵¹ HERLIN-KARNELL, Ester. The European Court of Justice as a Game-Changer. In: SERVENT, Ripoll a Florian TRAUNER, eds. *The Routledge Handbook of Justice and Home Affairs Research*. London: Routledge, 2017.

⁵² RENARD, Thomas. *EU Counterterrorism Policies and Institutions After the Lisbon Treaty*.

instance, the ECJ often played an important role in cases regarding the breach of personal data protection⁵³.

Finally, regarding the European Commission's decision-making powers, it remained a sole policy initiator in immigration and asylum policies, and the quarter of the Member States was allowed to initiate legislative proposals in criminal matters and police cooperation. Indeed, the Commission was not fully empowered with the right of initiative in all areas concerning the AFSJ. Instead, Member States were allowed to set the agenda through multi-annual action plans⁵⁴. As a result, the European Commission has always tried to consider Member States' concerns and possible reservations despite its pro-integrationists and security-oriented policies regarding data protection, border control, or counter-terrorism⁵⁵.

The introduction of the qualified majority voting (hereinafter the QMV) in the Council also played a relevant factor in the European Commission's brokering role between different institutional actors⁵⁶. According to Christian Kaunert⁵⁷, the European Commission represents a very active player in the AFSJ, often cooperating with other EU institutional actors, particularly with the European Parliament and civil society groups.

The European Council and the Council are at the core of EU decision-making in the AFSJ. It was argued that the European Council and various Council formations were placed in control of decision-making within the sensitive policy area of AFSJ to prevent the loss of national sovereignty⁵⁸. After adopting the Lisbon Treaty, the European Council composed of the Heads of State or Governments was granted the competence to set the strategic guidelines for legislative and operational planning within the AFSJ. Apart from that, and crises necessary to be discussed on the highest EU level, the European Council would

⁵³ HERLIN-KARNELL, Ester. *The European Court of Justice as a Game-Changer*.

⁵⁴ MARICUT, Adina. With and without supranationalisation: the post-Lisbon roles of the European Council and the Council in justice and home affairs governance. *Journal of European Integration*. 2016, roč. 38, č. 5. DOI: <http://dx.doi.org/10.1080/07036337.2016.1178253>

⁵⁵ ZAUN, Natascha. *The European Commission in justice and home affairs: Pushing hard to be a motor of integration*.

⁵⁶ UÇARER, Emek M. From the Sidelines to Center Stage: Sidekick No More? The European Commission in Justice and Home Affairs. *European Integration online Papers* [online]. 2001, roč. 5, č. 5. Dostupné z: <https://ideas.repec.org/a/erp/eiopxx/p0065.html>

⁵⁷ KAUNERT, Christian. *The area of freedom, security and justice in the Lisbon Treaty: commission policy entrepreneurship?*.

⁵⁸ MARICUT, Adina. *With and without supranationalisation: the post-Lisbon roles of the European Council and the Council in justice and home affairs governance*.

typically discuss JHA issues based on the European Commission's annual report on the state of the field⁵⁹.

In contrast to the role of the European Council in AFSJ, the Council represents a stable decision-maker in the area, involved in the adoption of both legislative and non-legislative acts. JHA issues are debated and decided either on the ministerial (i.e. the Council) level, committee (i.e. the COREPER) level, or on the civil servant (i.e. working parties) level⁶⁰. In legislative files under the ordinary legislative procedure, ministers take part in the so-called "orientation debate" that is particularly important in highly publicised dossiers regarding immigration, asylum or criminal justice. In addition, ministers rely heavily on their counsellors' activity from COREPER (i.e. their Permanent Representations), who are responsible for preparing the ministers' meetings and for political discussions, negotiations, and decision-making⁶¹.

It is important to note that decisions are taken since the Lisbon Treaty came into force by the QMV, based on a weighted vote system with a double majority rule (which counted for 55 % of the Member States representing 65 % of the EU's population)⁶². Furthermore, JHA Counsellors (i.e. mid-level officials from national ministries of justice or interior) are at the heart of decision-making on legislative dossiers. They are seen as the problem-solving body searching for compromises and consensus regarding the legislative files, with frequent meetings⁶³. Finally, about eighteen capital-based working parties are working on issues concerning internal security. In order to create the so-called national mandate for further negotiations, each Member State appoints an "expert" to represent national viewpoints in the working party meetings⁶⁴, at these "lower" levels where a legislative file can become stuck, or deals can be struck.

⁵⁹ Ibid.

⁶⁰ SMEETS, Sandrino. How issues move or get stuck: Or how to be effective in the EU Council of Ministers. *European Integration online Papers*. 2013, roč. 17, č. 1. DOI: 10.1695/2013006

⁶¹ MARICUT, Adina. *With and without supranationalisation: the post-Lisbon roles of the European Council and the Council in justice and home affairs governance*.

⁶² ROOS, Christof. *The Council and European Council in EU Justice and Home Affairs Politics*.

⁶³ MARICUT, Adina. *With and without supranationalisation: the post-Lisbon roles of the European Council and the Council in justice and home affairs governance*.

⁶⁴ Ibid.

2. Conceptual and theoretical framework: Platform governance triangle

This chapter will first provide an overview of the secondary literature consisting of texts that focus on platform governance, online content regulations, and content moderation techniques. These texts provide the necessary definitions of such terms, hence providing the overall understanding of the issue at hand. Second, a conceptual framework of the platform governance triangle will be introduced and explained in detail. The thesis draws on the work by Robert Gorwa⁶⁵, and Kenneth W. Abbott and Duncan Snidal⁶⁶. Gorwa based the concept of platform governance triangle on the literature on transnational corporate governance, analyses informal arrangements governing online content on platforms in Europe, and maps them onto Abbott and Snidal's governance triangle model.

2.1. Literature review

Charilaos Papaevangelou's article⁶⁷ defines regulation and governance and put it in the context of platform governance and online content regulation. Papaevangelou contends that platform governance is inherently connected to the cooperation between multiple actors and stakeholders while putting online platforms in the middle of attention⁶⁸.

There is no single definition of regulation, yet it is appropriate to use a definition by political scientists for the purpose of this thesis. They define regulation as "a mean of control that seeks to dictate a change in behaviour"⁶⁹. However, when studying the concept of regulation, one should be aware of the many factors that must be considered, including politics, policies, institutions and effectiveness of implementation and monitoring. To capture the intentionality and the interventionist character of regulation, the author mentions another definition by Koop and Lodge as following: regulation is "intentional intervention

⁶⁵ GORWA, Robert. The platform governance triangle: Conceptualising the informal regulation of online content. *Internet Policy Review*. 2019, roč. 8, č. 2. DOI: 10.14763/2019.2.1407

⁶⁶ ABBOTT, Kenneth W. a Duncan SNIDAL. The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State. In: MATTLI, Walter a Ngaire WOODS, eds. *The Politics of Global Regulation*. Princeton: Princeton University Press, 2009.

⁶⁷ PAPAEVANGELOU, Charilaos. The existential stakes of platform governance and online content regulation: a critical conceptual model. *Open Research Europe*. 2021, roč. 1, č. 31. DOI: doi.org/10.12688/openreseurope.13358.1

⁶⁸ Ibid.

⁶⁹ Ibid.

in the activities of a target population, where the intervention is typically direct – involving binding standard-setting, monitoring, and sanctioning – and exercised by public-sector actors on the activities of private-sector actors."⁷⁰

It is also important to acknowledge that negotiations produce regulation and power dynamics between various actors, including state actors, non-state or business actors, and non-governmental or civil actors⁷¹. Furthermore, different actors may be influenced by different types of regulations. Generally speaking, there are three types of regulations: self-regulation, co-regulation, and top-down regulation. Self-regulation typically entails non-binding and voluntary agreements, therefore lack any forms of legal repercussions. Co-regulation stands somewhere in the middle of the imaginary scale, as it seeks to consolidate shared governance among stakeholders, implementing soft-laws than strict state regulations or no regulations at all instead. Finally, top-down regulations are passed by a public authority in official legislation, often intervening in an industry or the market. Top-down regulations often implement legal repercussions to those not abiding by them⁷².

In Papaevangelou's article, governance is understood as the notion implying "to govern" with authority and power, while power relations symbolise the interdependence among actors and their interests. The author then argues that governance shapes regulations directly by establishing standards to a specific actor or group of actors or indirectly by aiming at the environment in which a certain actor is active⁷³. According to Julia Black⁷⁴, it is necessary to understand the institutional environment in the construction of legitimacy, the nature of accountability relationships, and the structures through which accountability occurs, and legitimacy is constructed to grasp the power relations between state, non-state and non-governmental actors involved in governance.

In addition to the notion of governance and regulation, Papaevangelou addresses the context of platform governance and regulating content on the Internet. She indicates that internet governance as we know it today was not established until the 2006 foundation of the Internet Governance Forum by the United Nations, which puts forward the first definition

⁷⁰ KOOP, Christel a Martin LODGE. What is regulation? An interdisciplinary concept analysis. *Regulation & Governance*. 2015, roč. 11, č. 1. DOI: 10.1111/rego.12094

⁷¹ PAPAEVANGELOU, Charilaos. *The existential stakes of platform governance and online content regulation: a critical conceptual model*.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ BLACK, Julia. Constructing and contesting legitimacy and accountability in polycentric regulatory regimes. *Regulation & Governance*. 2008, roč. 2, č. 2. DOI: 10.1111/j.1748-5991.2008.00034.x

of internet governance: "Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the Internet."⁷⁵

This evolution led to recent discussions about platform governance, which Papaevangelou describes as an evolution of the broader internet governance field. In order to conceptualise the platform governance and the actors involved in online content regulation, Papaevangelou uses the term "governance clusters" as she claims that it is difficult to group-specific stakeholders (e.g. digital news media) based on their spatial manner. As a result, Papaevangelou argues there are more actors within the governance of online content regulation than just states, business actors and civil society organisations. According to Papaevangelou, those actors involved can be categorised as digital platforms, citizens, opinion makers, non-governmental organisations (hereinafter the NGO), news media, and public authorities⁷⁶.

Another journal article by Tarleton Gillespie et al.⁷⁷ focuses on content moderation and its impact on policy-making, particularly governmental regulations. Moreover, the authors provide us with examples of content moderation in practice. First, he puts forward the definition of content moderation as: "the detection of, assessment of, and interventions taken on content or behaviour deemed unacceptable by platforms or other information intermediaries, including the rules they impose, the human labour and technologies required, and the institutional mechanisms of adjudication, enforcement, and appeal that support it"⁷⁸. Then, Gillespie discusses that it is essential to consider the size, reach and language of a particular platform and differentiate the deployment of different technical processes of content moderation accordingly. For instance, large-scale platforms like Facebook, YouTube or Instagram share resources to moderate content on their sites, but smaller platforms may need to outsource their moderation to third-party services⁷⁹.

⁷⁵ PAPAEVANGELOU, Charilaos. *The existential stakes of platform governance and online content regulation: a critical conceptual model*.

⁷⁶ Ibid.

⁷⁷ GILLESPIE, Tarleton et al. Expanding the debate about content moderation: scholarly research agenda for coming policy debates. *Internet Policy Review*. 2020, roč. 9, č. 4. DOI: 10.14763/2020.4.1512

⁷⁸ Ibid., s. 2.

⁷⁹ GILLESPIE, Tarleton et al. *Expanding the debate about content moderation: scholarly research agenda for coming policy debates*.

Ariadna Matamoros-Fernández talks about one of the way content is moderated online. She touches on how encryption techniques on platforms such as WhatsApp or Facebook Messenger create a problem of regulating platforms to tackle the circulation of inappropriate content. She presented an interesting example when serious offences such as terrorist and criminal activity appeared on WhatsApp, which led governments to pressure Facebook to provide them with access to encrypted messages on their platforms. Nevertheless, providing access to encrypted messages seems problematic because it may infringe user privacy, security, and freedom of expression⁸⁰.

Many researchers and civil society activists point out the potential risks to democratic norms and institutions posed by content moderation⁸¹. For example, Aram Sinnreich brings up the risks of algorithmic content moderation, which is frequently applied as a form of content moderation. Those potential risks are related to the rising governments' pressure on major technology companies to find technical solutions, often in a concise time window for illegal content takedowns⁸². In addition, Sinnreich argues that from the governance point of view, algorithmic content moderation violates the principles of separation of powers by delegating legislative, judicial, and executive functions to a single, unaccountable, private entity⁸³.

Similarly, Robert Gorwa et al.⁸⁴ claim that algorithmic moderation may pose a negative impact on transparent decision-making (due to a difficulty understanding and audit of firms' non-transparent set of practices), on justice system (due to privileging of different viewpoints, groups, or types of speech), and on the plausible de-politicisation and the visibility of content moderation as a political issue. For instance, terrorist online content is a political issue, and however, by obligating firms to remove such content from their platforms, governments essentially shift the role of security provider to the firms.

⁸⁰ Ibid.

⁸¹ EDRI. Can we ensure EU terrorism policies respect human rights? In: *www.edri.org* [online]. 2018. Dostupné z: <https://edri.org/our-work/can-we-ensure-eu-terrorism-policies-respect-human-rights/>

⁸² GORWA, Robert, Reuben BINNS a Christian KATZENBACH. Algorithmic content moderation: Technical and political challenges in the automation of platform governance. *Big Data & Society*. 2020, roč. 7, č. 1. DOI: 10.1177/2053951719897945

⁸³ GILLESPIE, Tarleton et al. *Expanding the debate about content moderation: scholarly research agenda for coming policy debates*.

⁸⁴ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance*.

2.2. Platform governance triangle

The focus on platforms and their influence on modern public and political life increased after multiple public scandals. As a result, many researchers and policymakers are trying to understand the complex political effects of platforms to make them more democratically accountable and legally responsible for content posted by users via their services⁸⁵. Some examples of government actions are Germany's 2017 Network Enforcement Act (NetzDG) which forces platforms to ensure that illegal content is deleted within 24 hours. In addition, the French 2018 Avia Law establishes a uniform reporting system for illegal content that must be removed within one hour, and the United Kingdom's Online Harms legislation proposes holding online businesses accountable for harmful content⁸⁶.

Scholars, lawyers or economists began thinking about defining the term platform in the 1990s while new software has developed and companies enabled access to user-generated content, which the companies did not create, therefore should not be held accountable for it⁸⁷. Nowadays, the term platform is used to describe both the services provided by companies and the companies⁸⁸. Gorwa, on the other hand, distinguishes between the term "platform company" as a corporation that deploys a service (e.g. Facebook) and "platform" as the online, data-driven apps and services (e.g. Facebook Messenger, Google Search or YouTube)⁸⁹.

Platform companies can have a significant impact on individual behaviour and are thus a part of governance. Nevertheless, just as they make essential decisions and influence the public, platforms and platform companies are also subjected to governments' policy and regulatory constraints⁹⁰. The current platform governance is understood as "the set of legal, political, and economic relationships structuring interactions between users, technology

⁸⁵ SUZOR, Nicolas. *Lawless: The secret rules that govern our digital lives (Draft)*. Cambridge: Cambridge University Press, 2019. DOI: 10.31235/osf.io/ack26.; GORWA, Robert. What is platform governance? *Information Communication and Society*. Routledge, 2019, roč. 22, č. 6. DOI: 10.1080/1369118X.2019.1573914

⁸⁶ GILLESPIE, Tarleton et al. *Expanding the debate about content moderation: scholarly research agenda for coming policy debates*.

⁸⁷ GILLESPIE, Tarleton. The politics of „platforms“. *New Media & Society*. 2010, roč. 12, č. 3. DOI: 10.1177/1461444809342738

⁸⁸ SRNICEK, Nick. *Platform capitalism*. Cambridge: Polity Press, 2016.

⁸⁹ GORWA, Robert. *What is platform governance?*.

⁹⁰ Ibid.

companies, governments, and other key stakeholders in the platform ecosystem"⁹¹. Thus, for example, Facebook must conform to international regulatory frameworks for overseas operations, the American regulatory framework, voluntary compliance mechanisms like the Global Network Initiative, or voluntary partnerships for terrorist content such as the 2015 EU Internet Forum and the 2017 Global Internet Forum to Counter Terrorism (hereinafter the GIFCT)⁹².

As one would expect, governments and platforms are not the sole actors in current platform governance. Advocacy groups like NGOs, academics, researchers, and journalists all play a crucial role in platform governance. While Papaevangelou uses the term "governance clusters" to describe the actors in the current platform governance, Robert Gorwa employs the term "platform governance triangle".

In his research, Gorwa applies Abbott and Snidal's concept of "governance triangle"⁹³ to content governance initiatives in the EU. Specifically, Gorwa uses the platform governance triangle to break down different actors in EU regulations. The actors are put in three major groups: states, NGOs, and firms. First, states include both individual governments and supranational groupings of governments (e.g. the EU). Second, NGOs represents a broad category of civil society groups, international NGOs, academic researchers, activists, and individuals. Finally, firms are composed of individual companies, industry associations and other groupings of companies⁹⁴. It is important to note that content moderation regulations may involve just one type of actor or a combination of the two⁹⁵.

The concept of the platform governance triangle can be used to map out the informal regulatory arrangements for content moderation on platforms that host user-generated content. Moreover, as Gorwa argues⁹⁶, these informal regulatory arrangements have formed a vital tool through which governance stakeholders, like the EU, have sought to shape the behaviour of firms on content issues. The relationship between the EU government and the firms represents the primary debate on which this thesis focuses. While the EU had applied

⁹¹ GORWA, Robert. *The platform governance triangle: Conceptualising the informal regulation of online content*.

⁹² GORWA, Robert. *What is platform governance?*.

⁹³ ABBOTT, Kenneth W. a Duncan SNIDAL. *The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State*.

⁹⁴ GORWA, Robert. *The platform governance triangle: Conceptualising the informal regulation of online content*.

⁹⁵ Ibid.

⁹⁶ Ibid.

"co-regulatory", "self-regulatory", and "soft law" solutions, recently, the emphasis was put on adopting stricter norms to reduce the availability of terrorist content online.

Gorwa then presents three key arguments essential in studying the effectiveness of the EU content moderation regulations. First, it is "the importance of varying actor competencies in different governance initiatives". Second, it is "the difficult dynamics of "legitimation politics" between different initiatives (and between voluntary governance arrangements and traditional command-and-control regulation)". Moreover, third, it is "the layers of power relations manifest in the negotiation and implementation of informal governance measures"⁹⁷. The following chapters discuss the arguments respectively.

2.2.1. Actor competencies

Actors' competencies define the effectiveness of a regulatory process. Before we go into the depth of actors' competencies, it is necessary to outline the different stages of a regulatory process. Abbott and Snidal⁹⁸ divide the regulatory process into five stages. First, agenda-setting is when an actor places an issue on the political agenda and urges relevant groups to act. Second, a negotiation that results in drafting the solution to an issue. Third, implementation within target firms. Then, monitoring of compliance. Last, enforcement, or at least promoting compliance and responding to non-compliance.

According to Abbott and Snidal⁹⁹, actors must possess a range of competencies to act effectively throughout the stages of a regulatory process. By identifying competencies necessary for the effectiveness of regulation, we can conclude that the regulation process lacking one or more of those competencies is likely to be ineffective. Four central competencies are identified: independence, representativeness, expertise, and operational capacity. It is presumed that no actor can possess all of the competencies. Therefore a genuinely effective regulation requires collaboration.

Single-actor initiatives often have limited long-term success. For instance, NGOs can have a high degree of independence and representativeness and advocate for strict standards; however, they lack the operational capacity to implement and enforce them. On the other hand, firms are essentially motivated by profit-seeking, strengthening their expertise and

⁹⁷ Ibid.

⁹⁸ ABBOTT, Kenneth W. a Duncan SNIDAL. *The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State*.

⁹⁹ Ibid.

operational capacity to change their behaviour, whereas firms do not necessarily act in the public interest, thus lack representativeness and independence. States can deploy resources, expertise, administrative capacity, and enforcement mechanisms, but they often rely on firms to implement the decisions¹⁰⁰. In conclusion, collaborative initiatives have a bigger chance of effectively assemble needed competencies from diverse actors and be more open and representative¹⁰¹.

2.2.2. Legitimation politics

The argument concerning the dynamics of legitimation politics comes from the assumption that any regulation, which results in politically salient rules, can become contested between different actors who try to undercut each other.

The argument goes to the competency of an actor to capture public attention about an issue, frame an issue in a politically powerful way, and formulate how to proceed accordingly¹⁰². Therefore, during this stage of a regulatory process, competencies necessary are independence, representativeness, expertise, and operational capacity. Because the specific design of regulation also plays a vital role in its success or failure¹⁰³.

The actors who set the agenda must have a certain level of legitimacy, which leads other actors to comply with the rules and decisions made by the government or international institution¹⁰⁴. Therefore, legitimacy can be assessed by the perceptions of normative commitment, actor's expertise, and state's independence from regulation targets¹⁰⁵.

2.2.3. Power relations

The notion of power relations is associated with the governance negotiations and bargaining power in a regulatory process. Furthermore, Abbott and Snidal recognise that essential competence for effective regulation is one of expertise at the negotiation stage.

¹⁰⁰ GORWA, Robert. *The platform governance triangle: Conceptualising the informal regulation of online content*.

¹⁰¹ ABBOTT, Kenneth W. a Duncan SNIDAL. *The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State*.

¹⁰² Ibid.

¹⁰³ GORWA, Robert. *The platform governance triangle: Conceptualising the informal regulation of online content*.

¹⁰⁴ HURD, Ian. Legitimacy and contestation in global governance: Revisiting the folk theory of international institutions. *The Review of International Organizations*. 2019, roč. 14. DOI: 10.1007/s11558-018-9338-z

¹⁰⁵ ABBOTT, Kenneth W. a Duncan SNIDAL. *The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State*.

They argue that an actor should possess normative expertise to ensure the regulation corresponds to existing norms and business expertise to ensure the regulation will match with business practices and auditing expertise so that the regulation can be adequately monitored and political expertise to negotiate effectively¹⁰⁶.

The effectiveness of regulation depends on monitoring and enforcement as well. Governments should be independent of the target firm and should be able to gather and assess relevant information and resources to be successful at the monitoring stage. Enforcement, on the other hand, typically involves some rewards or penalties. Those can take the form of sanctions as a material type of penalty or, from a normative point of view, the so-called "naming and shaming" practices that may harm a firm's reputation¹⁰⁷.

Moreover, the participation of a range of stakeholders or their representatives enhances the legitimacy of negotiations. Specifically, in internet governance and particularly within the firm-state negotiations, we can observe that NGOs have been largely marginalised¹⁰⁸. For example, this was the case of establishing the EU Internet Forum, which brought together EU officials with Google, Facebook, Twitter, and Microsoft representatives. However, the whole negotiation process was highly secretive and notably excluded representatives from NGOs, even though the outcome of the negotiations had a significant impact on the public's online activities¹⁰⁹.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ GORWA, Robert. *The platform governance triangle: Conceptualising the informal regulation of online content.*

¹⁰⁹ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance.*

3. Application of the platform governance triangle on the EU Regulation on preventing the dissemination of illegal terrorist content online

The following chapter of the analysis focuses on the EU Regulation on preventing the dissemination of illegal terrorist content online. The previously outlined concept of the platform governance triangle is applied to the regulation to analyse its effectiveness and address European institutions and private business actors' role in the regulatory process.

3.1. Actor competencies

3.1.1. The European Union

The competencies of the European Union are robust in areas of independence and representativeness, expertise and administrative capacity. These competencies are illustrated on the EU's regulatory framework of counter-terrorism and digital market within which the EU Regulation on preventing the dissemination of illegal terrorist content online (hereinafter the TERREG) was adopted¹¹⁰.

The EU regulatory framework for content moderation has expanded over the years, reflecting the growing powers of platforms. Nowadays, we could define the regulatory framework of content moderation from the security point of view (i.e. focusing solely on preventing terrorism) and from the pro-integrationist point of view (i.e., several regulations touch on internal market issues). Therefore, the regulatory framework for content moderation consists of the following legislative acts: the 2000 E-Commerce Directive, the 2015 European Agenda on Security, the 2018 Audio-Visual Media Services Directive, and finally, the Directive 2017/541 on combatting terrorism adopted in 2017¹¹¹. Each legislation helps to understand the legal background of EU content moderation activities.

¹¹⁰ DE STREEL, Alexandre et al. *Online Platforms' Moderation of Illegal Content Online: Law, Practices and Options for Reform*. Luxembourg, 2020. DOI: 10.2861/831734

¹¹¹ TECH AGAINST TERRORISM. *The Online Regulation Series: The European Union* [online]. 2020. Dostupné z: <https://www.techagainstterrorism.org/2020/10/19/the-online-regulation-series-the-european-union/>

The 2000 E-Commerce Directive was established when online platforms were only at the beginning of their growth. Nevertheless, the Directive aimed to provide safer Internet with a shared responsibility between all private actors involved in cooperation with public authorities who essentially served as notifiers of illegal content on online platforms. In addition, the Directive took into account ensuring fundamental rights, privacy and freedom of expression¹¹².

The Directive 2017/541 on combating terrorism is crucial because it defines public provocation to commit terrorist conduct. Moreover, the Directive acts under the ordinary legislative procedure. It proclaims that removing online content that appeals to a public provocation to commit a terrorist offence is an effective mean of combating terrorism¹¹³. Article 5 of the Directive states that the Member States shall take the necessary measures to ensure that the distribution, whether online or offline, of a message to the public that incites the commission of terrorist offences, such as the glorification of a terrorist act, is punishable as a criminal offence¹¹⁴.

TERREG was proposed to complement the Directive 2017/541 on combating terrorism, mainly to tackle the misuse of hosting services for terrorist purposes. Furthermore, the TERREG defines terrorist content as covering material that incites or advocates the commission of terrorist offences, encourages the contribution to terrorist offences, promotes the activities of a terrorist group or provides methods and techniques for committing terrorist offences¹¹⁵.

In addition, the European Agenda on Security adopted in 2015 put together three priorities for the EU. In particular, they were tackling terrorism and radicalisation, severe and organised cross-border crime, and cybercrime. In addition, there were particular concerns about full compliance with fundamental rights (i.e. the debate about security and freedom), improving information exchange, and ensuring transparency, accountability and

¹¹² EUROPEAN PARLIAMENT a THE COUNCIL OF THE EUROPEAN UNION. *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')* [online]. 2000. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0031>

¹¹³ EUROPEAN PARLIAMENT a THE COUNCIL OF THE EUROPEAN UNION. *Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA* [online]. Strasbourg, 2017. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017L0541>

¹¹⁴ Ibid.

¹¹⁵ DE STREEL, Alexandre et al. *Online Platforms' Moderation of Illegal Content Online: Law, Practices and Options for Reform*.

democratic control. However, the EU also stated that the tools to implement the goals would be Europol Internet Referral Unit and European Counter-Terrorism Centre¹¹⁶.

Finally, the 2018 Audio-Visual Media Services Directive (hereinafter the AVMSD) expanded the framework of content moderation by imposing on the video-sharing platforms to take appropriate measures to protect the general public. Three types of illegal content under EU law were set out. First, terrorist content, child abuse material and racisms and xenophobia. Second, it was hate speech based on illegal grounds codified in the EU Charter of Fundamental Rights, such as sex, race, colour, ethnic or social origin, language, religion, political or any other opinion, or membership of a national minority. Third, it was content that may impair the physical, mental or moral development of minors¹¹⁷.

On the contrary, the AVMSD did not specify what the measures to combat such content are. It merely stated that the measures should be proportionate while considering the size of the platform and the nature of its provided services. Essentially, it was the platform itself that set the appropriate measures to handle it¹¹⁸.

Notably, the requirements for platforms under the AVMSD regulation were compatible with the liability exemption already suggested in the E-Commerce Directive¹¹⁹. The liability exemption for hosting service providers means that if they do not know about illegal activity taking place at their platform, they should not be concerned about implementing proactive voluntary measures¹²⁰.

Other legislative and non-legislative elements complement the baseline regulatory regime of tackling illegal content online: the 2018 Guidelines of the European Commission on effectively tackling illegal content online, and the EU Internet Forum, which has been

¹¹⁶ EUROPEAN COMMISSION. *The European Agenda on Security* [online]. Strasbourg, 2015. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0185:FIN>

¹¹⁷ EUROPEAN PARLIAMENT a COUNCIL OF THE EUROPEAN UNION. Directive (EU) 2018/ 1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio visual media services in view of changing market rea. *Official Journal of the European Union* [online]. 2018. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&qid=1550491395985&from=en>

¹¹⁸ Ibid.

¹¹⁹ DE STREEL, Alexandre et al. *Online Platforms' Moderation of Illegal Content Online: Law, Practices and Options for Reform*.

¹²⁰ KUCZERAWY, Aleksandra. The EU Commission on voluntary monitoring: Good Samaritan 2.0 or Good Samaritan 0.5? *KU Leuven Centre for IT & IP Law* [online]. 2018. Dostupné z: <https://www.law.kuleuven.be/citip/blog/the-eu-commission-on-voluntary-monitoring-good-samaritan-2-0-or-good-samaritan-0-5/>

established in 2015, or the 2015 establishment of the EU Internet Referral Unit within Europol (hereinafter the EU IRU)¹²¹.

Specifically, EU IRU operates in full compliance with the Europol Regulation and the EU legal framework, particularly with the Directive 2017/541 on combating terrorism. The goals of the EU IRU is to identify terrorist and violent extremist content online and advise the Member States. The EU IRU has extensive operational capacity and expertise backed by its experts in religiously inspired terrorism, translators, information and communications technology (ICT) developers and law enforcement experts in counter-terrorism investigations¹²². To illustrate, the EU IRU Advanced Technical Solutions team, consisting of ICT experts and developers, develops tools for flagging and collecting publicly accessible online terrorist content. The flagged illegal content is referred to the concerned service provider, whose responsibility is to remove it. The EU IRU additionally manages the Check-the-Web portal, an electronic reference library of jihadist terrorist online propaganda accessible only to law enforcement actors¹²³. The latest figures from 2017 show us that since the EU IRU was set up, it has assessed 42 066 pieces of content, from which 40 714 were referred as illegal over 80 platforms in more than ten languages¹²⁴.

3.1.2. Platform companies

Platforms possess unique technical expertise and operational capacity to moderate illegal content¹²⁵. Governments' increasing demand for platform responsibility for safety and security on the global stage has pushed platforms to develop procedures to manage such growing public expectations. Preeminent platforms like Facebook, YouTube and Twitter know how to deploy algorithmic moderation systems such as automated hash-matching and predictive machine-learning tools to moderate user-generated content¹²⁶.

¹²¹ DE STREEL, Alexandre et al. *Online Platforms' Moderation of Illegal Content Online: Law, Practices and Options for Reform*.

¹²² EUROPOL. *EU IRU Transparency Report 2019* [online]. 2020. Dostupné z: <https://www.europol.europa.eu/publications-documents/eu-iru-transparency-report-2019>

¹²³ Ibid.

¹²⁴ EUROPOL. EU Internet Referral Unit - EU IRU: Monitoring terrorism online. In: www.europol.europa.eu [online]. Dostupné z: <https://www.europol.europa.eu/about-europol/eu-internet-referral-unit-eu-iru#fndtn-tabs-0-bottom-1>

¹²⁵ GORWA, Robert. *The platform governance triangle: Conceptualising the informal regulation of online content*.

¹²⁶ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance*.

Algorithmic moderation systems (also known as algorithmic commercial content moderation) clarify user-generated content based on either matching or prediction, leading to removal, geo-blocking or account takedown¹²⁷. The aim is to identify, match, predict, or clarify a piece of content, be it video, image, text or audio file, based on its exact properties and general features.

One process of matching newly updated content typically involves "hashing", meaning that a known example of a piece of content is transformed into a string of data identifying the underlying content, called the hash or digital fingerprints¹²⁸. This process is practical and computationally cheap in comparison to identifying content piece by piece. On the other hand, its flaw is the sensitivity for any minor modifications. For example, any changes of colour of one pixel in an image may lead to a completely different hash value¹²⁹. Therefore, platforms tend to use other hashing techniques, particularly the so-called "perceptual hashing" for content moderation.

Perceptual hashing can detect if two different files represent the same image as perceived by human vision. Microsoft and Facebook use perceptual hashing to be a part of the GIFCT and their shared hash database. Unfortunately, despite the possible advantages of perceptual hashing, it is surrounded by secrecy regarding the exact algorithm used, which may be worrisome from a security point of view and raises privacy concerns¹³⁰.

Another process of matching newly updated content is classification. On the contrary to hashing, classification matches newly uploaded piece of content that has no correspondence to the previous version in a database and puts new content into one category¹³¹. Modern classification tools typically deploy automatic induction of statistical patterns from data to predict outcomes based on labelling the content as offensive and not offensive. The classification process typically results in creating so-called blacklists of

¹²⁷ Ibid.

¹²⁸ GALLACHER, John. Automated detection of terrorist and extremist content. In: GANESH, Bharath a Jonathan BRIGHT, eds. *Extreme digital speech: Contexts, responses and solutions* [online]. VOX-Pol Network of Excellence, 2019. Dostupné z: https://www.voxpol.eu/download/vox-pol_publication/DCUJ770-VOX-Extreme-Digital-Speech.pdf

¹²⁹ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance*.

¹³⁰ GENNARO, Rosario et al. *Publicly Evaluatable Perceptual Hashing*. 2020. DOI: 10.1007/978-3-030-57878-7_21

¹³¹ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance*.

offensive keywords. It may cause limitations for smaller companies in maintaining up-to-date blacklists, which sometimes needs to be done by manually coding offensive language¹³².

Once content has been matched and classified as offensive, platforms can either flag or delete it. When the platform chooses to flag, they place the content either in a regular queue, where it is no longer recognisable to user-flagged content or in a priority queue, where it will be seen faster by a specific expert moderator. A similar approach was implemented in 2018 by the government of the United Kingdom. British government closed a partnership with an artificial intelligence firm called ASI Data Science, whose content moderation tool is based on machine learning and can distinguish specific patterns in video files and match them to terrorist propaganda videos. The company reported the accuracy of their matching tool up to 94%, with a false positive rate of 0,005%¹³³.

In case of deletion, content is eradicated or prevented from being uploaded in the first place. For instance, YouTube uses the so-called "Content ID" technique for matching the content to the system of hashes. Twitter developed a "Quality Filter" to analyse the content and render it less visible for other users. In addition, when joining GIFCT, Facebook pledged that matched content in the hash database would not be automatically deleted but instead flagged to further reviews¹³⁴.

Facebook and Telegram messaging application is among the most popular platforms of choice among Islamic State members and supporters¹³⁵. According to Facebook, their algorithmic content moderation tools removed 99% of Islamic State and Al-Qaeda material uploaded to the platform¹³⁶. That implies Facebook has advanced expertise in content moderation, using both automated tools and human moderators¹³⁷. Apart from image

¹³² Ibid.

¹³³ GALLACHER, John. *Automated detection of terrorist and extremist content*.

¹³⁴ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance*.

¹³⁵ CONWAY, Maura a Ryan SCRIVENS. The roles of „old" and „new" media tools and technologies in the facilitation of violent extremism and terrorism. In: LEUKFELDT, Rutger a Thomas J. HOLT, eds. *The Human Factor of Cybercrime*. London: Routledge, 2020.

¹³⁶ BICKERT, Monika a Brian FISHMAN. Hard Questions: How effective Is Technology in Keeping Terrorist off Facebook? In: *Facebook Newsroom* [online]. 2018. Dostupné z: <https://about.fb.com/news/2018/04/keeping-terrorists-off-facebook/>

¹³⁷ DIRECTORATE FOR SCIENCE, Technology and Innovation Committee on Digital Economy Policy. *Current Approaches to Terrorist and Violent Extremist Content among the Global Top 50 Online Content-Sharing Services* [online]. 2020. Dostupné z: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CD/EP\(2019\)15/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CD/EP(2019)15/FINAL&docLanguage=En)

matching, Facebook deploys language understanding with artificial intelligence to understand text that might be advocating for terrorism and can detect new fake accounts created by repeat offenders. Furthermore, Facebook uses algorithms to identify Pages, groups, posts or profiles related to terrorism support¹³⁸.

With Telegram messaging application that employs two-way encryption, and similarly to other platforms like Signal and WhatsApp, moderating content might be somewhat problematic. Due to the encryption of message channels, access to the content shared between its users is theoretically forbidden. Hence, deploying the automatic content-detection tools is much more challenging and sometimes impossible¹³⁹. Moreover, the encryption creates hurdles both for platforms and third parties, such as intelligence or law-enforcement agencies. One solution may be deploying monitoring tools straight to users' devices to scan content before the encryption is applied¹⁴⁰. However, this would lead to privacy violations and corporate surveillance; therefore, it could endanger the profit of platforms when users switch to alternative platforms.

There is no such definition in defining terrorist and violent extremist content in Telegram's Terms of Service or its Community Guidelines. They do, however, proclaim that the promotion of violence and illegal content on publicly viewable Telegram channels is prohibited. They must process legitimate requests to take down illegal public content so that the application can be distributed through platforms like the App Store and Google Play¹⁴¹. Despite the fact, Telegram does not disclose exact procedures for content moderation and stresses that all its chats and group chats are private amongst their participants, and they do not process any requests for deletion related to them¹⁴².

Twitter used to be a particularly favourite platform by the IS and its supporters. Twitter reported that in the period from September to December 2014, there were around

¹³⁸ BICKERT, Monika a Brian FISHMAN. Hard Questions: How We Counter Terrorism. In: *Facebook Newsroom* [online]. 2017. Dostupné z: <https://about.fb.com/news/2017/06/how-we-counter-terrorism/>

¹³⁹ DIRECTORATE FOR SCIENCE, Technology and Innovation Committee on Digital Economy Policy. *Current Approaches to Terrorist and Violent Extremist Content among the Global Top 50 Online Content-Sharing Services*.

¹⁴⁰ GALLACHER, John. *Automated detection of terrorist and extremist content*.

¹⁴¹ NO AUTHOR. Telegram FAQ. In: *Do you process takedown requests?* [online]. Dostupné z: <https://telegram.org/faq#q-there-39s-illegal-content-on-telegram-how-do-i-take-it-down>

¹⁴² DIRECTORATE FOR SCIENCE, Technology and Innovation Committee on Digital Economy Policy. *Current Approaches to Terrorist and Violent Extremist Content among the Global Top 50 Online Content-Sharing Services*.

46 000 up to 90 000 pro-IS accounts¹⁴³. Since then, Twitter took action in disseminating terrorist content; hence the number of Twitter accounts and posts started to decline. In the period between 2015 and 2017, Twitter claims to have removed 1 210 357 accounts for violations related to the promotion of terrorism¹⁴⁴. In comparison, in the period from July 2018 until June 2020, Twitter suspended or removed 379 816 accounts due to the promotion of terrorism and violent extremism¹⁴⁵. Because of the large amount of data to be reviewed, human moderation would be not only costly but unfeasible. Therefore, Twitter uses GIFCT shared database of hashes to remove previously detected terrorist content¹⁴⁶.

Another frequently used platform for spreading terrorist content is YouTube. As mentioned previously, YouTube developed its Content ID for matching the content to the GIFCT database of hashes. Videos or posts that violate policies can be removed, with explanation, and depending on the severity of the offence, the user's access to certain features and the capacity to post new content may be restrained. Ultimately, the user's account may be terminated¹⁴⁷. YouTube reports that 98% of videos removed for violent extremism are flagged by machine-learning¹⁴⁸. Besides automated tools, YouTube also uses staff member moderators to moderate terrorist content, which does not have a clear or straightforward

¹⁴³ CONWAY, Maura a Ryan SCRIVENS. *The roles of „old" and „new" media tools and technologies in the facilitation of violent extremism and terrorism.*

¹⁴⁴ CONWAY, Maura et al. Disrupting Daesh: Measuring Takedown of Online Terrorist Material and Its Impacts. *Studies in Conflict & Terrorism*. 2019, roč. 42, č. 1–2. DOI: 10.1080/1057610X.2018.1513984

¹⁴⁵ TWITTER. *Rules Enforcement* [online]. 2021. Dostupné z: <https://transparency.twitter.com/en/reports/rules-enforcement.html#2018-jul-dec>; TWITTER. *Rules Enforcement* [online]. 2020. Dostupné z: <https://transparency.twitter.com/en/reports/rules-enforcement.html#2019-jul-dec>; TWITTER. *Rules Enforcement* [online]. 2021. Dostupné z: <https://transparency.twitter.com/en/reports/rules-enforcement.html#2020-jan-jun>

¹⁴⁶ OFCOM. *Use of AI in Online Content Moderation* [online]. 2019. Dostupné z: https://www.ofcom.org.uk/_data/assets/pdf_file/0028/157249/cambridge-consultants-ai-content-moderation.pdf

¹⁴⁷ REEVE, Zoey. Human assessment and crowdsourced flagging. In: GANESH, Bharath a Jonathan BRIGHT, eds. *Extreme digital speech: Contexts, responses and solutions* [online]. VOX-Pol Network of Excellence, 2019. Dostupné z: https://www.voxpol.eu/download/vox-pol_publication/DCUJ770-VOX-Extreme-Digital-Speech.pdf

¹⁴⁸ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance.*

definition¹⁴⁹. Though, much like other platforms, YouTube remains secretive about the specific technical implementation of its proprietary algorithmic moderation systems¹⁵⁰.

3.2. Legitimation politics

The following part presents the specific design of the TERREG Proposal and how had actors reacted to the Proposal. The focus is on the period of agenda-setting and framing the issue with solutions accordingly.

3.2.1. Regulation on preventing the dissemination of illegal terrorist content online

The European Commission issued a TERREG Proposal in September 2018 in line with the 2015 European Agenda on Security and the State of the Union speech by the President of the Commission, Jean-Claude Juncker¹⁵¹. Before proposing TERREG, the European Commission launched a voluntary system for tackling terrorism online, based on guidelines and recommendations. However, the system of self-regulation was limited, and in June 2018, the European Council decided to call for legislation to improve the detection and removal of content inciting accompanying hatred and committing terrorist acts. Accordingly, the Commission proposed a new system based on the belief that "what is illegal offline, should be illegal online" by removing terrorist content online within one hour of being posted¹⁵².

The legal basis for the TERREG Proposal is Article 114 of the Treaty of the Functioning of the European Union on the establishment and functioning of the internal market. Under Article 114, it is possible to impose obligations on platform companies

¹⁴⁹ DIRECTORATE FOR SCIENCE, Technology and Innovation Committee on Digital Economy Policy. *Current Approaches to Terrorist and Violent Extremist Content among the Global Top 50 Online Content-Sharing Services*.

¹⁵⁰ GORWA, Robert, Reuben BINNS a Christian KATZENBACH. *Algorithmic content moderation: Technical and political challenges in the automation of platform governance*.

¹⁵¹ COUNCIL OF THE EUROPEAN UNION. *Interinstitutional File 2018/0331(COD)* [online]. Brussels, 2018. Dostupné z: https://www.parlament.gv.at/PAKT/EU/XXVI/EU/04/57/EU_45743/imfname_10862334.pdf

¹⁵² LUYTEN, Katrien. *Addressing the dissemination of terrorist content online* [online]. 2021. Dostupné z: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649326/EPRS_BRI\(2020\)649326_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649326/EPRS_BRI(2020)649326_EN.pdf)

established outside the EU when their activities affect the internal market¹⁵³. In addition, the TERREG Proposal has also taken into account the principles set by the digital single market strategy referring to the E-Commerce Directive and the AVMSD Directive, especially with regards to maintaining platforms' liability exemption¹⁵⁴.

The specific design of the TERREG Proposal from September 2018 aims at tackling the dissemination of terrorist content from hosting services providers by imposing duties of care and proactive measures on them. Here are three main elements of the proposal. First, the removal orders can be issued by a competent national authority (not necessarily a judicial body). Here, the European Commission issued a one-hour deadline to act on the removal order. Second, content referrals sent from either a competent national authority or an EU body such as EU IRU must be assessed by a platform. Third, it sets duty of care obligations for all platforms, and the use of proactive measures to remove terrorist material from their services include deploying automated content moderation tools. In addition, human oversight should be in place to prevent false removals¹⁵⁵.

The Proposal also defined terrorist content as "material that incites or advocated committing terrorist offences, promotes the activities of a terrorist group or provides instructions and techniques for committing terrorist offences"¹⁵⁶. Furthermore, it put forward an effective, compliant mechanism for platforms. If the content has been removed unjustifiably, platforms would be required to re-upload the content as soon as possible. In addition, platforms would be provided with judicial remedies by national authorities to challenge removal orders¹⁵⁷.

3.2.2. Actors' reactions to the TERREG Proposal

The Proposal was examined in the Council's Terrorism Working Party and COREPER between September and November 2018. The Council position reflected most of the issues raised by the Member States. First, the Council concluded that the Proposal should protect journalistic content and press freedom in particular. Second, in terms of scope, the

¹⁵³ COUNCIL OF THE EUROPEAN UNION. *Interinstitutional File 2018/0331(COD)*.

¹⁵⁴ LUYTEN, Katrien. *Addressing the dissemination of terrorist content online*.

¹⁵⁵ EUROPEAN COMMISSION. *Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online* [online]. Brussels: European Commission, 2018. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:0640:FIN>

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

definition of terrorist content was aligned with the Directive 2017/541 to combat terrorism, claiming terrorist content shall incorporate the glorification of terrorist acts, soliciting persons to commit or contribute to terrorist offences, and promoting the activities of a terrorist group¹⁵⁸.

Third, the Council stated it should be the Member State's right to choose the nature and scope of proactive measures. Finally, concerning the issues of jurisdiction and the role of the Member State where the platform is established, Council decided for more effective implementation that any Member State has the right to issue removal orders and referrals to any platform, regardless of where the platform is established or where it designated a legal representative¹⁵⁹.

While the Justice and Home Affairs Council reached a position on the TERREG Proposal in December 2018, the European Parliament requested an opinion from the IMCO and CULT Committees and the EU Fundamental Rights Agency (hereinafter the FRA). FRA's main concern was with the too-broad definition of terrorist content as it may endanger the freedom of expressions and information¹⁶⁰.

Some concerns of the IMCO Committee included emphasising fundamental rights, the rights to privacy and personal data protection, and the freedom of the press and journalistic standards. Furthermore, regarding the scope of platforms included in the TERREG Proposal, it specifically expressed that "online encyclopaedias, educational and scientific repositories, open-source software developing platforms, cloud infrastructures that do not have access to consumer content and cloud providers that do not share content to the general public, and services at other layers of the Internet infrastructure than the application layer, should not be considered hosting service providers"¹⁶¹. In addition, it also contended the deadline for removing the content within six hours from receiving the removal order¹⁶².

The CULT Committee also stressed that the TERREG Regulation should not infringe the fundamental rights and the EU existing legal framework. It suggested narrowing down

¹⁵⁸ COUNCIL OF THE EUROPEAN UNION. *Interinstitutional File 2018/0331(COD)*.

¹⁵⁹ *Ibid.*

¹⁶⁰ RIGHTS, European Union Agency for Fundamental. *Proposal for a Regulation on preventing the dissemination of terrorist content online and its fundamental rights implication: Opinion of the European Agency for Fundamental Rights* [online]. Luxembourg, 2019. Dostupné z: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-online-terrorism-regulation-02-2019_en.pdf

¹⁶¹ COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION. *Draft Opinion: Amendments 98 - 403* [online]. 2019. Dostupné z: <https://edri.org/our-work/terrorist-content-regulation-document-pool/>

¹⁶² *Ibid.*

the definition of hosting service providers to exclusively cover only those who enable their users to make content available to the general public and exclude those that produce educational, journalistic and research content¹⁶³. Moreover, the deadline for removal was contested. CULT Committee suggested replacing the one-hour deadline with "without undue delay" whilst considering smaller platforms with limited capacities¹⁶⁴. In addition, CULT Committee pointed out plausible clashes with the E-Commerce Directive and the AVMSD Directive. For instance, the requirement to take and report deploying proactive measures could lead to general monitoring obligations that contradict the E-Commerce Directive. Moreover, proactive measures seem to be incompatible with the prohibition of control measures or uploading filters of content as is provided for in the AVMSD Directive¹⁶⁵.

After receiving the reports from IMCO and CULT Committees, the LIBE Committee published its report on the TERREG Regulation in February 2019. Overall, the report affirms the amendments suggested by the IMCO and CULT Committees, including the emphasis on fundamental rights, excluding cloud services from the Regulation, and educational and journalistic content. Competent authorities should also consider the platform's size and resources to deploy automated content moderation tools. The same should be applied regarding the unintentional delays in removals and determining the plausible penalty in case of non-compliance¹⁶⁶. LIBE Committee also stresses that no general monitoring obligations should be imposed on the platform companies. Finally, it also put forward that platform companies should publish annual transparency reports on actions taken against disseminating terrorist content, but the same applies to competent authorities that can issue removal orders¹⁶⁷.

The European Parliament adopted its first-reading position in April 2019 before the general elections in May 2019. According to the amended text, platforms were obligated to withdraw the illegal content within one hour, despite not being legally obliged to monitor or filter the content. Furthermore, according to the text, the illegal content was defined as a

¹⁶³ COMMITTEE ON CULTURE AND EDUCATION. *Opinion of the Committee on Culture and Education for the Committee on Civil Liberties, Justice and Home Affairs* [online]. 2019. Dostupné z: https://www.europarl.europa.eu/doceo/document/CULT-AD-632087_EN.pdf?redirect

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ COMMITTEE ON CIVIL LIBERTIES JUSTICE AND HOME AFFAIRS. *Draft Report on the proposal for a regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online* [online]. 2019. Dostupné z: https://www.europarl.europa.eu/doceo/document/LIBE-PR-633042_EN.pdf?redirect

¹⁶⁷ Ibid.

material which "incites or solicits the commission or contribution to the commission of terrorist offences, provides instructions for the commission of such offences or solicits the participation in activities of a terrorist group; and guides on how to produce and use explosives, firearms and other weapons for terrorist purposes"¹⁶⁸. Finally, in the events of persistent and grave non-compliance, platform companies risk being sanctioned up to 4% of their global turnover¹⁶⁹.

The decision to enter into interinstitutional negotiations was announced in the European Parliament in October 2019, and between October and December 2020, several triologue meetings at the technical level took place. Reacting to terrorist attacks in France and Austria in 2020, the Council reassured their commitment to complete the negotiations on the TERREG Proposal. Moreover, in December 2020, the European Parliament and the Council presidency reached a political agreement on the TERREG Proposal. On January 11 2021, the LIBE Committee approved the agreed text, and the Council formally adopted the text on March 16 2021¹⁷⁰. The TERREG Regulation was approved without the final vote on April 29 2021, by the Members of the European Parliament¹⁷¹.

3.3. Power relations

The following sub-chapter aims to look at the TERREG Proposal negotiation process, monitoring competencies and enforcement tools. It focuses on data provided from open public consultations conducted by the European Commission with firm stakeholders. In addition to the targeted consultations and the open public consultation, the European Commission gathered stakeholders' views through a Eurobarometer survey.

Before the open public consultations took place, Commissioners Andrus Ansip, Dimitris Avramopoulos, Elżbieta Bieńkowska, Věra Jourová, Julian King and Mariya

¹⁶⁸ EUROPEAN PARLIAMENT. *Preventing the dissemination of terrorist content online*.

¹⁶⁹ Ibid.

¹⁷⁰ EUROPEAN PARLIAMENT. *Legislative train: Preventing the dissemination of terrorist content online / 2018-9* [online]. 2021. Dostupné z: <https://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/area-of-justice-and-fundamental-rights/file/preventing-the-dissemination-of-terrorist-content-online>

¹⁷¹ EUROPEAN PARLIAMENT. 2018/0331(COD) Preventing the dissemination of terrorist content online. In: *Legislative Observatory of the European Parliament* [online]. Dostupné z: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/0331\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/0331(COD))

Gabriel met with the 22 representatives of online platforms on January 9 2018. The targeted consultation aimed to discuss progress made in tackling the spread of illegal content online¹⁷². However, because the topic discussed was sensitive, the consultation was held under Chatham House rules. Therefore the available brief report on what was discussed covered only the raised issues and did not unveil any concrete names. However, the report disclosed that Commissioners met with representatives from global and national companies, large corporations, and small-range companies involved in a wide range of online activities from e-commerce to social networks. We also know that the companies expressed several concerns. For example, they stressed that protecting fundamental rights, freedom of speech, and privacy pose a challenge for companies especially combined with the short deadline of removal¹⁷³.

On the other hand, they acknowledged the responsibility of platforms to take actions against illegal content. First, the reason for that is that the companies want to keep up a good and trustworthy reputation among their users. Second, they pointed out that to be successful in moderating illegal content in the areas of terrorist content, stakeholders should strengthen the cooperation among governments, industry and civil society. Also, cooperation between big and smaller platforms on matters such as sharing know-how, data and technology is essential so that the illegal content does not relocate elsewhere¹⁷⁴.

When asked about the technical capacity to tackle the spread of illegal content, the companies assured they hold practical machine learning algorithms and trusted-flaggers programs to tackle the vast amount of illegal content. Nevertheless, in some cases, human intervention is always necessary¹⁷⁵.

Consequently, the European Commission conducted an open public consultation after adopting a recommendation including a set of non-binding operational measures taken by online providers and Member States to tackle illegal content online. The consultation with

¹⁷² EUROPEAN COMMISSION. Removing illegal content online: Commission calls for more efforts and faster progress from all sides. In: www.ec.europa.eu [online]. 2018. Dostupné z:

https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_63

¹⁷³ EUROPEAN COMMISSION. *Tackling illegal content online - Meeting with Online platforms of 9 January 2018* [online]. Brussels, 2018. Dostupné z: <https://digital-strategy.ec.europa.eu/en/library/tackling-illegal-content-online-meeting-online-platforms-9-january-2018>

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

stakeholders took place before introducing the TERREG Proposal, from April 30 2018, to June 25, 2018, to examine options to tackle illegal content further online¹⁷⁶.

The open public consultation intended to gather views on the scope of the problem, its impact on society, online businesses and national authorities. In addition, the consultation analysed the view on the effectiveness of current measures to tackle illegal content and on the stakeholder's preferences for possible additional measures and their impact. Furthermore, the consultation was also intended to explore how the platforms would take the TERREG Proposal measures. Overall, 8 961 replies were received, from which 172 replies were from organisations, ten from public administrators, and 8 749 from individuals (i.e. users of online platforms). Replies from organisations contained 18 hosting service providers, four major business associations replying on behalf of platforms, and start-ups¹⁷⁷.

The results of the public consultation showed that the majority of hosting service providers deemed enhanced cooperation and exchanges between hosting service providers and competent authorities effective¹⁷⁸. In terms of measures to be imposed, larger platform companies encouraged deploying proactive measures, including automated content moderation with human oversight. However, around 30 organisations considered automated tools ineffective¹⁷⁹. In addition, the survey showed that smaller platform companies have limited capacity to tackle illegal content adequately. Furthermore, associations representing platforms voiced concerns about the time frame for removals, potentially leading to over-removal of the legal content¹⁸⁰. Overall, hosting service providers rather inclined towards strengthening cooperation and sustaining voluntary measures, and more organisations agreed to further measures on tackling the illegal content online¹⁸¹.

For example, the European trade association DOT Europe (previously known as EDiMA) represents online platforms and other innovative businesses that provide European consumers with a wide range of online services, including e-content, media, e-commerce,

¹⁷⁶ DE STREEL, Alexandre et al. *Online Platforms' Moderation of Illegal Content Online: Law, Practices and Options for Reform*.

¹⁷⁷ EUROPEAN COMMISSION. *Summary report of the public consultation on measures to further improve the effectiveness of the fight against illegal content online*.

¹⁷⁸ EUROPEAN COMMISSION. *Detailed contributions: Answers of organisation* [online]. European Commission, 2018. Dostupné z: <https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-measures-further-improve-effectiveness-fight-against-illegal>

¹⁷⁹ Ibid.

¹⁸⁰ EUROPEAN COMMISSION. *Summary report of the public consultation on measures to further improve the effectiveness of the fight against illegal content online*.

¹⁸¹ EUROPEAN COMMISSION. *Detailed contributions: Answers of organisation*.

communications, and information/search services. Its members include Airbnb, Amazon EU, Apple, eBay, Facebook, Google, Microsoft, TripAdvisor, Twitter, and Yelp¹⁸². During the open public consultation, DOT Europe welcomed the Commission's action on tackling illegal content online. Nevertheless, it also reported that some proposed measures should be carefully assessed.

First, setting time-frames to process referrals and removal orders is ineffective. Furthermore, DOT Europe found automated content moderation tools worrisome. This is because automatic detection tools cannot assess some types of illegal content. For example, in the context of vacation rentals, it is impossible to exclusively rely on automated tools to assess if specific properties displayed on the platform are not legally allowed to be there. Instead, a human with an understanding of the local legislation is needed, and automated tools are not developed enough to flag that type of illegal content¹⁸³.

On the other hand, the problem with human oversight of illegal content can have negative consequences. The critique was meant to point out the feasibility of such an approach. DOT Europe specifically claimed that “a human reviewing all illegal content is neither feasible from a technical point of view nor desirable, despite being, in theory, an interesting solution”¹⁸⁴.

As for the monitoring and enforcing of the TERREG Regulation, the EU put forward the obligation of platforms to deliver annual transparency reports to ensure transparency and accountability¹⁸⁵. Furthermore, the Regulation enforcement can be guaranteed by the option that the Member States can put in place financial penalties for non-compliance with removal orders. The level of penalties that the Member State decides to impose should be proportionate to the nature and size of the platforms to alleviate the burden and penalties for small, medium and micro-enterprises¹⁸⁶. However, the number of sanctions can be going up to 4% of the global turnover of the last business year¹⁸⁷.

¹⁸² TRANSPARENCY REGISTER. DOT Europe. In: *www.ec.europa.eu* [online]. 2021. Dostupné z: <https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=53905947933-43>

¹⁸³ EUROPEAN COMMISSION. *Detailed contributions: Answers of organisation*.

¹⁸⁴ Ibid.

¹⁸⁵ EUROPEAN PARLIAMENT. *Preventing the dissemination of terrorist content online*.

¹⁸⁶ EUROPEAN COMMISSION. Security Union: Commission welcomes political agreement on removing terrorist content online. In: *www.ec.europa.eu* [online]. 2020. Dostupné z: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2372

¹⁸⁷ EUROPEAN PARLIAMENT. *Preventing the dissemination of terrorist content online*.

Conclusion

The thesis aimed to explore and analyse how the EU tackles the dissemination of illegal terrorist content on the Internet. The thesis focuses on the relationship between the EU and platform companies, and it tries to explore a debate about binding regulations regarding the moderation of illegal content online. The Regulation on preventing the dissemination of illegal terrorist content online from 2018 was applied as the case to test the arguments. The thesis aims to analyse whether the Regulation has the potential to be effective.

The first chapter described the historical conditions, interests, and norms of the governmental actors. Then, it presented how had European security been coordinated, managed and regulated. Specifically, it showed that the counter-terrorism policy within the EU was coordinated strictly on an intergovernmental level, where the Member States remained the most relevant actors. Then, it showed that the perception of the terrorist threat changed radically after the terrorist attacks of September 11. In the aftermath of the attacks, the counter-terrorism policy domain became more institutionalised in the EU framework, as the EU adopted new measures and initiatives to deepen the cooperation and create a common approach to terrorism. Finally, it showed that certain aspects of counter-terrorism policy are now institutionalised under the ordinary legislative procedure. It means that the European Commission can initiate the legislative proposals, the European Parliament gained co-decision powers along with the Council of the EU, which remained the core institution of the decision-making. Moreover, the ECJ jurisdiction was extended to cover all AFSJ issues.

The second chapter presented the analytical framework of the platform governance triangle by Robert Gorwa. The concept enabled us to study the relationship between different actors in the regulatory process. By applying the platform governance triangle concept, the thesis presented three arguments to determine the plausible effectiveness of the TERREG Regulation. First, varying competencies of the EU and platform companies were analysed. Second, the specific design of the TERREG Regulation and the contest between the EU institutions were presented. Finally, the power relations between EU institutions and platform companies and monitoring and enforcement tools were brought up.

The thesis outlined four research questions. The first question asked about how has the TERREG Regulation come to be and what is the policy-making process behind it? The research showed that the European Commission initiated the TERREG Regulation in

September 2018 due to the ineffective voluntary system for tackling terrorism online. The European Commission acted in line with the 2015 European Agenda on Security and the State of the Union speech by the President of the Commission, Jean-Claude Juncker. In addition, the European Commission reacted to the 2018 European Council called for legislation to improve the detection and removal of terrorist content. Finally, the European Commission also believed that what is illegal offline should be illegal online.

The policy-making process fell into the ordinary legislative procedure and was based on the legal framework in Article 114 of the Treaty of the Functioning of the European Union, which allowed the EU to impose obligations on platform companies. It was also shown that apart from the European Commission exercising its right of initiation, the European Parliament also exercised its co-decision power. The CULT, IMCO, made severe amendments, and LIBE Committee before the European Parliament adopted its position in April 2019. Later in October 2019, the European Parliament voted on entering into interinstitutional negotiations, and several trialogue meetings took place after that. Finally, the European Parliament and the Council agreed on the final text of the TERREG Regulation, and in March 2021, the Council approved the amended text. The TERREG Regulation was approved in April 2019 by the Members of the European Parliament.

The second research question asked what the role of the European institutions within the decision-making process of adopting the TERREG Regulation was. The research showed that the European Commission sets the agenda, frames the issue in a politically salient way, initiates proposals, and conducts various meetings and consultations with business stakeholders and civil society and the public. The European Parliament published opinions and amendments to the TERREG Regulation as well as obtained an opinion from the FRA. The European Council was relevant because it called for legislation to improve further the system for tackling terrorist content online. Moreover, the Council was significant because it somewhat expedited the adoption of the TERREG Regulation after the terrorist attacks in France and Austria in 2020.

The third research question asked what the role of private business actors within the decision-making process of the TERREG Regulation was. The research showed that private business actors (i.e. platform companies) consulted the issue with the European Commission before the proposal for TERREG was initiated. Despite expressing their concerns, it remains unclear what led the European Commission not to take the concerns into account. This could plausibly be recommendations for future research.

Finally, the fourth research question asked what the conditions for the TERREG Regulation to be effective are. There are several aspects to be taken into consideration. First of all, the thesis proposes that the EU and platform companies complement each other in terms of competencies. The research showed that the platform companies possess unique technical expertise and operational capacity to implement the TERREG Regulation. The platforms already know how to deploy automated content moderation tools in order to regulate the vast amount of illegal content online. An example of it is Twitter, YouTube, and Facebook's success in taking down terrorist content online. The EU, on the other hand, is competent in areas of independence and representativeness, expertise and administrative capacity. This is illustrated by the EU extensive regulatory framework of counter-terrorism and digital market.

Furthermore, the EU expertise is also very high due to the extensive operational capacity and knowledge of EU IRU within Europol. The EU IRU has experts working on the root causes of terrorism and how to prevent it. It also has experts in ICT development who focus on tools for flagging and collecting publicly accessible online terrorist content.

The second argument, which the research proposes, is that the legitimization of the TERREG Regulation. Essentially, the research showed that the TERREG Proposal is based on legal documents that allow the EU to implement such measures. Moreover, the research demonstrated that the Proposal was adopted through the proper legislative process, and each actor had a chance to voice their suggestions, amendments and positions. The final part focuses on power relations during the negotiation process and the monitoring and enforcement tools. The research shows that the TERREG Regulation has introduced the obligation for platform companies to publish annual transparency to ensure the transparency and accountability of the Regulation. Moreover, the enforcement of the TERREG Regulation can be guaranteed by the leverage of sanctions, specifically by the financial penalties.

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