

The regulation of the digital transition in the EU: Opportunities & challenges in the EU's fight against disinformation

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Abstract: Digital technologies allow for the spread and dissemination of hate speech and disinformation at previously unseen scale and speed, which threaten citizens' right to (accurate) information and human dignity, and the core values of the rule of law and democracy, which are for the European Union enshrined in Article 2 TEU. According to the European Commission, disinformation constitutes "false or misleading content that is spread with an intention to deceive or secure economic or political gain, and which may cause public harm". The recently adopted EU's Digital Services Act (DSA) seeks to combat harmful content online and disinformation, although disinformation is only referred to and not defined in its recitals. In this paper it will be assessed to what extent the DSA within the context of Europe's Digital Single Market is fit for purpose to address the challenges of dissemination.

Keywords: Digital technologies; Harmful content; Disinformation.

1. Introduction

In the Draghi report on 'The Future of European Competitiveness' (2024)¹ the importance of digitalisation for the economy, for the delivery of public services and goods, for Europe's strategic autonomy, for decarbonisation, and for Europe's social model is highlighted. Building upon this report, in the newly adopted Clean Industrial Deal, the European Commission also pictures a future wherein a synergy exists of ecological sustainability, technological innovation and social justice.²

Yet at the same time, it is increasingly recognised that next to its benefits effects, digitalisation may have disruptive and harmful effects, not only for the environment as many digital technologies are resource intensive and need much energy, but also for society as a whole, and the functioning of the market and the economy. European Union (EU) law has traditionally chosen two ways of mitigating these destabilizing effects of digitalization. In the first scenario, the EU legislator has not intervened and it is up to the 27 Member States to adopt mitigating measures which address these disruptive effects within the constraints set by primary EU law, i.e. in particular the Treaty provisions on the free movement of goods, persons, services and capital (the so-called four freedoms) and on competition, and the case law of the European Court of Justice.³

The second and now preferred scenario entails that the EU legislature intervenes in the market integration process, which is referred to as positive integration, by adopting legally binding measures, mostly on the basis of Article 114 TFEU, to establish the equilibrium between the market and the society at the European level. In an attempt to address the challenges that arise from the digital transition, the EU legislature has so far adopted an impressive number of rather far-reaching *regulations*, which *inter alia* include the Digital Markets Act (DMA), the Digital Services Act (DSA), the Artificial Intelligence Act (AI Act), the European Media Freedom Act (EMFA) and the Political Advertising Act (PA).⁴ Prior to the EU's intervention some individual Member States, like France and Germany, had adopted strict laws, offering the possibility to impose high fines on Internet platforms and search engines. But these national measures created market distortions and impeded the DSM project, which called for a more unified, EU approach to the problem of disinformation and hate speech.⁵

1. The Future of European Competitiveness, September 2024: https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf

2. The EU's Twin Green and Digital Transitions: A Policy Revolution or Just Euro-Jargon." The Conversation. Accessed October 22, 2025. <https://theconversation.com/the-eus-twin-green-and-digital-transitions-a-policy-revolution-or-just-euro-jargon-250459>.

3. See also C. Barnard, *The Substantive Law of the EU – The Four Freedoms* (Oxford University Press, 2025).

4. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector, OJ 2022, L 265/1 (Digital Markets Act); Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services, OJ 2022, L 277/1 (Digital Services Act); Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations, OJ 2024, L 1689/1 (AI Act); Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market (European Media Freedom Act), OJ 2024, L 1083/1; Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, OJ 2024, L 900/1 (Political Advertising Act).

5. S.A. de Vries, 'CHAPTER 1 - The Resilience of the EU Single Market's Building Blocks in the Face of

In this paper the focus is laid on the harmful effects of digitalization on fundamental rights and in particular on the right to be informed and the freedom of expression, which are laid down in Article 11 of the Charter of Fundamental Rights of the European Union (hereafter: EU Charter). Digital technologies allow for the spread and dissemination of hate speech and disinformation at previously unseen scale and speed,⁶ which threaten citizens' right to (accurate) information and human dignity, and the core values of the rule of law and democracy, enshrined in Article 2 TEU. For that matter, according to the European Commission, disinformation constitutes "false or misleading content that is spread with an intention to deceive or secure economic or political gain, and which may cause public harm".⁷

The Digital Services Act (DSA) is (one of) the binding legal instruments through which the EU legislator seeks to combat harmful content online and disinformation, although disinformation is only referred to and not defined in its recitals.⁸ After I have discussed the specific features of the EU's Digital Single Market, I will focus on the content of the DSA and assess, on the basis of a case example, whether this regulation is fit for purpose to address these challenges.

2. The specific features of the (EU) Digital Economy

Although, according to the European Commission, the EU's *Digital Single Market* (DSM) merely allows the four freedoms to enter the digital age, and is clearly intertwined with the *analogue, offline or physical* internal market,⁹ the DSM has certain characteristics that distinguishes itself from the 'offline' internal market, like, for instance, (i) the crucial and critical role of private actors, such as the big tech firms like Alphabet, Amazon or Meta, and platforms like Uber and Airbnb, and (ii) the importance of data and information and thus the strong interrelationship between the digital market and citizens' fundamental rights.¹⁰

With respect to (i), the major role of non-state, private actors, their strength and power have important ramifications not only for market access of businesses and consumers, but also for citizens' fundamental rights, the rule of law and public interests and social values. Since considerable time, the role of non-state actors in the regulatory domain or, as Habermans calls it the public sphere,¹¹ has grown and the traditional public-private divide has been diluted. The process of digitalization and particularly the role of social media and online platforms, which have become central to public discourse and communication, further weakens and damages the

Digitalization', in: U. Bernitz, X. Groussot, J. Paju & S. de Vries, *General Principles of EU Law and the EU Digital Order* (Kluwer Law International, Alphen a/d Rijn, 2020), pp. 3-4.

6. J.J.W. van de Kerkhof, 'Jawboning Content Moderation from a European Perspective', in: C. van Oirsouw, J. de Poorter, I. Leijten, G. van der Schyff, M. Stremler, M. De Visser (eds) *European Yearbook of Constitutional Law 2023* (T.M.C. Asser Press, The Hague, 2024), https://doi.org/10.1007/978-94-6265-647-5_4.

7. See also the European Commission's Digital Strategy: <https://digital-strategy.ec.europa.eu/en/policies/online-disinformation> (last consulted, 14 August 2025).

8. R. Ó Fathaigh, D. Buijs, and J. van Hoboken, 'The Regulation of Disinformation Under the Digital Services Act', *Media and Communication*, 2025, Vol.13, p. 2, available at: https://pure.uva.nl/ws/files/234729206/The_Regulation_of_Disinformation_Under_the_Digital_Services_Act.pdf (last consulted, 14 August 2025).

9. M. Marcut, *Crystalizing the EU Digital Policy – An Exploration into the Digital Single Market* (Cham, Springer International Publishing, 2017), p. 75.

10. See for a more elaborated analysis of the Digital Single Market: S.A. de Vries (2020), *op. cit.*

11. J. Habermans, *Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik* (Suhrkamp, 2022).

public sphere, where the political and democratic process takes place; a sphere that becomes increasingly commodified through monetizing citizens' correspondence and political speech, and the exploitation of personal data, and that as a consequence faces many threats like hate speech and disinformation.

These developments give prominence to the question of whether and to what extent private actors can be held accountable for violations of EU law, in particular of the four freedoms and fundamental rights, and vice versa, to what extent they may play a role in defending fundamental rights.¹²

Secondly, (ii) data and information are at the centre of our digital economy. Data is seen as the new oil of the digital market, crucial for innovation and the development of new services. Whereas access to data remains problematic, which is however important for the functioning of the digital market and for empowering citizens,¹³ there are also serious downsides to granting access to data and information. As stated above in the introduction and according to the European Commission in its Communication on Tackling Online Disinformation, "[N]ew technologies can be used [...] to disseminate disinformation on a scale and with speed and precision of targeting that is unprecedented, creating personalised information spheres and becoming powerful echo chambers for disinformation campaigns. Disinformation erodes trust in institutions and in digital and traditional media, and harms our democracies by hampering the ability of citizens to take informed decisions."¹⁴

3. The Digital Services Act and the fight against disinformation

3.1 The importance of 'services' and the EU's competence to regulate services

The point of departure is the crucial role of services in our digital economies, marking a shift from physical exchanges to those conceived in a cyber-environment.¹⁵ The free movement of services constitutes, according to Article 26 TFEU, just as regards the free movement of goods, persons and capital, one of the four pillars of the EU's internal market. According to Article 57 TFEU services are 'normally provided for remuneration', which entails that there must be an economic connotation for the EU provisions on the free movement of services to apply. The fact that EU internal market law generally only applies to economic activities has been further spelled out in the case law of CJEU, which has adhered to a broad definition of economic activities and services.

12. S.A. de Vries, 'Securing private actors' respect for civil rights within the EU: actual and potential horizontal effects of instruments', in: S. De Vries, H. De Waele and M-P. Granger (Eds), *Civil Rights and EU Citizenship – Challenges at the Crossroads of the European, National and Private Spheres* (Edward Elgar, Cheltenham, 2018), pp. 43-44.

13. G. Lister, *Free Speech and Access to Information: Key to Citizen Empowerment and Sustainable Development*: <https://en.unesco.org/Free-Speech-Access-to-Information-Gwen-Lister> (accessed 29 August 2019).

14. Commission Communication 'Tackling Online Disinformation', COM (2018) 236 final.

15. C.S. Rusu, A. Looijestijn-Clearie & J.M. Veenbrink, 'Digitalisation of Economic Law in the EU: Which Way Forward?', *Radboud Eco. L. Blog* 2018, available at: <https://www.ru.nl/en/research/research-projects/radboud-economic-law-blog> (last consulted on 27 October 2025).

It is in this respect relevant that also digital payments and other forms of counter-performance, also those that do not (directly) constitute financial payments, may be covered by the free movement rules. The service does not necessarily have to be paid for by those for whom they are performed. Already back in 1988 in the *Bond van Adverteerders* case, the CJEU held that as long as the recipient or even a third party pays for the service, this payment constitutes remuneration.¹⁶ This is crucial where services may at first sight appear to be ‘free’ for users and money is made from users’ data, whilst services are paid for through, for instance, advertising.¹⁷

So the fact that services provided by and through social media platforms are ‘apparently’ provided for free is no reason to exclude these types of services from EU (internal market) law. This is *inter alia* confirmed by the EU’s Digital Content Directive, which in Article 3 states that the Directive “shall apply to any contract where the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price”, but also “where the trader supplies or undertakes to supply digital content or a digital service to the consumer, and *the consumer provides or undertakes to provide personal data to the trader* [...]”.¹⁸ This also means that the EU legislature is, according to the Treaties, competent to regulate these services through binding, legislative harmonization measures, *inter alia* on the basis of Article 114 TFEU, which constitutes the general legal basis of Internal Market legislation.

3.2 The DSA in general

The Regulation on a Single Market for Digital Services, or the *Digital Services Act* (DSA), is based upon Article 114 TFEU and seeks to contribute to the proper functioning of the internal market for intermediary services by creating a safe, predictable and trusted online environment that facilitates innovation and protect fundamental rights (Article 1 DSA). It has become applicable as from 17 February 2024.¹⁹

The DSA serves a double aim, i.e. on the one hand to create a level playing field for the provision of intermediary services and, on the other, to protect public interests and fundamental rights. According to the European Commission “[t]he DSA regulates online intermediaries and platforms such as marketplaces, social networks, content-sharing platforms, app stores, and online travel and accommodation platforms. Its main goal is to prevent illegal and harmful activities online and the spread of disinformation. It ensures user safety, protects fundamental rights, and creates a fair and open online platform environment.”²⁰

16. Case C-352/85 *Bond van Adverteerders* [1988] ECLI:EU:C:1988:196, para. 16.

17. V. Hatzopoulos, *The Collaborative Economy and EU Law* (Bloomsbury Publishing, Hart Publishing, Oxford, 2018), p. 13.

18. Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services, OJ 2019, L 136/1.

19. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services, OJ 2022, L 277/1 (Digital Services Act).

20. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en (last consulted 24-07-2025).

With a view to realise these aims, the DSA contains provisions on the (exemption of) liability of online intermediary service providers and thereby updates the E-Commerce Directive (Chapter II);²¹ it includes due diligence obligations for these service providers (Chapter III) and notice and take down mechanisms for illegal content (Article 16); it treats so-called 'trusted flaggers' by priority, as they have particular expertise and competence for the purpose of detecting illegal content (Article 22); and it contains rules for the protection of minors (Article 28). Regarding the E-commerce Directive the CJEU had been asked by the Supreme Court of Austria to pronounce itself on the extent of the responsibilities of social media platforms, in this case Facebook, to take down defamatory posts which were deemed illegal in Austria.²² In this case the CJEU, in interpreting the E-Commerce Directive which contained in Article 15 a prohibition for Member States to impose general monitoring obligations on intermediary service providers (now Article 8 DSA), held that this provision did not preclude a Member State *in a specific case* from stopping or preventing an illegal activity, like defamatory statements put on Facebook. And this may include information with an equivalent meaning, which is "information conveying a message the content of which remains essentially unchanged and therefore diverges very little from the content which gave rise to the finding of illegality".²³ The CJEU then held that such an obligation for Facebook "in so far as it also extends to information with equivalent content — appears to be sufficiently effective for ensuring that the person targeted by the defamatory statements is protected". And it regarded this obligation imposed on Facebook as not excessive, as "the monitoring of and search for information which it requires are limited to information containing the elements specified in the injunction, and its defamatory content of an equivalent nature does not require the host provider to carry out an independent assessment, since the latter has recourse to automated search tools and technologies".²⁴

When it concerns specifically *disinformation*, the DSA does not define disinformation but it does give some sort of 'formal' definition of illegal content. According to Article 3 "illegal content means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law". This rather broad definition includes the sale of products and provision of services. It does, however, "not delineate the protected legal interests of the person and balance these competing interests in freedom of speech". And although the EU Charter of Fundamental Rights lays down the freedom of speech and information in Article 11, it does not "offer concrete parameters on how to *balance* these interests where they collide'. That depends on national law which defines the sources of illegality.²⁵

21. Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ 2000, L 178/1.

22. Case C-18/18, Eva Glawischnig-Piesczek ECLI:EU:C:2019:821.

23. Ibid, para. 39.

24. Ibid, para. 46.

25. M. Eifert, A. Metzger, H. Schweitzer & G. Wagner, 'Taming the Giants: The DMA/DSA Package', 58 CMLRev. 2021, p. 1008.

As in some Member States disinformation is indeed deemed illegal, the provisions of the DSA relating to illegal content are also relevant for disinformation.²⁶ This is, firstly, Article 9 DSA, stipulating that national judicial or administrative authorities may order online platforms to act against content considered illegal content. Secondly, Article 16(1) DSA requires platforms to implement notice-and-action mechanisms for (allegedly) illegal content. In particular, platforms are required to “put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content”. The problem that may arise here is that platforms which become aware and gain knowledge of illegal content may be held liable under Article 6 DSA if they do not take action and take down illegal content, which may include disinformation, incentivizing removal of information.²⁷ Thirdly, the above-mentioned Article 22 DSA give trusted flaggers a special position with regard to illegal content, which may include disinformation.

The DSA furthermore includes additional obligations for very large online platforms (VLOPs) and very large search engines (VLOSEs) to manage systemic risks (as from Article 33; see hereafter, section 3.3). With the DSA the European legislator recognizes that online platforms indeed have the power and responsibility to foster safe digital spaces, and that VLOPs and VLOSEs have the ability to disproportionately impact this space.

The fact that the EU legislator chose to adopt the *regulation* as legal instrument is, considering the fact that the DSA imposes direct obligations and prohibitions on *private actors*, not strange. After all, regulations shall have, according to Article 288 TFEU, general application and are binding in their entirety and directly applicable in all Member States. In other words, they do not have to be transposed into national legislation first, like *directives*, and provisions of regulations often have both vertical and horizontal direct effect, which means that can be directly invoked by private actors in a national court vis-à-vis public authorities or other private actors.²⁸

3.3 Specific duties for VLOPs and VLOSEs: risk assessment & the problem of disinformation

According to Article 33 DSA, VLOPs and VLOSEs are online platforms and online search engines which have a number of average monthly active recipients of the service in the Union equal to or higher than 45 million, and which are designated as very large online platforms or very large online search engines pursuant to paragraph 4. The European Commission has meanwhile published on its website a list of designated VLOPs and VLOSEs: <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>.

Article 34 DSA stipulates the specific duties for these large online platforms and search engines. According to the first section: “Providers of very

26. See in particular R. Ó Fathaigh, D. Buijs, and J. van Hoboken (2025), op. cit., p. 4.

27. Ibid, p. 4.

28. For the principle of direct effect, see e.g. D. Gallo, *Direct Effect in EU Law* (Oxford University Press, Oxford, 2025).

large online platforms and of very large online search engines shall diligently identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services. They shall carry out the risk assessments [...]. This risk assessment shall be specific to their services and proportionate to the systemic risks, taking into consideration their severity and probability, and shall include the following systemic risks:

- (a) The dissemination of illegal content through their services;
- (b) Any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including the freedom and pluralism of the media, enshrined in Article 11 of the Charter, to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a high-level of consumer protection enshrined in Article 38 of the Charter;
- (c) Any actual or foreseeable negative effects on civic discourse and electoral processes, and public security;
- (d) Any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person's physical and mental well-being".

In section 2 the following is stated: "When conducting risk assessments, providers of very large online platforms and of very large online search engines shall take into account, in particular, whether and how the following factors influence any of the systemic risks referred to in paragraph 1:

- (a) the design of their recommender systems and any other relevant algorithmic system;
 - (b) their content moderation systems;
 - (c) the applicable terms and conditions and their enforcement;
 - (d) systems for selecting and presenting advertisements;
 - (e) data related practices of the provider.
- [...]"

When one looks at these provisions, it appears that the scope of the risk assessment is relatively broad and vague as “it covers most of the risks, from legal and illegal content.”²⁹ Without explicitly mentioning disinformation, it appears from recital 84 that the dissemination of disinformation may lead to systematic risks. Recital 84 *inter alia* states that “[w]hen assessing the systemic risks identified in this Regulation, those providers should also focus on the information which is not illegal, but contributes to the systemic risks identified in this Regulation. Such providers should therefore pay particular attention on how their services are used to disseminate or amplify misleading or deceptive content, including disinformation”.

Article 35 DSA then asks the VLOPs and VLOSEs to put in place “reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 34, with particular consideration to the impacts of such measures on fundamental rights”. The European Commission is the sole enforcer of Article 35 DSA as these specific duties apply to the larger online platforms and online search engines. One of the points of criticism concerns the relatively vague language and broad terms of Articles 34 and 35 DSA which allow both the platforms and the European Commission considerable leeway in, for instance, tackling disinformation. Broad definitions of illegal content, misinformation, disinformation or hate speech may place pressure on platforms moderating and taking down content, “creating an internet governed by fear”.³⁰

Some have – very opinionated and biased without considering the harmful effects of disinformation for our democracies – even argued that, where the enforcement powers of the Commission are concerned, the Commission may well become “the proverbial Ministry of Truth when tackling disinformation”.³¹ But as rightfully put forward by Husovec, the European Commission.

“cannot invent new binding content rules. That is, it cannot tell providers what lawful expressions they must prohibit or suppress on their services. This still leaves room for many interventions against lawful disinformation whose goal is to improve the resilience of individuals against manipulation. As long as the Commission does not cross this red line, the arguments that it is becoming a Ministry of Truth are misplaced”.³²

Besides, there are other EU, soft law, instruments, in particular the Code of Conduct on Disinformation of 2025, which has also been signed by the main platforms and search engines, and, importantly, the Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to

29. M. Husovec, ‘The Digital Services Act’s red line: what the Commission can and cannot do about disinformation’, *Journal of Media Law*, 2024, Vol. 16, p. 48.

30. A. Portaru, ‘The EU Digital Services Act and Freedom of Expression: Friends or Foes?’, 24-03-2025 at: <https://constitutionaldiscourse.com/the-eu-digital-services-act-and-freedom-of-expression-friends-or-foes/> (last consulted, 14 August 2025).

31. L. Wastell, ‘The EU’s Orwellian Internet Censorship Regime’, 24-08-2023, at: <https://europeanconservative.com/articles/commentary/the-eus-orwellian-internet-censorship-regime/> (last consulted 14 August 2025).

32. *Ibid*, p. 48.

Article 35(3) of Regulation (EU) 2022/2065.³³

In addition, it must be borne in mind that the EU's legislative powers to regulate and harmonize national laws in the field of fundamental rights are limited. The DSA is after all based on Article 114 TFEU, the internal market legal basis, and the EU Charter of Fundamental Rights explicitly states in Article 51(2) that it "does not extend the field of application of Union law beyond the powers of the Union or establish any new power to task for the Union, or modify powers and tasks as defined in the Treaties".

Ultimately the Commission can impose fines, periodic penalties and even temporary suspension of services on platforms for not complying with the provisions of the DSA, i.e. breach of DSA obligations, failure to comply with interim measures or breach of commitments. Were the smaller platforms and search engines are concerned, the national digital service coordinators (in cooperation with the Commission) are involved in enforcing the DSA. Next to these forms of administrative enforcement, the DSA will be enforced by national courts as provisions of regulations may have both vertical and horizontal direct effect.

4. The Case of TikTok

The Case of TikTok constitutes one of the first cases wherein the European Commission initiated formal proceedings under the DSA and thus an early stress test for the DSA. The Commission started its investigation of the social media platform TikTok on 19 February 2024 with a view to assess whether it had breached the DSA. The concerns of the Commission related first to *inter alia* advertising transparency, negative effects stemming from the design of TikTok's algorithmic systems (such as 'rabbit hole effects' and behavioural addiction), age assurance, and privacy, safety and security for minors.

In December 2024 the Commission also launched formal proceedings against TikTok regarding its management of risks related to elections and civic discourse, especially linked to TikTok's recommender systems and risks stemming from coordinated inauthentic manipulation or automated exploitation of the platform, and TikTok's policies on political advertisements and paid-for political content, based on given evidence of paid Romanian influencers circumventing TikTok's prohibition on political ads. It is particularly these second proceedings that are relevant here, as these concern TikTok's alleged breach of Articles 34 and 35 DSA by improperly assessing and mitigating risks linked to election integrity.³⁴

The background of the TikTok case concerns the presidential elections in Romania held on 24 November 2024 and the unprecedented Romanian's Constitutional Court's decision of 6 December 2024 to annul the results of the first round of the election, in part based on the findings of the Romanian intelligence

33. See <https://digital-strategy.ec.europa.eu/en/policies/dsa-codes-conduct> (last consulted 14 August 2025); Communication from the Commission - Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065, OJ 2024, C 3014/1. See also R. Ó Fathaigh, D. Buijs, and J. van Hoboken (2025), pp. 9-10.

34. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6487

services that due to Russian interference social media had been manipulated promoting the independent nationalist candidate Georgescu.³⁵

On 15 May 2025 the Commission presented its preliminary view, namely that “[T]he company does not fulfil the Digital Services Act (DSA)’s obligation to publish an advertisement repository. Such an advertising repository is critical for researchers and civil society to detect scam advertisements, hybrid threat campaigns, as well as coordinated information operations and fake advertisements, including in the context of elections. [...] TikTok does not provide the necessary information about the content of the advertisements, the users targeted by the ads, and who paid for the advertisements. Moreover, TikTok’s advertisement repository does not allow the public to search comprehensively for advertisements on the basis of this information, thereby limiting the usefulness of the tool.³⁶” TikTok now has the right to reply to the Commission’s findings but if the Commission upholds its preliminary views, a fine of up to 6% of the total worldwide annual turnover of Tiktok may be imposed as well as other penalties as provided for in the DSA.

Awaiting the final decision of the Commission, it is too early to conclude whether the DSA is being used, and can be used and enforced effectively by both platforms as well as the European Commission to protect free speech in the light of the EU Charter of Fundamental Rights (and Article 10 of the European Convention on the protection of Human Rights (ECHR))³⁷ and combat disinformation. And TikTok is certainly not alone in failing to meet the DSA’s requirements. There are many more platforms being used to influence elections and spread disinformation. It is therefore important that the Commission is not politically motivated to take action against certain platforms only, that clear and foreseeable criteria are being developed creating legal certainty and that red lines are not being trespassed undermining the freedom of expression and the right of citizens to be properly informed.

5. Conclusions

EU legislative harmonization measures adopted within the context the digital order are increasingly widespread, with far-reaching obligations for intermediary service providers, including social media platforms. The relatively well-developed (in part administrative, rule of law based) supervision and enforcement system under, for instance, the DSA, has effects beyond the EU, which is crucial considering the fact that the big tech firms originate from outside the EU (although having establishments in the EU).

With respect to the fight against disinformation, this article is not intended to be comprehensive but has merely focused on a few provisions of the DSA, which constitute an important legal basis to tackle the dissemination of disinformation, which may undermine our democracies, the rule of law and electoral processes. The European Commission, however, thereby walks on a tightrope as it needs to protect free speech, the freedom of information and combat illegal content and

35. J. Alberts, TikTok and the Romanian elections: A stress test for DSA enforcement, 20 December 2024 at: <https://dsa-observatory.eu/2024/12/20/tiktok-and-the-romanian-elections/> (Last consulted 14 August 2025).

36. https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1223

37. R. Ó Fathaigh, D. Buijs, and J. van Hoboken (2025), p. 15.

disinformation at the same time. It should also be observed that the powers of the EU legislator to 'regulate' fundamental rights in the EU are generally limited – the DSA is an internal market legal instrument - and that the EU Charter of Fundamental Rights cannot be used to extend the EU's competences in this respect. This may well explain the strictly formal definition of illegal content and the absence of an EU wide definition disinformation in the DSA.³⁸

As a final note, the multi-layered and 'rule of law' approach to and regulation of disinformation in the EU through the DSA considerably differs from the approach in Indonesia where the spread of disinformation is addressed more directly and punitively with broad definitions of illegal content and far-reaching powers of authorities. Elsewhere, a number of suggestions have been put forward how the DSA could constitute a source of inspiration for the Indonesian legislator.³⁹

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