CHAPTER 4

European approaches to disinformation and public discourse

The policy framework to regulate the digital platform environment

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ABSTRACT

In this chapter, I introduce the reasons for and the challenges of creating a framework regulation for digital service providers in the EU. I analyse the rules passed in 2022–2024, including the Digital Markets Act, the Digital Services Act, the Code of Practice on Disinformation, and the European Media Freedom Act's rules on the relationship between digital platforms and media. I point out that this complex set of rules is aimed at creating and fostering a diverse information environment rather than directly regulating content. Instead of curtailing the privileges of the platforms, the law furnishes them with more responsibility and the expectation to exert due diligence to preserve the values of democracy and fundamental rights.

KEYWORDS: digital rights, disinformation, European regulation, platform regulation, social media platforms

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Introduction: Social media platforms in the context of public discourse

The necessity of regulating global social media platforms was and still is far from undisputed. As described below, the reasons are rooted in social and political values and legal traditions but have also been triggered by current events in global politics. As the roles and services of online platforms have rapidly changed and transformed in the past decade, both policymakers and researchers had to aim at a "moving target". Previous chapters in this volume discuss in detail how social media platforms play a key role in the democratic public discourse. Gatekeepers[1] hold the power to exert control over the exercise of rights by masses of people, including the right to freedom of expression, the right to information, and the freedom of the media, but, at the same time, they also facilitate the exercise of these freedoms. Their informational power is considerable, even from a historical perspective (De Gregorio, 2021b). Even though platforms merely mediate third-party content and do not provide content of their own, they shape how content is presented. The content-ranking algorithms of social media and search engines determine the audiences' exposure to content and, therefore, its perception, as discussed below in more detail. As a result, the public discourse is formed by these algorithms, with implications for democratic functioning (Helberger, 2020).

In the past decade, social media platforms were found to play a meaningful role in the spreading and amplifying of disinformation around the globe. Even though a causal link between this and the spreading populism and extremism through various countries cannot be proven, the concern for democracy within the EU triggered an action plan (the European Democracy Action Plan) aimed at reframing the information landscape. Besides political and security considerations, a commerce-driven regulatory necessity also informed the need for digital regulation. For this reason, the Platform to Business Regulation was passed in 2019, which regulated the relationship between digital platforms and business users, and introduced the principles of fairness and transparency (P2B Regulation). The two regulatory incentives were joined in the Digital Services Act (DSA), the Digital Markets Act (DMA) and, to some extent, in the Artificial Intelligence (AI) Act, which regulate online platforms and algorithms as powerful actors for both economic and public interest. The changes that platformisation has caused in the public sphere were addressed by two further acts: the Regulation on Political Advertising and the European Media Freedom Act. These were primarily informed by the values of the EU as laid down in Article 2 of the Lisbon Treaty and in the European Charter of Fundamental Rights. At the same time, especially the former three regulations were more influenced mostly by digital platform stakeholders, foregrounding economic freedom over public-interest safeguards.

Digital platform owners have claimed their own freedom of expression as understood in American jurisprudence. This American understanding of

platform privilege has two pillars: the First Amendment, which formulates a purely negative freedom; and the US law Communications Decency Act (CDA) 230, which provides unconditional immunity for intermediaries (for third-party content), regardless of whether they moderate the content. This liability has been re-examined as a result of court cases debating whether unconditional immunity should be lifted and retained only for cases where the platform is not actively involved in content governance through its algorithms (*Tamiz v. Google*, 2013; *Vargas v. Facebook*, 2023). The evolving judicial practice sustains immunity for third-party content (*González v. Google*, 2023). In *Twitter v. Taamneh* (2023), the US Supreme Court found that Internet service providers are not liable for aiding and abetting terrorist action, regardless of the nature of their algorithmic recommendations.

The European constitutional approach to freedom of expression, in contrast to the American, places greater emphasis on the value of public discourse and is more inclined to endorse regulation aimed at correcting imbalances and creating a more level playing field within the information landscape. And, most distinctively, in the EU logic, digital platforms are not primary subjects of freedom of expression, because they are not considered speakers themselves – only mere intermediaries.

While digital platforms are clearly not liable for illegal third-party content, according to the DSA, they *are* responsible for ensuring that the systemic risks of their services are well managed and mitigated. This means that they could become liable for failures in their content curation if their algorithmic recommendations systemically amplify terroristic content.

As a result, the European law retains platform immunity but imposes the obligation to ensure a safe environment through built-in co-regulation, which means an official obligation to self-regulate their rules of transmission and amplification. What looks like an obligation on paper is at the same time the legitimisation of a privilege: Digital platforms get to say how they curate content as long as they adhere to some basic principles of fairness, such as transparency, respect for human rights, and so on. The meaningful penalties apply only if the European Commission finds that a platform has violated its systemic obligation to diligently safeguard its informational services.

At the time of writing, no investigation or decision was taken on the basis of the systemic risk mitigation obligation, or other specific issue relating to disinformation or a similar anomaly that could cause a risk to the public discourse and democracy. While the European Commission has been conducting investigations and imposed a fine on X, those were related to transparency obligations, and the due process requirements in the notice-and-action procedure, which are hard obligations. A preliminary finding was published regarding TikTok and Meta, and a fine of 120 million euros was imposed on X for non-compliance in October and in December 2025, respectively. Below, said legal instruments are analysed in the light of media theories to assess their impact on the public discourse.

The DSA defines digital platforms as intermediaries, reinforcing their role as mere transmitters of information, as opposed to publishers and other media operators. This was an important clarification of their role, which was not entirely covered by the previous legislation (the E-Commerce Directive). After having experimented with various content offers such as a support fund by Facebook in 2019 called "Journalism Project" (Ingram, 2022) or "Facebook News", and in 2021, "Bulletin", social media platforms are now also legally incentivised to refrain from providing their own content, including the selection and active sharing of content, as that could qualify them as publishers. After the DSA was passed, Facebook terminated these threads and even stopped using the term "news feed" in order to avoid the word "news", calling it only "feed" now. In 2023, Google also stopped carrying news, disabling the "news" tag in Canada and disallowing users to share news in order to avoid having to pay for news content (Ryan, 2023; Woolf, 2023). A similar move finally led to an agreement in Australia (Gollom, 2023).

Algorithmic ranking and recommending

Media effects research has repeatedly examined the cognitive reception of media content by audiences and its impact on their psyche. Following the initial findings (Lasswell, 1927/1971), it has been established that the interpretation of received content by audiences is influenced by the surrounding society, including friends, relatives, and other influential figures (Lazarsfeld et al., 1944). With digitalisation on the rise, our perception of this surrounding social environment has been increasingly shaped by algorithms. Friends, family, colleagues, influencers, and celebrities are often encountered through social media platforms, and the information they share is filtered through the same algorithms as other content. Additionally, this traditionally private sphere has become intertwined with the public sphere in the social media environment, which presents a mixed feed of news, advertisements, and information on public matters with private posts about, for example, cats, children, holidays, or food (Calhoun, 2010; Seeliger & Sevignani, 2022). All of these are filtered and ordered by the opaque logic of algorithms. Thus, the societal environment that had once exerted a moderating effect on media perception has itself been captured by the same algorithms that govern public content. Friends and family, once considered a balancing factor in the process of information formation, have become drivers of polarisation in the social media environment.

Similarly, the agenda-setting function of the media (McCombs & Shaw, 1972) has increasingly been taken over by social media algorithms. Some posts become viral, others get forgotten. What is prioritised and what gets suppressed is defined by self-learning algorithms, which are designed by IT experts and then released to do their "own job". The departments that create those are often unaware of their exact activity because of the black-box nature of machine learning (Council of Europe, 2021).[2]

This should be weighed with the fact that giant social media platforms dominate the advertising market and reach an unprecedented number of people globally (CMPF, 2020). Meta investor reports confirmed 3.07 billion monthly active users and 2.11 billion daily active users (Jaimes, 2025). This is incomparable to any media concentration on the traditional media market, where Japan's *Yomiori Shinbun* has the largest subscriber base with approximately 10 million readers, followed by the *Wall Street Journal* with 2.2 million subscribers. Admittedly, traditional news organisations provide their own content while digital platforms merely transmit third-party content, but still, platforms can shape the content offered through their algorithmic ranking and recommendations. Moreover, the network effect (Barabási, 2003: 409–410; Barabási, 2014; Katz & Shapiro, 1994) causes big actors to get bigger and pushes small actors further to the peripheries (Barabási, 2016).

In sum, digital platforms shape information consumption through their opaque algorithms, which are hidden from public, academic, and official scrutiny. Their market and opinion power, as well as their regulatory actions, rival those of nation states (De Gregorio, 2021b). In fact, any attempt by a state to exert similar control over opinions would not be tolerated in any democracy. So, what factors contribute to the tolerance of such control by private enterprises?

Microscopic violations

The ways in which digital platforms interfere with the rights and capabilities of individual users is currently in the shadows. Several rights may be identified that are regularly and systematically interfered with by platforms, particularly the rights to privacy and freedom of expression, as well as the rights to receive information, dignity, equality, and others. The interferences are so common, and often so minor if considered individually, that they remain below the threshold of attention (Smuha, 2021).[3] Even *users* do not often perceive these constraints as a problem; and if they do, the tiny relevance of each individual case seems unworthy of a costly lawsuit.

Occasionally, non-governmental organisations make the effort and initiate court procedures, relying on mass-level violations of concrete legal provisions rather than human rights directly (noyb, 2023). These lawsuits are successful and effective, but they change neither the general dynamics of the infringing habit nor the systemic legal attitude of how these microscopic human rights infringements are regarded. Another complication arises when harmful actions are perpetrated by a chain of numerous actors, such as a network of disinformants or providers of targeted manipulative advertising. In such instances, the responsibility for harm is diffused among the "many hands" involved.

Additionally, this responsibility often falls upon private companies that are not directly obligated to uphold human rights, raising the question of the horizontal effect of human rights. Moreover, harm frequently occurs with the individual's consent, owing either to their lack of awareness of the

risks or their willingness to waive their rights in exchange for immediate benefits (Mühlhoff, 2022).

In summary, the prevailing human rights framework regards human rights as inherently attached to individuals and subject to individual claims for remedy. Several human rights regimes, especially international ones, require that substantial significance be proven to initiate a lawsuit (McGregor et al., 2019). However, the normative premises of human rights remain significant in the context of changed realities (Hoffmann-Riem, 2022). In situations like this, state regulatory policy is a usual response, imposing obligations on companies to respect the interests of individuals, as it occurred in the fields of labour law, telecommunication law, and other sectors (Trebilcock, 1997).

In European regulatory culture, the rights of individual people prevail over corporate rights, which is reflected in nation states' positive obligation to create a regulatory environment in which those individual rights are protected. This state obligation extends beyond showing respect towards rights, passively refraining from interfering with those. It also includes taking positive actions to protect and, in some cases, even to ensure, that those rights can be exercised. This is the path that the EU has taken, albeit it has severe limitations.

Limitations of the European legislative policy

European legislation is loaded with more than one burden, which hinders the efficient treatment of the problem.

Limited competences

First, as the EU is not a state, its legislative competencies are limited. It may adopt legislative acts only in the fields that have been explicitly conferred upon it by the member states. Neither human rights nor media are among these areas, therefore, strictly speaking, the EU is not empowered to regulate these fields. However, transmitting and providing content is a service that falls under the principles of the common market. Harmonising the common market constitutes a legitimate legal basis for the EU to enact specific regulations for this purpose. In addition, the Lisbon Treaty has enacted the European Charter of Fundamental Rights as a binding document for the EU. It binds all actions of the EU institutions, which encompass the legislative function as well. Thus, whenever the EU adopts a law, it must respect, protect, and ensure that the rights incorporated in the Charter are protected.

The presence or absence of the legal basis has continually been a matter of dispute during the legislative process of the laws that have regulated the operation of online platforms. In particular, the justification of the provisions intended to protect fundamental rights, democracy, and the public discourse was subject to intense discussions.

Definitional issues

Second, tackling disinformation has been a challenge since its emergence. Freedom of expression protects all opinions and statements of facts, regardless of their value or their truth, as long as they do not violate other persons' rights. For statements that discuss political opinions or matters of public interest, the scope of freedom is even wider (see ECtHR decisions Jersild, Lingens, Handyside). Disinformation – that is, content that is intentionally designed to be manipulative and misleading – does not violate specific rights to individual reputation, privacy, or public morals. Any existing legal restriction (such as defamation) would consume the category of disinformation. Thus, disinformation, as a term, consciously addresses an existing regulatory gap (Bayer et al., 2021).

In recent regulations, disinformation has been circumscribed as content that may have an adverse impact on democracy, influence the outcome of elections (AI Act, Political Advertising Act), or is manipulative, impacting public health, public security, political participation, or civil discourse (DSA). The Strengthened Code of Practice on Disinformation (SCOP) of 2022 does not define disinformation but leaves it up to the signatories to define it. Signatories decided that they cannot distinguish between intentionally untrue or manipulated and unintentionally untrue or misleading information (i.e., disinformation and misinformation), and they refer to both with the broader term of "misinformation".

The EU's European Democracy Action Plan, which is the basis for the SCOP, defines misinformation and disinformation as follows:

> Misinformation is false or misleading content shared without harmful intent though the effects may still be harmful, e.g. when people share false information with friends and family in good faith; disinformation is false or misleading content that is spread with the intention to deceive or secure economic or political gain and which may cause public harm. (European Union, 2020: §4, para. 1).

The challenge of detection and identification

A third reason lies in the difficulty of distinguishing the truth from falsity: Determining with certainty whether content is disinformation is nearly impossible in several cases. For example, during the Covid-19 crisis, information that was first identified as disinformation turned out to be true. Notably, true but misleading information disseminated with the intention of manipulating the audience may also qualify as disinformation (Bayer et al., 2019). In addition, epistemic uncertainty also undermines stable identification: No news item is ever completely true or false. According to Bajomi-Lázár (2023), the truthfulness of journalistic content is to be defined on a gradual scale rather than with binary values. For these reasons, a direct state restriction of disinformation would not only be unreasonable but also illegitimate. Therefore, while platforms are obligated to remove illegal content, the removal or downranking of disinformation is merely "recommended", while

the obligation includes due diligence to prevent its amplification. In automatic detection applications, besides content detection, suspicious dissemination patterns also allow for the recognition of manipulative content (Bayer, 2022).

The seemingly equal status of actors

Finally, neoliberal economy and political representation frown upon any restriction that might curtail the rights of entrepreneurs. From the perspective of regulation, giant platforms and individual users have the same status: They are all private entities, none of which may be directly obligated to respect the rights of others, which is a state duty. Microscopic violations are not currently acknowledged, nor are they represented in legal argumentation.

For all these reasons, the European legislation, rather than addressing the impact on human rights directly, intended to create an information environment that is more likely to foster human rights and, as a result, a balanced public discourse and democracy.

Setting the framework: The Digital Markets Act

The Digital Markets Act (DMA) (European Union, 2022b) complements traditional competition law instruments (Vestager, 2021) with a specific focus on digital markets (Fernández, 2021; Petit, 2021). Acknowledging the vast size and influence of the "digital giants" (also called "gatekeepers" under the DMA), it regulates their actions along the principles of fair market behaviour and for the benefit of consumers and business partners. The requirements such as interoperability, sharing access, and the principles of fairness and non-discrimination align with the idea of net neutrality, a principle of fairness and equality that had dominated the policy discourse on Internet access providers – the earlier gatekeepers of the network infrastructure, before platforms occupied the centre of attention (Marsden & Brown, 2023).

By regulating the structure of the digital environment, the DMA exerts an indirect regulatory effect on the information landscape. Most benefits can be expected from the prohibition of discrimination and the protection of users from targeted content without their explicit consent. While this principle does not stretch beyond the rules of the General Data Protection Regulation (GDPR), detailed rules have been added to prevent circumvention of those. For example, the acquisition of personal data sideways without users' consent, such as "preying" on data acquired by business users to which platforms gain access through their intermediating services, is ruled out. Similarly, it is prohibited to use personal data inferred from the commercial activities of business users or the end users of those business users, including click, search, view, and voice data. Further, it is also prohibited to repeatedly ask for consent once it was rejected (within a period of one year). Along with the DSA's rule

that provides for equal representation of rejection and consent (European Union, 2022c),[4] these may provide a better protection of personal data.

On the other side of the seesaw, business users of gatekeeper platforms are entitled to get free access to the personal data provided to them by their customers through the platform infrastructure. The gatekeeper may use such data only in the event they originate directly from the end user who opted to share such data (European Union, 2022b: §6.1, 6.10). This rule practically obliges gatekeepers to provide their intermediary services in a neutral manner, also adding that the conditions of ranking should be non-discriminatory and fair.

Additional rules on interoperability[5] and access obligations address the structural market balance between gatekeepers and other service providers. A flatter market structure is expected to incentivise platforms to pay more attention to human rights and better serve their customers as citizens (Rowe, 2022). The DMA's advertising transparency rules are expected to bring some competition within the advertising market (Brown, 2020; Eifert, 2021: 1015; Stuart, 2021; European Union, 2022b: §5–6, Recital 45).

Platform rules: The Digital Services Act

The DSA's primary mission is to harmonise the common market rules for a seamless free movement of platform services across borders (European Union, 2022c: §1.2a). Its secondary aim is more progressive: to provide uniform rules for a safe, predictable, and trusted online environment where the fundamental rights enshrined in the European Charter of Fundamental Rights are effectively protected (European Union, 2022c: §1.2b). Although the approach may appear revolutionary, the regulation hardly extended beyond codifying the existing state of affairs and creating a legal and regulatory framework for its enforcement. By acknowledging the role of platforms as de facto market regulators, the DSA introduced rules for supervision and transparency to monitor and mitigate any events that could potentially have systemic significance (Eifert et al., 2021).

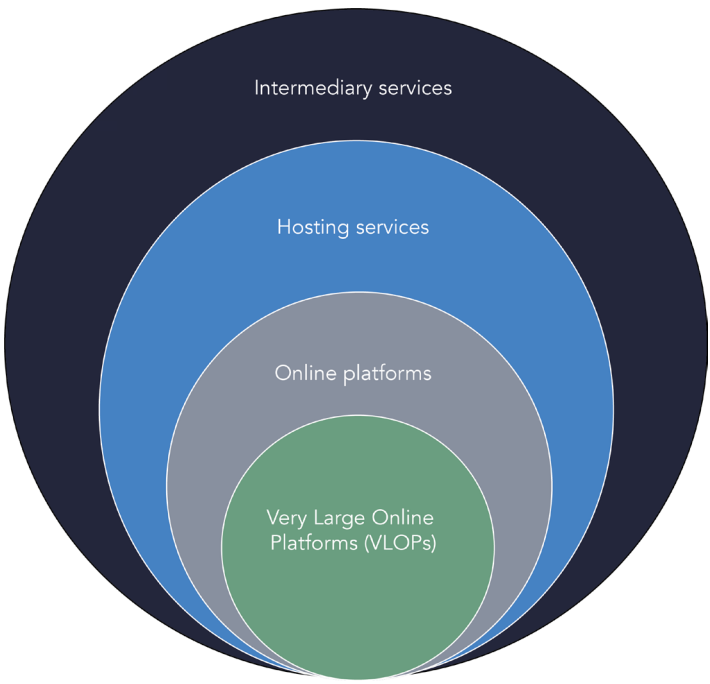
Defining platform providers has been a long-overdue task for legislators. These actors emerged after the millennium and were not covered by the scope of the previous laws that governed Internet service providers (the E-Commerce Directive and the national laws passed on its basis). The DSA has defined platform providers as a type of hosting provider that disseminates information to the public, a definition that does not grasp the core service of platforms, which is to make order out of the chaos of information and to decide which information item is presented to each user as well as to decide which items are left in the "long tail". The actual activity of content governance (as opposed to content moderation) is still only marginally addressed by the DSA.

By setting the aim of installing safeguards to protect fundamental rights, the legislator endeavoured to enter "uncharted regulatory waters" (Eifert et al., 2021: 994). As noted in the previous section, tackling content governance directly was not possible without interfering with the fundamental rights of

platforms and their users. Therefore, the legislator applied the due diligence framework; this is used by the EU as the new "magic wand" to deal with corporate superpowers. Due diligence is increasingly being introduced in areas where corporate actors interfere with human rights and the environment, leaving microscopic traces which together generate meaningful adverse effects. Beyond the DSA and the AI Act,[6] the Corporate Sustainability Due Diligence Directive has been passed and entered into force on 25 July 2024.

Rather than being liable for the content they carry (Riordan, 2020), platforms are responsible for applying due diligence to prevent harms (Naughton, 2018). The due diligence obligations include a wide range of measures (European Union, 2022c: Chapter III). Some of them, such as the clear and transparent wording of the terms and conditions, must be applied by all services; others, such as the transparency obligations regarding the notice-and-takedown procedures, apply only to hosting services. Refraining from dark patterns applies to all online platforms; and some specific obligations apply to very large online platforms (VLOPs). The more specific a service provider is, the more obligations it has (see Figure 4.1.).

Figure 4.1 The types of intermediary services in the Digital Services Act



Not all measures of due diligence are defined by the law; platforms are entitled to design their own measures and policies, as long as they fulfil the expectation of mitigating the systemic risks arising from their services.

Among the several requirements, two specific obligations directly address content governance. First is the traditional media ethics standard of separating advertisements from organic content (European Union, 2022c: §26). Platforms are now obligated to label advertisements as such, enabling users to immediately identify the advertiser and the sponsor. Second, online platforms that use recommender systems must disclose their main parameters and any options if offered. The main parameters must include the most significant criteria in determining the information that was suggested to the user, as well as the reasons for their relative importance. VLOPs and very large online search engines (VLOSEs) are further obliged to offer at least one additional option. The SCOP recommends that relevant signatories should commit to offer more options (European Commission, 2022: Commitment 19).

This responsibility is completed with the accountability of platforms for their diligence efforts. Insufficiency of the diligence may result in sanctions imposed by the Digital Services Coordinator or the Commission. VLOPs must employ an annual independent audit at their own cost (European Union, 2022c: §37).

The risk-based regulation has several downsides, one of which being the vagueness of what counts as systemic risk (Peukert, 2021). Overly broad terms raise doubts about the appropriateness of the rules, such as the wording "*any* negative effects" (European Union, 2022c: §34.1b, c, d). For example, reporting on matters of public interest is often likely to exert a negative effect on certain public figures (Barata, 2021; Peukert, 2022), whereas the removal of any critical content would have a negative effect on the civil discourse. Deciding between conflicting values is beyond the competence of platform moderators.

Enforcement

Accountability for the due diligence obligations is provided by the annual independent audit by which platforms are required to review and report on their compliance with Chapter III of DSA and with the Codes. In addition, the Commission is entitled to order independent monitoring through external experts. The text of the DSA makes no direct connection between a negative audit report and the Commission's ensuing investigation or sanctions. The Commission decides based on all information collected (European Union, 2022c: §65.2). In addition to the positive and negative opinions, an audit report can also contain a "positive opinion with comments", in which the auditor includes remarks that "do not have a substantial effect on the outcome of the audit" (European Union, 2022c: Recital 93). The need for a binary (positive/negative) decision deprives the auditing process of its complexity and degrades the risk-management and due-diligence framework into a checklist. The purpose of auditing should rather be to provide a qualitative and quantitative analysis of measures used by VLOPs to fulfil their obligations, ensuring that the assessment reflects the complexity of the obligations (De Gregorio & Dunn, 2022).

Auditors scrutinise both adherence to the law and the voluntary commitment under the SCOP. However, only the violation of the law may entail a fine. While violating individual commitments under the SCOP falls outside the sanctionable scope of obligations, a systemic violation would mean non-compliance with the due diligence obligations and, as a behaviour contrary to the rules in Chapter III of the DSA, may result in a non-compliance decision imposing on VLOPs fines of up to 6 per cent of their total global turnover (European Union, 2022c: §35).

The soft power of the codes

The previous Code of Practice on Disinformation (European Commission, 2018) lacked benchmarks for evaluation and reporting, as well as any oversight mechanisms (Brogi & Bleyer-Simon, 2021). Platforms were observed to portray their efforts in a more positive light than actual reality.

The new Code, the SCOP, incorporates quantifiable measures and performance indicators formulated in collaboration with the Commission and the European Board for Digital Services (European Commission, 2022). Signatories must regularly report on their compliance. In addition to evaluating the attainment of goals, the Commission and the Board publish their findings on the Codes. In addition, the Commission and the Board may "invite the signatories [...] to take the necessary action" (European Union, 2022c: Article 45.4). Nevertheless, this did not impede the withdrawal of Twitter (X) from the SCOP (Krukowska, 2023). While X is the first platform to be fined by the Commission, the non-compliance is based on the due diligence obligations and not on the systemic risk mitigation, which is augmented by the DSA. In other words, the fine is not related to X's withdrawal from the Code.

The Code of Conduct against Illegal Hate Speech that had been originally issued in 2016 has been revised and integrated into the DSA. Other codes of conducts, such as the Code of Conduct for Online Advertising and the Code of Conduct for Accessibility, were planned to be developed during 2025, but no apparent signs of their preparation are visible at the time of closing this manuscript (European Union, 2022c: §46–47).

The Strengthened Code of Practice on Disinformation: Reordering the information landscape

The SCOP (European Commission, 2022) aims to tackle not merely disinformation but the entire systemic operation of the platform-dominated information environment by creating and maintaining a more transparent landscape. Therefore, its content is broader than just disinformation. It includes topics such as political and issue advertising, the integrity of services, the empowering of users, and cooperation with researchers and the fact-checking community. It comprehensively addresses the main elements of

the platform communication environment: key actors and behavioural subsystems. The SCOP identifies users, researchers and fact-checkers as key actors. The described policies focus on content management, although content moderation is also part of the set. The removal of "harmful" disinformation, while mentioned incidentally, is not in the centre point of the SCOP. The definitions of disinformation and misinformation are left to the signatories.

As a great difference to the previous Code of Practice (European Commission, 2018), each Commitment in the SCOP is followed by various (facultatively applicable) measures, which are followed by Qualitative Reporting Elements and Service Level Indicators. These support monitoring and auditing and help to come to a conclusive decision regarding compliance, which may have financial consequences. A task force is established by the SCOP which aims to adapt measures to the changing technological, societal, market, and legislative developments. It consists of the signatories' representatives, as well as those of the European Regulators' Group for Audiovisual Media Services (ERGA, which has been now replaced by the European Media Board), the European Digital Media Observatory (EDMO), and the External Action Service (EEAS), with the European Commission acting as chair.

The scope of membership to the SCOP has also been widened. Beyond platforms of all sizes, fact-checkers, researchers, and players from the advertising ecosystem and civil society organisations are also welcome to join. The signatories have the flexibility to pick measures from the list and ignore others according to their discretion.

One of the key measures to reduce the traffic of disinformation is to deprive it of its funding (demonetisation). The subjects of this measure are not merely advertisers but also actors throughout the value chain of advertising: online e-payment services, e-commerce platforms, and crowdfunding or donation systems (European Commission, 2022: Chapter II, Commitment 1).

The role of users in the fight against disinformation

The second part of the SCOP is concerned with empowering key actors. This relies on the observation that users are active agents in the social media environment, contributing to the formation of the landscape. In addition to the content they provide, their likes, shares, and other actions or reactions train the underlying algorithm in various ways.

Two competing views on the role of users are present in the discourse on platforms: In the liberal school of thought, they are viewed as rational, moral beings making conscious decisions. This was the original stance taken by early Internet optimists (Barlow, 1996) and has a strong representation among contemporary scholars as well (Napoli, 2011; Helberger et al., 2015, 2018; Möller et al., 2018). The other, risk-averse attitude regards users as vulnerable victims of a malfunctioning system. Research shows that users' cognitive predisposition and other traits are diverse (Grinberg, 2019; Van Bavel et al.;

2021) and bring about a variety of patterns (Anthony & Moulding, 2019; Georgiou et al., 2019; Imhoff & Lamberty, 2018; Klebba & Winter, 2021; Pierre, 2020; Poon et al., 2020). Rather than taking a position in this debate, it is reasonable to say that the user community is anything but homogeneous (Tan, 2022; Bayer et al., 2021), merely by the fact that it also includes political, commercial, and criminal actors. The anomalies of the information environment can be viewed as conflicts between users' interests, amplified by technology and AI applications. The ethical perspective on users' moral responsibility remains under-researched (Mühlhoff & Ruschemeier, 2022). The empowerment of users, similar to that of platforms (discussed below), also includes a desire that users assume greater responsibility for their online conduct. For example, the required measures to increase media literacy, support critical thinking and transparent policies, and better equip users to identify disinformation, among others through flagging, are clearly meant to urge responsible decisions by users. At the same time, platforms including vulnerable groups, safe design of the architecture, and the recommender system design (see below) are on the more protective side.

The role of algorithms

Among indicators for trustworthiness, the safe design of recommender systems is the most far-reaching element of the SCOP (European Commission, 2022: Commitment 18). This means that algorithms should automatically give prominence to authoritative information and *reduce the prominence* of disinformation (Measure 18.1). Further policies should be designed to prohibit, *downrank*, or not recommend harmful, false, or misleading information (Measure 18.2.). This kind of activity is similar to a public service obligation. If these measures are consequently realised, they may exert a massive impact on the structuring of the public discourse. However, the definition of what is authoritative and harmful is a huge responsibility subject to debate, especially when it comes to socially controversial issues. Therefore, this recommendation further increases, rather than curtailing, the autonomy and power of digital platforms. This policy strategy resembles the philosophy of Eastern martial arts: Rather than resisting power, the regulator added leverage and direction to this power.

Making this responsibility explicit is an acknowledgement of the fact that platforms are *not neutral* intermediaries, that they indeed *shape* the public discourse and public opinion with their algorithmic governance. This activity is subject to minimal transparency requirements by law, without explicit limitations. The DSA places emphasis on fairness towards users, integrating a limited number of safeguards within the broader rules outlined in the DSA such as the obligation to inform users even when their content is demoted (rather than removed), while giving the reasons for demotion (European Union, 2022c: §17). The SCOP requires that digital platforms take action only if actors *persistently* violate their policies (European Commission, 2022: Measure 18.2).

Beyond these rules on procedural fairness, providers are free to decide what they interpret as harmful and what as trustworthy or "authoritative", and neither the DSA nor the SCOP rule out systematic content-based discrimination or discrimination between users, provided that it is not part of the terms of services.

The European Media Freedom Act's platform perspective

The European Media Freedom Act (EMFA) is a milestone in EU media policy. It relies on the recognition that opinions and ideas influence the EU's economic and social processes. Just like goods and services flow, and people move across borders, opinions and ideas are also transmitted and exert an impact on democracy, security, and other important values. Maintaining a robust media market is of crucial interest for the EU as a democracy and as a market economy. In addition, the isolated national markets are unable to compete against the giant global platforms which have dominated the advertising market (Turow, 2012).

Efforts to regulate media pluralism emerged in the previous millennium but were dismissed for lack of a perceived problem (Bayer & Cseres, 2023). However, the High Level Group on Media Freedom and Pluralism reported problems in 2013, and a new perspective was added (Vīķe-Freiberga et al., 2013). Deficiencies in media freedom or pluralism within member states can have spillover effects at the EU level through the free flow of services and persons, the common opinion market, and the democratic processes such as the European elections (European Parliament, 2023; see also European Union, 2022a). Democratic shortcomings at the national level can stain the entire European process, because national elections shape the constituency of the European Council, thus influencing EU institutions (Bárd et al., 2016; Bárd & Bayer, 2016; Blokker, 2021; Pech & Scheppele, 2017).

The EMFA, similar to the previously discussed laws, aims at regulating the information environment in its complexity. It contains concrete regulations applying to several types of actors, including media providers, advertisers, political parties, member states and their authorities, as well as online platforms.

The purpose of regulating the relationship of media service providers and platform providers is to grant established media privileged treatment and thereby more prominence on social media platforms (European Union, 2024: §17). However, being an established media provider does not guarantee high-quality and trustworthy content: Media content can be just as biased or inaccurate as user-generated content. Although there are some attestation mechanisms provided by journalistic associations (Reporters Without Borders, 2023; Husovec, 2022), these have not been incorporated into the EMFA rules. VLOPs are merely required to get a self-declaration from the media service provider; although they also have the option to ask for confirmation

from the relevant regulatory authority, self-regulatory body, or through a machine-readable standard by an authorising association. Reporters Without Borders has created an ISO standard, the Journalism Trust Initiative (JTI), which allows media outlets to self-assess and certify themselves.

According to this rule, media service providers must be informed before their content is removed by a platform for violating its terms and conditions, and they have the possibility to respond within 24 hours, except for crises that may cause the time frame to be shorter. If the platform deems the content to be illegal, harmful to minors, or constituting hate speech, the privilege does not apply. However, any complaints by media service providers have priority and should be decided without delay. In case of dispute, they may use mediation or out-of-court dispute settlement mechanisms, and the platform must engage in the dialogue in good faith. The media service provider is entitled to report to the European Board for Media Services, which also has the right to regularly organise a structured dialogue between media service providers and platforms, with the possibility to involve civil society actors.

The so-called privilege is, in fact, nothing more than a fair procedure that would ideally be granted to every user. Just like with other laws, especially those with the due diligence framework, the key lies in enforcement. In the case of the EMFA, however, enforcement faces even more political risks and potential controversies than in the case of the other acts.

Concluding remarks

This chapter has outlined the main features of the European regulatory environment of online platforms and introduced the technique of regulation which combines due diligence, co-regulation, and statutory obligations with financial penalties.

The result is a combination of light-handed regulation with close supervision and the possibility of harsh penalties. The framework character leaves considerable flexibility (or uncertainty) for the precise content of the regulation, to be elaborated in the practice, largely by the stakeholders, and eventually in jurisdiction. In the past year, the Commission has started formal proceedings against some of the largest online platforms, such as X and Meta for the suspected violation of the DSA (European Commission, 2024a, 2024b) and Apple and Google for the suspected violation of the DMA (Tar, 2024a, 2024b; Gkritsi, 2024).

The aim of this regulatory package was set high. In addition to market regulation, it also aimed at creating a new balance in the public discourse that is so necessary for democracy. The risks are manifold. First, the risk-management and due diligence framework recommendations might be only superficially applied, among other reasons, because of their resource-intensive nature for both the regulatory subjects (platforms) and the controlling bodies. An enormous amount of technical information should be collected and processed, and numerous decisions must be taken by the authorities,

the various Boards, the Commission, and ultimately the Court of Justice in the course of interpretation. Currently, the willingness of platforms to provide in-depth information on a voluntary basis is "moderate" at best, as shown by the Commission's investigations against Meta and X for their failure to provide access to publicly available data to researchers (European Commission 2024a, 2024b). The number of eligible experts for auditing and monitoring is also limited.

Second, a too-rigorous application might lead to over-censorship with non-illegal content also being removed or downranked. While this appears to be a proportionate intervention to shape public discourse, the mechanism to guarantee user rights has not yet crystallised. Reporting all instances of moderation may impose a gigantic burden on platforms, yet a systematic and non-transparent suppression of user content would interfere with users' rights to free expression.

The current speed of technological development, especially with the advent of generative AI, is unprecedented; therefore, public communication is bound to change further. New services and new communication structures will emerge, for which these rules may be less fitting. The flexibility of the co-regulatory technique promises to withhold several changes. It addresses power relations and systemic patterns rather than individual actions, but even systemic patterns or power relations may change as generative AI allows new actors – in this case, content providers – and new mechanisms of content creation, as well as control, to emerge.

Endnotes

1. Gatekeepers are defined by the Digital Markets Act (DMA) as providers of core platform services that have a significant impact on the internal market and enjoy an entrenched and durable position. The terms in this definition are further specified extending approximately two pages in length (Article 3, DMA).
2. An intergovernmental committee under the authority of the Committee of Ministers that has collected the harms that are presented by intransparent ranking and lists the potential directions of solution (Council of Europe, n.d.).
3. Smuha describes three categories: the "knowledge gap", the "threshold problem", and the "egocentrism problem".
4. Article 24 (1a) DSA prescribes that "refusing consent shall be no more difficult or time-consuming to the recipient than giving consent. In the event that recipients refuse to consent, or have withdrawn consent, recipients shall be given other fair and reasonable options to access the online platform".
5. Interoperability ensures that two services can work together in a way similar to how it is possible to initiate a call from one telecommunications provider to the network of another, or to send an e-mail from a Gmail account to a Yahoo account.
6. The AI Act does not use the words "due diligence", but applies the responsibility framework of "risk management", which is in principle very similar to the due diligence framework.

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