



PROTECTING FUNDAMENTAL FREEDOMS IN THE CONTEXT OF THE TCO REGULATION



Safeguards for Freedom of Expression and Beyond



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The TCO Regulation has been designed to address the serious issue of spreading terrorist content online, while being mindful of the fundamental rights enshrined in the European Union's legal framework. Among the most important of these rights are the **freedoms that form the foundation of the democratic society**, such as the right to freedom of expression and information, the right to freedom of thought, conscience and religion, the right to freedom of assembly and association, and the right to freedom of the arts and sciences. These rights are all protected under the **Charter of Fundamental Rights of the European Union**, and the Regulation ensures that **measures taken to remove terrorist content respect and uphold them**. While the Regulation seeks to protect public safety by removing harmful terrorist material, it does so with careful consideration for individual freedoms. The Regulation's safeguards ensure that content removal actions do not interfere with legitimate forms of expression, such as educational, journalistic, artistic, or religious material, nor do they restrict individuals' ability to freely assemble, associate, or engage in academic and artistic pursuits. By setting clear exemptions for such use, the Regulation helps to safeguard these fundamental freedoms while still providing a mechanism for the prompt removal of terrorist content.

➔ Freedom of Thought, Conscience and Religion

The TCO Regulation upholds the individual's right to freedom of thought, conscience, and religion, as outlined in **Article 10 of the Charter of Fundamental Rights**. This fundamental right is essential in ensuring that people can hold personal beliefs and make free choices without interference from the state. The TCO Regulation takes great care to ensure that the removal of terrorist content does not infringe upon the individual's ability to freely express their thoughts, beliefs, or religious views. Content related to religion or philosophy, as long as it does not incite hatred or violence, is protected from removal. This means that religious discourse or discussions of moral and philosophical issues are not to be mistakenly categorized as terrorist material, thereby preserving this critical right for individuals and communities.

➔ Freedom of Expression and Information

Freedom of expression and information, as enshrined in **Article 11 of the Charter of Fundamental Rights**, is one of the most fundamental rights within the democratic society. The TCO Regulation recognizes this and ensures that any measure taken to remove terrorist content online does not infringe upon this essential freedom. While the Regulation empowers authorities to take down content that incites terrorism or glorifies violence, it also establishes strict safeguards to protect legitimate expression, including political speech, news reporting, and social commentary. This protection ensures that content, which is critical, controversial, or thought-provoking yet not intended to incite harm, remains accessible. The Regulation emphasizes that the removal of content should be based on clear evidence of an imminent threat, not merely on the expression of unpopular views or criticisms of the status quo. In this way, the TCO Regulation helps maintain a balance between combatting terrorist material and upholding the right to freely express ideas, seek information, and engage in open discussion, which is fundamental to both individual autonomy and societal progress.

➔ Freedom of Assembly and of Association

The Regulation also safeguards the right to freedom of assembly and association, protected by **Article 12 of the Charter**. This right ensures that individuals can come together in groups for common purposes, such as political, social, or cultural activities. The TCO Regulation carefully avoids actions that would prevent people from organizing, meeting, or associating for lawful purposes. In practice, this means that content related to peaceful protests, social movements, or political gatherings should not be removed simply because it discusses controversial issues, provided it does not incite violence or terrorist activity. The Regulation ensures that its measures are proportional, preventing overreach that might stifle individuals' rights to express their collective views or pursue their common interests.

➔ Freedom of the Arts and Sciences

Under **Article 13 of the Charter**, the TCO Regulation also recognizes and protects the freedom of the arts and sciences. This includes the right of individuals to engage in artistic expression, scientific inquiry, and academic research. The Regulation acknowledges the vital role that art and science play in the development of society and culture, and it establishes specific safeguards to prevent the undue removal of content that falls under these categories. By preserving these freedoms, the Regulation ensures that the creation, dissemination, and exploration of new ideas, which is critical for societal progress, can continue unrestricted.



While the TCO Regulation strives to protect these essential freedoms, the line between terrorist content and legitimate expression can sometimes be difficult to define, especially when the content in question is ambiguous, controversial, or falls within a grey area of interpretation. **The Regulation acknowledges that artistic works, scientific research, and other forms of expression may, at times, include provocative or challenging ideas that should not automatically be construed as supporting terrorism.** In such cases, the Regulation encourages careful consideration to ensure that legitimate content is not mistakenly removed.

The following borderline examples will demonstrate how nuanced the distinction between harmful content and protected expression can be, highlighting the importance of context and intent when determining the appropriateness of content removal.



➔ **Examples of borderline cases** *(in which content might be flagged as terrorist, but in fact, it is not):*

Freedom of Thought, Conscience and Religion -

A user shares a post with a quote from a religious text that says, "To safeguard our faith, we must not be afraid to stand firm and defend our beliefs from those who seek to undermine them." The post is accompanied by an image of a group of people practicing their religion in a peaceful setting. Some might misinterpret this as a veiled threat or a call for violence, especially given the strong wording about "defending" faith. However, the user is simply expressing a desire to protect their religious practices from what they perceive as societal pressures to conform to secular norms.



Freedom of Expression and Information - A user posts a video saying, "Our government is watching us all, waiting for the moment to strike. We need to strike first to prevent our rights from being taken away!" This statement might appear to advocate violence against the government, yet the true intent could be to highlight the dangers of excessive government surveillance and advocate for protecting civil liberties. The language may be exaggerated for dramatic effect, but it's meant to draw attention to the erosion of freedoms, not to incite terrorism.



➔ **Examples of borderline cases** *(in which content might be flagged as terrorist, but in fact, it is not):*



Freedom of Assembly and of Association -

A post written in the form of a political manifesto that says, “The corrupt system must be dismantled. Revolution is our only answer, and we will do whatever it takes to reclaim our freedom!” It could be flagged for advocating violent overthrow, but in reality, the post is an extreme critique of a political system and a call for reform, not necessarily a violent revolution. The rhetoric could be hyperbolic, using violent imagery to illustrate deep dissatisfaction with the current regime.

Freedom of the Arts and Sciences - A user uploads a documentary that features controversial individuals discussing radical political views about overthrowing governments through violent means. The video doesn’t explicitly encourage terrorism but presents extremist viewpoints within the context of a broader discussion about political change. The video includes interviews with individuals who openly discuss past violent movements, but the documentary itself may take a neutral stance or seek to analyze these ideas for educational purposes.

➔ Review Mechanism for Content Removal under the TCO Regulation

In addition to the safeguards protecting fundamental rights, the TCO Regulation also provides HSPs with the right to challenge removal orders they believe to be unjustified. Under Article 4 of the Regulation, HSPs have the right to submit a reasoned request to the competent authority for the review and scrutiny of a removal order. This provision acknowledges the significant responsibility that HSPs bear in moderating content on their platforms and seeks to ensure that decisions to remove content are made fairly and transparently. If an HSP believes that the removal order is unjustified or fails to adequately consider the rights to freedom of expression, religion, or other fundamental freedoms, they may request a review by the competent authority. This review mechanism acts as a check on potential overreach and helps prevent the undue censorship of legitimate expression. By providing this opportunity for redress, the Regulation ensures that content removal is not arbitrary or overly broad, while also enabling the competent authority to take a more measured approach in evaluating the necessity and proportionality of the removal. This process is designed to foster transparency and accountability, ensuring that measures aimed at combatting terrorism do not inadvertently undermine fundamental rights. In this way, the Regulation balances the need for public safety with the protection of individual freedoms, reinforcing the commitment to both preventing the spread of terrorist content and safeguarding core democratic values.