



FREuDe

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POLICY BRIEF

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THE „EUROPEAN WAY“: EU RESPONSES TO DISINFORMATION AND PLATFORMS.

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Who is this aimed at

- EU digital media policy makers and planners in government and institutions

Key messages

- The new European Digital legal environment should minimise interference in the democratic process
- Legal role of platforms becomes clear for the future
- Europe makes a significant step toward building its digital model

Introduction

More than 20 years ago, the so-called electronic commerce directive established the current legal background[1] of the digital marketplace. The Internet has been transformed since then, bringing in new services, platforms, companies, and uses. One can argue that most of the evolution of the network has been in line with society. Unfortunately, distortion has arisen in many ways.

These new risks and challenges include illicit content and disinformation, which have had a highlighted role, especially since the pandemic (and its infodemic[2] as the WHO baptised it) or authoritarian and populist political regimes among some of the most important global powers.

[1] <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>

[2] <https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>

To handle this new panorama, the European Parliament's update on policies of disinformation has had an essential role in this legislature. It has been carried out through the Digital Services Act package[3] which includes the Digital Services Act (DSA) and the Digital Markets Act (DMA).

Interferences to Democratic Processes of the European Union

One of the key points when addressing the importance of countering disinformation in the digital space and the protection of exercising civil rights is elections. We have witnessed the ways in which digital platforms can play a significant role in their interaction with voters. From the Cambridge Analytica scandal[4], where Facebook (now Meta) played the leading role, to those events where disinformation and hate speech became crucial in inciting insurrection, violence, and domestic interference[5].

Digital platforms are also essential environments for regulatory frameworks regarding commercial speech, but also speech that 'sits' in between, such as political advertising. They can be seen as tool for participation and debate or an evil machine for manipulation. To support this statement and, especially, to avoid foreign interference in democratic processes[6], the Parliament had already made a specific resolution before the DSA was published.

In this mix of interests and rights, disinformation plays a critical role. It can be seen as a malignant strategy to reach goals far beyond propaganda, being currently converted into the core of a strategic and political debate, especially since the armed conflict between Russian and Ukraine.

Legal Response

The legal answer to this scenario is complex, as numerous countries are involved that have different national laws but also private companies behind these platforms. Companies that are located outside the European Union, mainly in the USA and latest, in China, with the TikTok appearance.

Countries are already adopting an increasing number of national laws. The critical point is the role of the intermediary services regarding the ways in which they should tackle online disinformation, illegal content, or other societal risks in relation to issues of information. Any regulatory approach must be harmonised in a delicate balance between business, rights, and freedom of expression and information. As the DSA states, a "safe, predictable and trustworthy online environment."

This legal response should be established at a European Union level, clearly defining actors, processes, and ways to handle the problems we have already stated. That takes us to the providers' liability rules and when they could be held liable for the illegal content the service users create or spread.

Platforms Role

The definitions provided in the DSA (Article 3) make a useful foundation for the act, as it highlights and particularises its focal areas. We can find classical points not clearly defined in the former directive although some may be the intermediary service, the recommender system, or content moderation. The term 'Very large online platforms,' with 223 appearances in the text. It is a straightforward way to talk about the big players of the Internet world, and Article 33 of the act and its section 5 is dedicated to platforms and their responsibility towards transparency.

[3] <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

[4] <https://www.theguardian.com/news/series/cambridge-analytica-files>

[5] [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/679076/EPRS_BRI\(2021\)679076_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/679076/EPRS_BRI(2021)679076_EN.pdf)

[6] https://www.europarl.europa.eu/doceo/document/TA-9-2022-0064_EN.html

We can find a new point about systemic risks, their assessment, and mitigation in it. This is related to this brief as it talks about:

- a) Dissemination of illegal content;
- b) exercise of fundamental rights;
- c) civic discourse and electoral processes, and public security;
- d) gender-based violence, the protection of public health and minors, and serious negative consequence to the person's physical and mental well-being.

The act suggests some mitigation measures and introduces the figure of a Digital Services Coordinator that every member country should determine. Aligned with a response mechanism, audits, and compliance, this is a more active manner in which to force some kind of accountability towards the broader society in relation to content and its governance mechanisms.

The DSA is the product of a debate inside the parliament underpinned by two main currents, one based on transparency and the other on prohibition. It finally seems that the transparency approach has been adopted through providing tools and information. They should help civil society distinguish and consent to using information and data.

When discussing electoral periods, service providers should control content that is illegal. The aim, once again, is that the citizen can distinguish—everything based on the protection of freedom of expression and opinion.

The European Way

The leading platforms are non-European. They had evolved stepping away from an analog model, which is no longer valid in the digital era, culminating into a point of friction between American and Chinese Digital Platforms[7].

The first one has operated with minimal regulation in the use of the data and has had consequences, as the Cambridge Analytics already showed. The second one operates under a stricter centralized control of technology and what each of its citizens does in the digital realm.

Europe needs to balance those models and has chosen to fully acknowledge the value of data and its power. These new acts will be helpful to reverse or minimise former actions, not only in terms of the market but also in interferences with democratic processes, or so at least is the aim – and hope.

They should also offer traction for European companies to start building and growing European platforms large enough to challenge the monopoly i.e. oligopoly of existing ones. Its support and protection will be an invaluable pushing force for the internal market.

How the parliament foresees its role can be summarized with a taking back control[8] in the digital sphere idea. This will be completed with other side initiatives to align democracy and technology. They will include rules for artificial intelligence or data and cybersecurity obligations for companies and countries.

[7] Li, F. (2022), Sustainable Competitive Advantages via Temporary Advantages: Insights from the Competition between American and Chinese Digital Platforms in China. *Br. J. Manag.*, 33: 2009-2032.

[8] <https://www.europarl.europa.eu/news/en/headlines/society/20211209STO19124/eu-digital-markets-act-and-digital-services-act-explained>

To close this European way chapter, the European Commission has also adopted a policy program The Digital Decade with aligned rights and principles. Its first annual report is planned for June 2023 and will serve as the basis for national strategic roadmaps[9].

Conclusion

The European Union has made, even with considerable delay in some aspects, an important regulatory leap. After a deep analysis, and much conflictual politics, based on more than two decades of experience in the digital landscape, the EU has been able to find and set limits using a clear set of policies.

The environment dominated by non-European private companies that were growing in power and global control has become one that has significantly impacted individuals and the evolution of crucial matters in communication, expression and political participation. Former initiatives had been determined on the go, and so was the solution to the problems that originated from them.

The near future after this digital package should invite us to optimism. Points are clear, so are definitions, and even a germ of mechanism is defined. But many issues still need to be addressed and questions to be answered. First, how will platforms react to the text, and how will they collaborate with the institutions and courts? In which ways will national countries and the EU seek to enforce issues of transparency and accountability? Then, what direction will the evolution of the digital services coordinators take and which role will they play once implemented? Finally, it is interesting to see the ways in which Court's interpretation will be realized once the first problems start to be judged upon this new paradigm.

[9] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_en#the-path-to-the-digital-decade

The Policy Brief is published in the framework of the FREuDe project. The project aims to intervene for positive future social change that derives from the commitment and intellectual input across disciplines, such as Sociology, Law, Education, Childhood and Youth studies, European studies and Politics, as well as Communication scholarship and Security studies. Moreover, the Centre addresses the question from the perspective of future autonomous citizens, today's children, and explore closely the ways in which information and Europe feature in their lives.

Jean Monnet Communication, Facts and Regulation for European Democracy (FREuDe) Centre of Excellence

- stimulates new forward thinking with regards the role of facts and place of regulation for securing a future democratic Europe
- generates new research and policy-oriented thinking about integration on the basis of informational rights and enabling informational environments across disciplines not traditionally involved in studying Europe:
- develops new agendas for research, policy and teaching across disciplines and across stakeholder communities
- provides an impetus for future oriented thinking, by researching the needs and perceptions of Europe's future autonomous citizens, young people and in particular children for factual information in and about Europe
- mobilises knowledges and competencies of a range of experts and especially aiming to "hear from" stakeholders which have historically been permitted least input to questions of right to accurate and comprehensive information as a civil and human right.

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