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Online Disinformation from a Freedom of Expression Perspective in the European Union

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foster a healthier digital space. By integrating ethical data practices and incentivizing positive behavior, these efforts can create a virtuous cycle of trust and innovation.

One initiative aiming to drive this change is the [Global Trust Challenge](#), developed in partnership with organizations like the OECD and IEEE. The IEEE Global Initiative on Trust Technology is an example of how collaboration can help develop and scale impactful solutions (source: [IEEE Trust Technology](#)). Additionally, partnerships highlighted by the OECD, IEEE, and UNESCO demonstrate the global effort to address AI-related trust issues through multi-stakeholder collaboration ([OECD Global Challenge Partners](#), [UNESCO Call for Global Challenge Partners](#)). By bringing together policymakers, technologists, researchers, and practitioners, this challenge fosters collaboration to develop scalable and impactful solutions. Participants work on integrating policy frameworks with technical tools to address trust issues at their roots, with a strong emphasis on data integrity and transparency. The challenge emphasizes diversity and inclusivity, ensuring solutions are adaptable across different cultural and geographical contexts.

The Global Trust Challenge exemplifies the potential of coordinated global efforts to build a trustworthy information ecosystem. By supporting and participating in initiatives like these, we can ensure that digital technologies serve as a force for good, empowering societies while upholding the integrity of information.

“Online Disinformation from a Freedom of Expression Perspective in the European Union” by Alejandra Michel⁴

The aim of the presentation was to examine the EU legislator's legal response to online disinformation, while drawing attention to the principles of freedom of expression (“FoE”). At the end of 2022, the European Union adopted the Digital Services Act (“DSA”)⁵. The regulation is truly a multifaceted instrument dealing with many aspects, but one of its major objectives is to ensure online trust⁶. To this end, the DSA requires intermediary service providers to comply with a set of tailored due diligence obligations that notably relate to content moderation. While these requirements contribute mainly to the fight against the dissemination of illegal content (i.e., a content or an activity that does not comply with current legislation, be it national or EU law), they can also, to a lesser extent, tackle harmful content (i.e. a complete legal content that could nonetheless cause harm). The EU legislator is setting this fight against illegal and harmful online content within a framework that effectively respects and protects human rights.

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⁵ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), *O.J.*, L 277, 27 October 2022 (hereinafter “DSA”).

⁶ See notably DSA, rec. 9.

This context thus leads to the following question: “What (regulatory) method should be used to fight online disinformation while ensuring freedom of expression?”. To solve it, the presentation highlighted three key elements, which constitute the various steps of the reasoning:

1. The **qualification of online disinformation regarding the scale of FoE’ protection;**
2. The **establishment of measures that comply with FoE’ principles;** and
3. The **place of the fight against online disinformation within the DSA.**

The first step is the **qualification of online disinformation and the assessment of the relationship with freedom of expression.** Commitments to act against online disinformation are often expressed in general terms, without insisting on or without considering nuances in qualification. It is however essential to differentiate between harmful disinformation and illegal disinformation. While in most cases disinformation constitutes a harmful content under EU law, it can sometimes be an illegal one when a national provision renders a certain type of disinformation illegal, or when the disinformation operates through a content that is per se illegal (for example, a content that disinforms with the aim of inciting the commission of a terrorist act). This assessment must always be made on a case-by-case basis.

The second step is the **determination of the appropriate** measures to act against disinformation. In a human rights approach, the very nature of the content must be taken into account when determining the measures to apply. Thus, the dichotomy between illegal and harmful content is highly important for the determination of measures: illegal content does not benefit from the protection by FoE, whereas (legal) harmful content does. This means that we cannot act in the same way against disinformation when it is harmful and when it is illegal: while outright removal is acceptable for illegal disinformation, more flexible measures will have to be applied for harmful disinformation in order to comply with the three-steps-test⁷.

The third step examines **the place of the fight against online disinformation within the DSA.** On this point, there is some confusion and controversy, mainly due to the very recent nature of the instrument. Although no binding provision of the DSA explicitly mention disinformation, the recitals refer on several occasions to disinformation campaigns, misleading information or intentional manipulation of the service⁸. One of the key DSA mechanisms that applies to disinformation is the obligation imposed on very large online platforms (VLOPs) and very large search engines (VLSEs) to “assess” and “mitigate” systemic risks arising from the design, operation and use of their services⁹. Online disinformation can in practice encounter each of the four categories of systemic risk listed in the regulation. It

⁷ Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions, ‘Tackling online disinformation: a European Approach’, 26 April 2018, COM(2018) 236 final, pp. 1 and 4. Restrictions on freedom of expression must be lawful, pursue a legitimate aim and be necessary in a democratic society. Regarding the three-steps-test, restrictions to freedom of expression must be lawful, pursue a legitimate aim and be necessary in a democratic society.

⁸ See mainly DSA, rec. 2, 9, 69, 83, 84, 88, 95 and 104.

⁹ DSA, art. 34 and 35.

could constitute (i) a risk linked to the dissemination of illegal content, or a harmful content likely to have a negative effect on (ii) electoral processes, (iii) public health, or on (iv) the fundamental right to information or on the exercise of another fundamental right that could be impacted by the receipt of false information. While some have expressed fears for public debate with such provisions, M. Husovec recently highlighted the essential difference of scope between the assessment obligation and the mitigation obligation. According to him, while the extent of the risk assessment obligation is very broad (article 34 DSA), VLOPs and VLSEs “do not have to act upon all risks [...] and when they do act, they are not required to act against all risks in the same way” (article 35)¹⁰. This brings us back to FoE principles and the need to take into account the very nature of the content when determining the appropriate measures. According to M. Husovec, if the disinformation content is an illegal one, the EU Commission may require content-specific mitigation measures. On the contrary, if it is a harmful content, the EU Commission can only go for content-neutral mitigation measures (i.e., measures that are the same for the whole service irrespective of content) such as users’ empowerment¹¹.

To conclude, the regulatory approach to fight the online dissemination of illegal and harmful content constitutes only a small part of the solution but helps to ensure online trust. Building trust also requires getting the right measures and respecting human rights. We need to clean up illegalities online to ensure trust, but we cannot censor legitimate expressions, even if they are disturbing, because they are at the heart of any democratic society.

“(Re)informing and engaging readers in the Digital Age for a (francophone) knowledge platform” by Thomas Parisot

From the development of access to scientific publications, the challenge of scientific platforms is gradually giving way to the need to establish a relationship of trust and quality with the readership. Increasingly multi-channel communication - platforms, applications, social networks - and increasingly multi-formats - text, images, video, data - require a rethinking of the quality reading experience, in favour of quality, readable and original information.

With this in mind, Cairn.info, a platform dedicated to the dissemination of French-language scientific publications, has recently upgraded its service, with the introduction of video interviews with renowned French-speaking scientific authors, accompanied by reading lists and dossiers written to help as many people as possible discover the state of the art¹². The combination of academic and journalistic know-how is used here to facilitate the appropriation of texts, not only

¹⁰ M. HUSOVEC, “The Digital Service Act’s Red Line: What the Commission Can and Cannot Do About Disinformation”, pp. 4-5.

¹¹ *Ibidem*.

¹² <https://shs.cairn.info/rencontres?lang=en>