

Democratic scrutiny of social media platforms and protection of fundamental rights

The power and role of social media platforms to moderate the content put online by their users is increasingly coming under scrutiny. A debate is raging among policy-makers, and more widely among the population, on whether social media platforms should be subject to more stringent measures and public oversight. During the February plenary session, the Council and the Commission are expected to make statements on democratic scrutiny of social media platforms and protection of fundamental rights, in particular on freedom of expression.

Social media platforms and challenges for fundamental rights

While digital technologies have created new opportunities to access and share information, they have also brought new challenges. Social media platforms amplify disinformation and the spread of false news, which limit citizens' access to reliable information, sometimes threaten business operations and could even undermine democratic processes. In this context, the difficult role of online platforms to assess, moderate and sometimes remove content shared online has become central. When assessing whether removing illegal content (falling under the prohibition of a law) and harmful content (not falling strictly under the prohibition of a law, but having harmful effects such as [disinformation](#) and fake news) a balance must be struck between the rights and legitimate interests of all parties that may be affected. Fundamental rights enshrined in the [EU Charter of Fundamental Rights](#), especially freedom of expression, must be protected. The risk of [censorship](#) puts into question the legitimacy of private actors and public authorities' intervention.

Online content moderation: Self-regulation, co-regulation and public oversight

While platforms are under stringent obligations to moderate illegal content online, the EU has so far [supported](#) a self-regulatory approach to the moderation of harmful content online. An EU [Code of Practice on disinformation](#) was signed voluntarily by leading platforms such as Facebook, Google, Microsoft, Mozilla and Twitter, and the [European Democracy Action Plan](#) sets out measures to counter disinformation. However, questions [arise](#) as to whether such self-regulatory measures are effective, and the [assessment](#) of the current rules shows that online platforms do not always appropriately protect the fundamental rights of their users in conducting content moderation. Against this background, the European Commission proposed in the draft [Digital Services Act](#) (DSA) unveiled in December 2020 a mix of mandatory and co-regulatory measures to more effectively remove illegal content online and better address harmful content online. Measures aim at fostering compliance with codes of conduct and more transparency with regard to algorithmic decision-making. Furthermore, very large platforms must assess the systemic risks and the societal and economic harm they can cause (e.g. for disinformation) and take mitigating measures (e.g. cooperate with trusted flaggers) having due regard to the impact on fundamental rights such as freedom of expression. The question of who has the authority to control the online space is paramount. A number of EU law-makers have [criticised](#) unilateral decisions of social media platforms (e.g. to suspend the former US President from their platforms) and called for more public oversight in Europe, especially to guarantee freedom of expression.

European Parliament position

On 20 October 2020, Parliament stressed in its [legislative-resolution](#) with recommendations to the Commission on a Digital Services Act that the responsibility for law enforcement must remain with public authorities in the EU and that the decision should ultimately be made by an independent judiciary and not by a private commercial entity. In its [own-initiative resolution](#) of 20 October 2020 on the Digital Services Act and fundamental rights issues, Parliament also called for putting in place adequate oversight and judicial redress mechanisms.

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PE 679.073 – February 2021



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