Cuadernos Europeos de Deusto

No. 74/2026

DOI: https://doi.org/10.18543/ced7420256

ESTUDIOS

Multilayered democracy, media freedom and online platforms

Democracia multicapa, libertad de prensa y plataformas en línea

Claes Granmar

doi: https://doi.org/10.18543/ced.3483

Received on January 19, 2026 • Accepted on February 5, 2026 • E-published: May 2026

Multilayered democracy, media freedom and online platforms

Democracia multicapa, libertad de prensa y plataformas en línea

Claes Granmar
LL.D., DIHR, Associate Professor (Docent)
European Law
claes.granmar@juridicum.su.se

doi: https://doi.org/10.18543/ced.3483

Received on January 19, 2026
Accepted on February 5, 2026
E-published: May 2026

Summary: I. Introduction.—II. Unification, fundamental rights, and democracy. 1. European unification and fundamental rights. 2. European unification and multilayered democracy. 3. Democracy and freedom of expression and information.—III. Unification, media freedom and informed opinion formation. 1. Media freedom, opinion formation and audiovisual media. 2. Democracy, media freedom and public services. 3. Democracy and transparent political advertisements.—IV. Democracy, transparency and platform providers. 1. Platform providers and media content. 2. Platform providers and political advertisements. 3. Public and private enforcement of platform responsibilities.—V. Conclusions.

Abstract: Paradoxically, the EU which is a *sui generis* polity largely based on intergovernmental cooperation and supranational bureaucracy, has become the main guarantor of democracy in Europe. In 2025, the European Democracy Shield was adopted to reinforce situational awareness, strengthen democratic institutions and boosting social resilience and citizen's engagement. As the Union lacks unambiguous powers to protect forms of governance, the shield consists mainly of frameworks for collaboration between national authorities and EU institutions. However, the Union's competences to establish and maintain an internal market has become a route to promote informed opinion-formation which is the very foundation for democracy. Within the scope of EU law, the EU institutions as well as the national norm giving powers must always take fundamental rights and interests recognised in the EU Charter into account. Primarily the freedom of expression and information enshrined in Article 11 of the EU Charter is, therefore, transposed into the regulation of media and platform services within the Union. It is a delicate matter to reconcile on the one hand the right to freely receive and impart information including media freedom and pluralism, and on the other hand to repress disinformation and protect the integrity and relevance of media providers acting under editorial responsibility. Indeed, a primary objective of the Democracy Shield is to protect against foreign information manipulation and interference (FIMI) in electoral as well as in legislative processes. Hence, the European Media Freedom Act (EMFA) and the Transparency and Targeting of Political Advertising Act (TTPA) which took effect in 2025, are impor-

tant components of the Shield. Since platform providers are in most instances not media service providers, they are instead subject to the legal and institutional framework established by the Digital Service Act (DSA). On occasion, conduct by platform providers can also be considered anticompetitive and infringe the Digital Markets Act (DMA) for media content providers and social-media platform providers. In this contribution, the interrelations between the relevant legal frameworks are explored. As an overall theme the reconceptualization of democracy within the EU, from being merely a matter of parliamentary majority to being anchored in fundamental rights, is discussed.

Keywords: Rule of law, democracy, media freedom, political advertising, online platforms.

Resumen: *Paradójicamente, la UE, que es una entidad política sui generis basada en gran medida en la cooperación intergubernamental y la burocracia supranacional, se ha convertido en la principal garante de la democracia en Europa. En 2025 se adoptó el Escudo de la Democracia Europea para reforzar la conciencia situacional, fortalecer las instituciones democráticas e impulsar la resiliencia social y la participación ciudadana. Dado que la Unión carece de competencias inequívocas para proteger las formas de gobernanza, el escudo consiste principalmente en marcos de colaboración entre las autoridades nacionales y las instituciones de la UE. Sin embargo, las competencias de la Unión para establecer y mantener un mercado interior se han convertido en una vía para promover la formación de opiniones informadas, que es la base misma de la democracia. En el ámbito del Derecho de la UE, tanto las instituciones de la UE como las normas nacionales que otorgan competencias deben tener siempre en cuenta los derechos e intereses fundamentales reconocidos en la Carta de la UE. Por lo tanto, la libertad de expresión y de información consagrada en el artículo 11 de la Carta de la UE se transpone principalmente a la regulación de los medios de comunicación y los servicios de plataforma dentro de la Unión. Es delicado conciliar, por un lado, el derecho a recibir y difundir libremente información, incluida la libertad y el pluralismo de los medios de comunicación, y, por otro, reprimir la desinformación y proteger la integridad y la relevancia de los proveedores de medios de comunicación que actúan bajo responsabilidad editorial. De hecho, uno de los objetivos principales del Escudo de la Democracia es proteger contra la manipulación y la injerencia extranjeras en la información (FIMI) en los procesos electorales y legislativos. Por lo tanto, la Ley Europea de Libertad de los Medios de Comunicación (EMFA) y la Ley de Transparencia y Orientación de la Publicidad Política (TTPA), que entraron en vigor en 2025, son componentes importantes del Escudo. Dado que, en la mayoría de los casos, los proveedores de plataformas no son proveedores de servicios de medios de comunicación, están sujetos al marco jurídico e institucional establecido por la Ley de Servicios Digitales (DSA). En ocasiones, la conducta de los proveedores de plataformas también puede considerarse anticompetitiva e infringir la Ley de Mercados Digitales (DMA), que a su vez establece normas para las interfaces en línea. En esta contribución se exploran las interrelaciones entre los marcos jurídicos pertinentes. Como tema general, se debate la reconceptualización de la democracia dentro de la UE, que pasa de ser una mera cuestión de mayoría parlamentaria a estar anclada en los derechos fundamentales.*

Palabras clave: *Estado de Derecho, democracia, libertad de prensa, publicidad política, plataformas en línea.*

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

I. **Introduction**

On 12 November 2025, the European Democracy Shield was launched by the European Union (EU) to promote and empower European democracies in accordance with the 2025 Work Programme of the European Commission, and the Political Guidelines for the Commission 2024-2029.[1] More to the point, the policy document establishing the Democracy Shield identifies three priority areas: "reinforcing situational awareness and support response capacity to safeguard the integrity of the information space"; "strengthening democratic institutions, free and fair elections and independent media"; and "boosting societal resilience and citizens' engagement."[2] It builds on the 2020 European Democracy Action Plan and the 2023 Defence of Democracy package, which were adopted with a view to give "a new push for European Democracy".[3] Unlike previous Union actions in the area, the Democracy Shield is developed by the European Commission in collaboration with the European External Action Service (EEAS), which testifies to its significance for the European way of life in a new security situation.[4] By exploiting the inherent vulnerabilities in open and democratic societies, foreign malevolent powers and their proxies seek to divide and create confusion among the people of Europe.[5] In this context, the Commission's

[1] Joint Communication from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, European Democracy Shield: Empowering Strong and Resilient Democracies, JOIN(2025) 791 final; Communication from the Commission, Commission work programme 2025, Moving forward together: A Bolder, Simpler, Faster Union, COM(2025) 45 final; and https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf, last visited 2026-01-13. Neither cybersecurity nor legal frameworks relating to free movement of capital will be addressed.

[2] *Ibid*, at 2.

[3] Communication from the Commission on the European democracy action plan COM(2020) 790 final; and Communication from the Commission on Defence of Democracy, COM(2023) 630 final; implementing Communication from the Commission, Commission Work Program 2020 – A Union that strives for more, COM(2020) 37 final; and point 6 of the Political Guidelines for the next European Commission 2019-2024 adopted by the then candidate for the President of the European Commission, Ursula von der Leyen, https://commission.europa.eu/document/download/063d44e9-04ed-4033-acf9-639ecb187e87_en?filename=political-guidelines-next-commission_en.pdf, visited 2026-01-13.

[4] See also Joint Communication from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, on the European Preparedness Union Strategy, JOIN(2025) 130 final.

[5] See outcome of proceedings in the Council of the European Union 21 May 2024, 10119/24, JP/kp, 1 RELEX 5, and Annex, Council conclusions on democratic resilience: safeguarding electoral processes from foreign interference, ttps://data.consilium.europa.eu/doc/document/ST-10119-2024-INIT/en/pdf, visited 2026-01-13.

President stated, in the policy document on the Democracy Shield, that "it is only by showing that democracy works for people and that it delivers, that we can create a stronger Union. Europe can only thrive if democracy thrives."[6] However, the Democracy Shield is introduced in a multilayered constitutional structure and must be seen in the light of limited normative competences conferred on the EU.[7]

At the supranational level, the European Parliament has gained increased powers, and EU citizenship complements national citizenship with additional rights to participate in electoral processes. However, the Member States have not conferred any clear competences on the Union to safeguard democratic processes at national level. On the contrary, the Union shall according to Article 4(2) of the Treaty on European Union (TEU), respect the Member States' "national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government."[8] Furthermore, the list of EU competences provided for in Articles 3-6 of the Treaty on the Functioning of the European Union (TFEU) is silent on the protection of democracy.[9] Since the provisions enshrined in the TEU and TFEU, like the terms of all international agreements, must be "interpreted in good faith in accordance with the ordinary meaning", the Union has limited formal powers to protect national democracies.[10] Consequently, the Democracy Shield consists to a large extent of institutional and procedural frameworks for collective efforts of Member States and the Union to uphold democracy.[11] However, the EU also relies on its powers to establish and maintain an internal market for media services and online intermediation services (platform services) to promote democracy.

As provision of media services in general and current affairs and news reporting in particular is essential for opinion formation, the deliberation of media services is directly linked to democracy. Although the EU and its

---

[6] Statement at the Charlemagne Prize award ceremony regarding work done in the service of European unification, quoted in the European Democracy Shield: Empowering Strong and Resilient Democracies, supra note 1, at 1.

[7] For an overview, see for instance K. Lenaerts and P. v. Nuffel (ed. T. Corthaut), EU Constitutional Law, Oxford University Press (OUP), 2022.

[8] Consolidated version of the TEU, Official Journal (OJ) 2012, C 326/13.

[9] Consolidated version of the TFEU, OJ 2012, C 326/47.

[10] See Article 31of the Vienna Convention on the Law of the Treaties, 1969, United Nations (UN), Treaty Series, vol. 1155, p. 331.

[11] See the European Democracy Shield: Empowering Strong and Resilient Democracies, supra note 1; 2025 Strategic Foresight Report Resilience 2.0: Empowering the EU to thrive amid turbulence and uncertainty, COM/2025/484 final; and "Rethinking societal resilience in a time of polycrisis", https://publications.jrc.ec.europa.eu/repository/handle/JRC142772, retrieved 2026-01-15.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

Member States have shared powers to regulate the internal market and the Union has, therefore, largely refrained from harmonising public service media, market integration has paved the way for a value-based regulation of media and platform services. Since the Lisbon Treaty revision in 2009, all Union and national measures within the scope of EU law must be aligned with the Charter of fundamental rights of the EU (EU Charter).[12] Conflicting rights and interests enshrined in the provisions of the TEU, TFEU and the EU Charter (EU primary law) must be reconciled by necessary limitations pursuant to the principle of proportionality, and the trade-offs are specified in EU legislative acts (secondary legislation).[13] Hence, secondary legislation concerning media and platform providers that forms part of the Democracy Shield, must be seen in the light of the European rule of law mechanism.[14]

In constantly changing media landscapes, journalism is challenged by media providers who do not act under editorial responsibility, and the distinction between news and entertainment is blurred. As a result of technological developments and migration of media content from terrestrial networks to digital devices, the limelight has moved to the responsibility of platform providers.[15] Evidently, a distinction needs at the outset to be made between those who provide media content and those who provide digital infrastructure for sharing and hosting the media content. Media providers are covered by the European Media Freedom Act (EMFA) and the Transparency and Targeting of Political Advertising Act (TTPA), which entered into force in 2025 and are now essential elements in the development of the European Democracy Shield.[16] Providers of online platforms are instead primarily covered by the Digital Service Act (DSA).[17] However, sophistication of algorithms for organizing and operating online interfaces, implies that platform providers become increasingly responsible for repressing illegal content such as disinformation, while at the same time not inhibiting

[12] EU Charter, OJ 2012, C 326/391.

[13] See TFEU, supra note 9, Article 288.

[14] See for an overview, https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5_en?filename=rule_of_law_mechanism_factsheet_en.pdf, retrieved 2026-01-15.

[15] See the Joint Research Centre (JRC) report on the influence of online media on citizens' behaviour: https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/technology-and-democracy, retrieved 2026-01-15

[16] Regulation (EU) 2024/1083 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ 2024 L, 2024/1083; and Regulation (EU) 2024/900 on the transparency and targeting of political advertising, OJ 2024 L, 2024/900.

[17] Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ 2022 L, 277/1.

freedom of expression and information.[18] In addition, platform providers can be held liable as publishers of political advertising under the TTPA. In particular providers of very large online platforms (VLOPs) and very large online search engines (VLOSEs) are covered to some extent by the rules in the EMFA.[19]

Through deregulation, media and platform services also become subject to the EU's exclusive powers to develop a competition law regime necessary for the functioning of the internal market. If the platform provider is classified among gatekeepers for access to media content, it becomes subject to the related legal obligations arising from the Digital Market Act (DMA).[20] As all platform services addressed to end-users in the Union are covered by EU law regardless of whether the service provider is established in the Union or not, the distinction between trade and competition in the internal market and external trade between, on the one hand the EU and its Member States, and on the other hand non-EU countries (third countries), collapses. Whereas media and platform services escape the scope of the Common Commercial Policy (CCP), they are subject to behind the border regulation at Union and Member State level in accordance with the principle that the rules in the jurisdiction where a measure takes effect apply. EU law applies globally insofar as it can be enforced by legal entities in the Union against providers established in third countries.

In an overall perspective, the obligation under EU law to transpose fundamental rights into secondary legislation, and the lack of clear competences to protect democracy *per se*, promotes a European form of democracy that is conditioned on the rule of law including fundamental rights.[21] In this chapter, the interrelations between free movement of media and platform services, freedom of expression and information, and the protection of democracy will be explored.

---

[18] See Joint Communication from the Commission and the High Representative of the Union for Foreign Affairs and Security Policy, Action Plan against Disinformation JOIN(2018) 36 final; and Communication from the Commission, Guidance on Strengthening the Code of practice on Disinformation COM/2021/262 final.

[19] Communication from the Commission, Guidelines to support the implementation of Regulation (EU) 2024/900 on the transparency and targeting of political advertising, C(2025) 6829 final, at 4-10.

[20] Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ 2022 L, 265/1.

[21] See as to the interrelations between democracy, the rule of law and fundamental rights for instance Communication from the Commission, 2022 Rule of Law Report, COM(2022) 500 final; and compare with the European Commission for Democracy Through Law (Venice Commission) Report on the rule of law (2011), Study No. 512/2009, CDL-AD(2011)003rev; and K. Annan, (2004), The rule of law and transitional justice in conflict and post-conflict societies; report of the Secretary-General, S/2004/616.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

II. **Unification, fundamental rights, and democracy**

1. *European unification and fundamental rights*

Already before the European Economic Community (EEC) was established by the Treaty of Rome in 1958, a Consultative Assembly of national members of parliament was set up in 1952 by the time limited Coal and Steel Treaty.[22] As a main objective, the Assembly should develop a political community, and it became the forum for developing the Western European military alliance established in 1948 into the Western European Union (WEU) in 1954.[23] However, the Assembly has been described as "a multilingual talking shop". Hence, the ambitious political project was soon put on hold and the WEU was overshadowed by the North Atlantic Treaty Organisation (NATO).[24] Instead, the idea of a European common market attracted greater interest. In that connection, the architect of the EEC, Jean Monnet was, wise from the experiences of political mass-movements and the rising tensions in the Alsace region at the time, an outspoken sceptic of the ability of political leaders to create cross-border unity and peace.[25]

For a long time, the interrelation between fundamental rights and economic integration was ambiguous. Indisputably, the founders of the EEC, who had experienced two world wars, were in favour of the United Nations (UN) Universal Declaration of Human Rights of 1948, as operationalised by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), that took effect in 1953.[26] However, fundamental rights should be rooted in parliamentarism, and the Member States were reluctant to relinquish constitutional powers. Furthermore, in the external di-

---

[22] Treaty establishing the European Coal and Steel Community and related instruments (ECSC treaty), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11951K, retrieved 2026-01-15.

[23] See https://www.cvce.eu/en/collections/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/9059327f-7f8a-4a74-ac7e-5a0f3247bcd3/Resources#73277207-d250-41c5-8960-1d8bce9f11aa_en&overlay, retrieved 2026-01-15.

[24] D. Farrell, Professor Farrel, "The EP is now one of the most powerful legislatures in the world, ttps://www.europarl.europa.eu/RegData/presse/pr_avi/2007/EN/03A-DV-PRESSE_IPR(2007)06-15(07837)_EN.pdf, retrieved 2026-01-15.

[25] See in Swedish, A. Ström Melin, Monnets blinda flack – Om EU:s grundare och hans skapelse, DIALOGOS, 2023, at 78-86.

[26] UN General Assembly resolution 217 A adopted on December 10, 1948, A/RES/3/217A; and ECHR that applies in all EU Member States is available here, www.echr.coe.int/documents/d/echr/convention, retrieved 2026-01-15. Winston Churchill had promoted a "Council of Europe" already during the war and he famously emphasised the need for such an organisation in a speech held at the University of Zurich on 17 December 1946, www.churchill-in-zurich.ch/en/churchill/en-churchills-zurcher-rede/, retrieved 2026-01-15.

mension, already the comprehensive free trade area established by the Treaty of Rome was pushing the limits of what could be accepted by the United States (US) within the framework of the General Agreement on Tariffs and Trade (GATT) established in 1947.[27] Nonetheless, it was stated in the first recital in the preamble to the EEC Treaty, that it was intended to "lay the foundations for an ever-closer union among the peoples of Europe".[28]

As the customs union was completed in 1968, the internal market could finally be established. However, the lack of powers to protect fundamental rights soon resulted in frictions between free movement of products and means of production, and national welfare models. Inevitably, the European Court of Justice (ECJ), therefore, had to reconcile the economic rights underpinning market integration with other fundamental rights and interests.[29] Famously, in 1970, the ECJ clarified in the *Internationale Handelsgesellschaft Case*, on the one hand, that the uniformity and efficacy of Community law required that the EEC legal acts took precedence over even national constitutional law, and on the other hand, that fundamental rights constituted general principles protected under EEC law.[30] Indeed, in the 1970s, the possibility of justifying trade barriers on grounds of public order became a rout to reconcile the right to conduct a business with the protection of other fundamental rights and interests by means of proportionate limitations.[31] However, the complainants in the national proceedings resulting in the ECJ's ruling in the *Internationale Handelsgesellschaft Case* had also turned to the German Constitutional Court, which explained that the primacy of EEC law over domestic law could be accepted only as long as ("Solange") structural principles of the national Basic Law could be maintained.[32] Similar reservations were made by the highest courts in other Member States.[33]

---

[27] F. McKenzie, The GATT-EEC Collision: The Challenge of Regional Trade Blocs to the General Agreement on Tariffs and Trade, 1950-67, The International History Review, Vol. 32, No. 2 (Jun 2010), at 229-252.

[28] Treaty of Rome, available here, https://eur-lex.europa.eu/EN/legal-content/summary/treaty-of-rome-eec.html, retrieved 2026-01-15.

[29] See Judgment of the ECJ of 12 November 1969, Erich Stauder v City of Ulm – Sozialamt, Case 29/69, EU:C:1969:57.

[30] Judgement of the ECJ of 17 December 1970, internationale Handelsgesellschaft, Case 11/70, EU:C:1970:114

[31] See Judgment of the ECJ of 4 December 1974, Yvonne van Duyn v Home Office, Case C-41/74, EU:C:1974:133; Judgment of the ECJ of 28 October 1975, Roland Rutili v Ministre de l'intérieur, Case 36/75, EU:C:1975:137; and Judgment of the ECJ of 27 October 1977, Régina v Pierre Bouchereau, Case C— Case 30/77 EU:C:1977:172.

[32] BverfdGE 37, 291, 29 May 1974 (Solange I).

[33] In France the principle of primacy was not accepted in administrative law by the Conseil d'Etat until 1995 in the case of Nicolo published in the Common Market Law Review (CMLR) [1990] 1 173. However, for instance Conseil d'Etat, 1 October 2014, 365054, Mme B. A. et Mme A.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

In 1986, the German Constitutional Court eventually abandoned the requirement for constitutional review of Community acts.[34] However, the protection of fundamental rights at the supranational level remained a subject of contention even after the European Union (EU) was established in 1993.[35] In Opinion 2/94, the ECJ declared that the Union could not accede to the ECHR in the absence of clear competences relating to human rights conferred by the Member States in the Maastricht Treaty.[36] Nonetheless, only European states that met the Copenhagen criteria, including the recognition of the rule of law, democracy and fundamental rights, could become EU Member States.[37] In connection with the EU enlargement into central and eastern Europe, the EU Charter was adopted in 2000 as a policy instrument.[38] Furthermore, the idea of a European Constitution gained traction in leading circles, but the project was brought to a halt by referendums in France and the Netherlands. Nonetheless, the Lisbon revision of the EU Treaty that resulted in the adoption of the TEU and TFEU in 2009, established a quasi-constitutional superstructure due to the elevation of the EU-Charter to primary law by Article 6(1) of the TEU.[39]

Within the scope of the competences conferred by the Member States on the Union under Article 4 of the TEU, the EU institutions shall according to Article 5(2) thereof, act "only to attain the objectives set out in the Treaties". As a primary objective, the Union shall pursuant to Article 3(1) of the TEU promote "peace, its values and the well-being of its people". On that note, the Member States have manifested in Article 2 of the TEU that the Union is founded on the values of "human dignity, freedom, democracy, equality, the rule of law and human rights […]".[40] In parity with the clarification in Article 6(1) of the TEU that the EU Charter has the same legal value as the Treaties, Article 51(1) of the Charter states that the Union and its Member States shall within the scope of EU law and in accordance with their respective powers "respect the rights, observe the principles and promote the applica-

[34] BverfGE 73, 339, 22 October 1986 (Solange II). However, compare with the concept of ultra vires in BVerfGE 89, 155, 12 October 1993 (Brunner).

[35] Maastricht Treaty available here https://eur-lex.europa.eu/EN/legal-content/summary/treaty-of-maastricht-on-european-union.html, retrieved 2026-01-15.

[36] Opinion 2/94 of the Court of 28 March 1996, EU:C:1996:140.

[37] Copenhagen Criteria available here, https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html, retrieved 2026-01-15.

[38] EU Charter, supra note 12.

[39] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ 2007 C, 306/1.

[40] See originally Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ 2001 C, 80/1.

tion" of the provisions in the Charter. Incompatible Union measures can be revoked by the ECJ and negligence on national level for instance by failing to transpose a directive specifying fundamental rights into domestic law, may give rise to national administrative court cases and actions for infringement of the EU Treaties.[41] Hence, the ECJ has since 2010 reiterated that "situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable."[42]

Fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall remain general principles of the Union's law pursuant to Article 6(3) of the TEU. In addition, Article 6(2) of the TEU manifests the persistent idea that the Union should accede to the ECHR-system to forge a united foundation of values, but only as long as an accession does "not affect the Union's competences as defined in the Treaties." Soon this contradiction in terms was brought to a head in Opinion 2/13 where the ECJ rejected a proposal for accession to the ECHR for the second time, now mainly because of the need to ensure system-coherency of the Union legal order and to avoid geo-political tensions resulting from actions by Member States and third countries against the EU institutions.[43] When it comes to normative coherency, it should be reminded of that Article 7 of the TFEU requires the Union to "ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers."

Although the Union has so far not been able to accede to the ECHR-system, Articles 52(3) and 53 of the EU-Charter, establish that the meaning and scope of the rights and freedoms recognised in primary EU law should be the same as those laid down in the ECHR, or provide more extensive protection. However, this perhaps laudable intention must be taken with a pinch of salt, since economic freedom and market integration remains at the centre of the European unification process. Furthermore, it stands to reason that the extension of one right corresponds to the limitation of another. For instance, an extensive right to data protection under Article 8 of the EU Charter, may confine the right to conduct a business under Article 16 thereof, and vice versa. If the Court of Justice of the European Union (CJEU) which consists of the General Court (GC) and the ECJ, would construe a provision of the EU Charter in another way than the Euro-

[41] See Articles 263 TFEU, Judgment of the ECJ of 9 November 1995, Andrea Francovich v Italian Republic, Case C-479/93, EU:C:1995:372; and Articles 258-260 of the TFEU.

[42] Judgment of the ECJ of 26 February 2013, Åklagaren v Hans Åkerberg Fransson, Case C-617/10, EU:C:2013:105, para. 21.

[43] Opinion 2/13 of the Court of 18 December 2014, EU:C:2014:2454.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

pean Court of Human Rights (ECtHR) would interpret a corresponding right under the ECHR, one of the rights under the ECHR would be more limited in scope than under the EU Charter.

There are also structural differences between the ECHR and the Union legal order, which makes it difficult to compare the systems in terms of a higher or lower level of protection of fundamental rights. In contrast to the possibility for a private party to bring a case before the ECtHR once all domestic legal remedies have been exhausted, fundamental rights and interests recognised in EU primary law, are as mentioned often specified in regulations and directives with primacy over national law in terms of direct or indirect applicability, and direct or indirect effect. Hence, the Charter appears rather as a yardstick for assessing the validity of Union measures, and as a fall-back position in case a Member State fails to align the domestic legal system. Furthermore, proportionality is a cardinal principle of EU law. Although conflicting rights and interests need to be reconciled by necessary limitations based on the facts of each individual case within both the ECHR-system and the Union legal order, proportionality defines the Union's shared right to regulate the internal market and ensures required system-coherency.

2. *European unification and multilayered democracy*

As the EEC and Euratom were established in 1958, the Consultative Assembly set up by the Coal and Steel Treaty became part of the common institutional framework of the three Communities. Moreover, in 1962, the Communities Assembly was renamed the "European Parliament". Then again, the realisation of the internal market relied heavily on the expertise of the civil servants in the European Commission, and on the creativity of the ECJ. As these supranational institutions accumulated increasing normative powers, the democratic deficit emerged as a problem, or perhaps rather as an argument against an increasing approximation of the domestic legal systems of the Member States.[44] However, instead of resulting in reduced powers of the EEC-institutions, the first elections to the European Parliament by direct and universal suffrage was carried out in 1979. Even if the election was valid, supranational parliamentarism remained immature in terms of voter turnout, the election of representatives and the positions of party groupings.[45] In democracies where opinions were formed in local

[44] See for an overview, A. Kammel, The Democratic Deficit of the European Union: Its Origins and the Role of the European Parliament, VDM Verlag Dr. Müller, 2010.

[45] *Ibid*.

communities, by political speech at rallies and in a limited range of media, the European Parliament was rarely heard of. In general, the national discourse on the EEC was rather about resistance to supranational influence. Nonetheless, as the EEC survived one crisis after another and the number of Member States increased, members of the Parliament demanded more influence.

An important step towards more democratic justification of the unification process was taken in 1990 when the ECJ handed down its seminal judgement in the *Case C-70/88, Chernobyl*.[46] In the ruling, the Court recognised an extended right of the European Parliament to participate in the supranational legislative processes in order to ensure an institutional balance.[47] Furthermore, as the EU was formed in 1993, the Parliament was given significant powers to for instance appoint the Commission, and decide on the budgets proposed by the Commission. A decade later, the powers and functioning of the European Parliament were consolidated in connection with the enlargement of the Union at the turn of the millennium.[48] As a result of the Lisbon revision in 2009, the Parliament became a co-legislator with competences equivalent to those of the Council of Ministers in most instances.[49] However, the people of Europe can influence supranational decision making in other ways than through their governments and members of the European Parliament. In EU legislative processes, the committee of the regions is normally consulted, and since 2009 national parliaments can cooperate under Protocol 2 to the EU Treaties in order to request revisions of draft legislative acts from the European Commission.[50] Also stakeholders are habitually involved in normative processes and in the "new push for European Democracy", participation of young Europeans aged 15 to 25 has been emphasised.[51] In addition, an interest group that consists of at least one million citizens of the EU Member States can submit a legislative proposal that the Commission must take into consideration.[52]

---

[46] Judgment of the Court of 22 May 1990, European Parliament v Council of the European Communities, Case C-70/88, EU:C:1990:217.

[47] Supra note 47, paras. 21-26.

[48] Articles 2-4, Treaty of Nice, supra note 41.

[49] See primarily Article 289 of the TFEU, and for an overview of the trilogue https://eur-lex.europa.eu/EN/legal-content/glossary/ordinary-legislative-procedure-codecision.html, retrieved 2026-01-15.

[50] See Protocol (No 2) on the application of the principles of subsidiarity and proportionality, 2008 OJ C, 115/ 206.

[51] See the European Democracy Shield: Empowering Strong and Resilient Democracies, supra note 1, at 24-25.

[52] See Articles 11 and 24 of the TFEU. See also https://citizens-initiative.europa.eu/_en, retrieved 2026-01-15.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

Since the Union was founded in 1993, every citizen of an EU Member State is also an EU citizen. In addition to the right to move freely within the Union and reside in any Member State under certain conditions, the EU citizen can pursuant to Articles 20-23 of the TFEU vote and stand as a candidate in elections to the European Parliament and in municipal elections in his or her Member State of residence on the same terms as nationals of that State.[53] These electoral rights are also manifested in Articles 39 and 40 of the EU Charter and they are specified in secondary legislation that has recently been amended and form part of the Democracy Shield.[54]

However, it must be said that the intergovernmental and bureaucratic features of the EU remain demonstrable. Indeed, the intergovernmental coordination in the Council of Europe is crucial and the Council of Ministers is used as a platform for joint actions beyond the Unions's competences.[55] In external relations the powers of the European Parliament are limited within the scope of EU law, as Commission measures need only to be approved by the Council of Ministers.[56] In addition to Union actions within the CCP, the trade bloc speaks with one voice through the Commission when developing neighbourhood policies, including accession procedures, as well as in the fields of cooperation with third countries further afield, and humanitarian aid.[57] As things are now, also intergovernmental cooperation to shape a Common Foreign and Security Policy and the Diplomatic Service of the EU have gained increased importance.[58]

As the basic structures of the Union belies the idea that the polity is a democracy in parity with a federation, democracy within the EU is first and foremost to be ensured at Member State level. Since the Lisbon revision in 2009, the requirement that a country must adhere to a democratic form of government to become an EU Member State, is manifested in Article 49 of

---

[53] Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ 2004 L 158/77.

[54] Council Directive (EU) 2025/1788 of 24 June 2025 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast), OJ 2025 L, 2025/1788. See also the Commission's proposal for the Council Directive, COM/2021/732 final; and Communication from the Commission, Securing free and fair European elections A Contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018, COM/2018/637 final.

[55] See as to the open method of coordination at https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html, retrieved 2026-01-15.

[56] Articles 207(3) and 218 of the TFEU.

[57] Article 8 of the TEU; and Articles 208-214 of the TFEU.

[58] Article 15-18, 21-27 and 30-46 of the TEU; and Articles 218-222 and 236 of the TFEU.

the TEU. However, once accepted as a member, the state cannot be excluded from the Union although departing from democracy may have repercussions such as reduced voting rights and budgetary sanctions depending on the views of other Member States in the Council.[59]

As the Union has no unambiguous powers to safeguard democracy, the Commission has adopted soft law instruments to monitor and support free and fair elections at national level.[60] In order to promote cooperation and coordination within the priority areas of the Democracy Shield, a European Centre for Democratic Resilience is now established.[61] A main objective of the Centre is to facilitate information sharing and support capacity building to combat foreign information manipulation and interference (FIMI) in electoral processes at EU, national, regional and local levels, as well as in legislative processes.[62] In addition, a Stakeholder Platform is set up to allow a "broad set" of independent and relevant stakeholders and communities to feed information and views into the work of the Centre.[63]

3. *Democracy and freedom of expression and information*

Evidently, it was well understood already in the embryonic democracies of the Greek city-states, that the limited male section of the public that constituted the electorate could be swayed.[64] Indeed, history shows how totalitarian states have emerged from legitimate general suffrages. Nonetheless, Winston Churchill was of course right in his speech to the nation on November 11,

---

[59] Article 7 of the TFEU.

[60] See for an overview European Democracy Shield: Empowering Strong and Resilient Democracies, supra not 1.

[61] European Democracy Shield: Empowering Strong and Resilient Democracies, supra note 1, at 2-3. See also

[62] See also as to democracy and electoral rights, the European cooperation network on elections, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/democracy-eu-citizenship-anti-corruption/democracy-and-electoral-rights/european-cooperation-network-elections_en, retrieved, 2026-01-15; and further information at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/democracy-eu-citizenship-anti-corruption/democracy-and-electoral-rights_en#european-cooperation-network-on-elections, retrieved 2026-01-15.

[63] See also Commission Recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes OJ 2023 L, 2023/2836; and Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("Strategic lawsuits against public participation"), OJ 2024 L, 2024/1069.

[64] Plato, the Republic, published most recently by Wilder Publications, 2022.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

1947, when he concluded by stating that "it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time."[65] However, the complexity of amalgamating nation-states into a polity through regulatory approximation, makes it necessary to abstract policy making from popular sovereignty. It must also be said that a changing media landscape and the difficulties to get messages across in the noise, amplify the risk of democracy turning into "bread and spectacles".[66] It is necessary to reduce the leeway for despots with deep pockets to dictate human conditions by conditioning democracy on the rule of law including fundamental rights. Indeed, reliance on fundamental rights rather than popular sovereignty may prove to be a bulwark against techno-populism and polarisation in the age of digital globalisation.[67]

Within the scope of EU law, the promotion of informed opinion-formation and repression of FIMI are based on the freedom of expression and information under Article 11 of the EU Charter:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

When it comes to the first paragraph of the provision, an open and multifaceted debate typically promotes well-founded opinions better than state controlled or monopolised information channels. Censorship for political or commercial reasons may also create political tensions in society.[68] From this point of view, the right to receive and impart information and ideas needs to be ensured through limited opportunities for public powers to restrict and regulate spaces for communication.[69] Indeed, the EU shall pursuant to Article 22 of the EU Charter respect cultural, religious and linguistic diversity and there-

[65] See https://winstonchurchill.org/resources/quotes/the-worst-form-of-government/. Retrieved 2026-01-15.

[66] Quotation attributed to the Roman poet Juvinus who used the notion in his Satires, section X56-113, see https://www.poetryintranslation.com/PITBR/Latin/JuvenalSatires10.php, retrieved 2026-01-15.

[67] This author has previously made the point in ISDS from an EU point of view, chapter 10 in The EU law of Investment: Past, Present, and the Future, Hart Publishing/Bloomsbury 2023.

[68] However, see as to Article 10 of the ECHR, Animal Defenders International v United Kingdom, Appl. No. 48876/08, 22 April 2013.

[69] As to Article 10 of the ECHR, see Handyside v United Kingdom, Appl. No. 5493/72, 7 December 1976 where the ECtHR clarifies that restrictions must be laid down in law, serves a public interest and be necessary in a democratic society. A restriction on the freedom of expression must be proportionate, see Perincek v Switzerland, Appl. No. 27510/08, 15 October 2015, paras. 230-231 and 273-280.

fore also promote the cultivation of a rich media landscape. However, like all fundamental rights, freedom of expression must be reconciled with conflicting rights and interests by necessary limitations pursuant to Article 52 of the EU Charter. Limitations are specified in for instance EU secondary legislation and national civil and criminal law on hate speech, defamation, deceit and infringement of intellectual property rights.

Freedom of expression contradicts the idea of an absolute requirement to convey only the truth.[70] Indisputably, it is desirable that people in general and politicians in particular communicate truthfully, and the German philosopher Ferdinand von Schirac has gone so far as to suggest that everyone should have a fundamental right to reliable statements from politicians.[71] However, a possibility to hold elected representatives accountable for not fact-checking a claim, would constitute a disproportionate limitation of the freedom of expression.[72] Unlike machine learning, the basis for human opinion-formation is broader than just correct data sets, and the political debate must appeal to both the minds and beliefs of voters. Nonetheless, there is a limit where impartation of information takes upon the features of *disinformation*.[73] Although there is no generally accepted definition of disinformation in the abstract, and it may often be difficult to tell it from irony or satire, the intent of the communication that can be discerned from the facts and circumstances of a case, should be decisive.[74] No matter how witty FIMI may be, the nature of the sender may classify the post as disinformation. A distinction should also be made between disinformation that is intended to deceive in a way that could harm legitimate interests, and misinformation which may be equally deceptive but is not intended to cause such harm, as may be the case when disinformation is forwarded.[75]

---

[70] As to Article 10 of the ECHR, see Lingens v Austria, Appl. No. 9815/82, 8 July 1986 paras. 45-46.

[71] F. v. Schirac, Jeder Mensch, Luchterhand Verlag, 2021.

[72] As to Article 10 of the ECHR, there is no general fact-checking requirement even for journalists, see Thorgeir Thorgeirson v Iceland, Appl. No. 13778/88, 25 June 1992 paras. 63-65.

[73] See a definition of disinformation in the European democracy action plan, supra note 3, at4; See also for instance K. M. Carley, A Political Disinfodemic, in Covid 19 Disinformation: A Multi-National, Whole Society Perspective (eds. R. Gill and R. Goolsby), Springer 2022, at 3 *et seq*. See also linted applicability of Article 17 of the ECHR, in Vejland and Others v Sweden, Appl. No. 1813/07, 9 February 2012.

[74] See as to fake news for instance C. Wardle and H. Derkhshan, Information disorder. Toward an interdisciplinary framework for research and policy making, Council of Europe Report DGI(2017)09.

[75] As to Article 10 of the ECHR, see Bladet Tromsø v Norway, Appl. No. 21980/93, 20 May 1999, paras. 62-66; and Salov v Ukraina, Appl. No.65518/01, 6 September 2005, paras. 111-117.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

Public media that are subject to ethical and regulatory requirements for the exercise of editorial responsibility has an important role to play in the checks and balances and has become a Fourth Estate. Without public watch dogs providing facts and figures at some level, it is difficult for people to form well-founded opinions and vote in elections in a meaningful way. Hence, in contrast to freedom of expression, editorial freedom and media pluralism which shall be protected under Article 11(2) of the EU Charter, is conditional on press ethics including factchecking. However, the need to attract attention in the media buzz is problematic as it affects the nature of journalism, bringing large parts of the press sector into a grey zone of infotainment.[76] In addition, the notion of journalism is blurred as persons who do not have press credentials can enjoy rights to report current events and news under Article 11(2) of the EU Charter.[77] Regardless of the political system of a Member State, the right to organise the media sector is circumscribed by the integration of national markets and fundamental rights under EU law.

III. **Unification, media freedom and informed opinion formation**

1. *Media freedom, opinion formation and audiovisual media*

Technological developments have constantly brought about new avenues of mass-communication, including means, methods and formats for current events and news reporting.[78] Traditionally, a distinction has been made between the press sector, the radio sector and the audiovisual media sector, characterised by different relationships to the public powers. Since the dawn of the printed press in the 18th and early 19th century, newspapers have been published by private undertakings, albeit often with state support. In contrast, the need for public investment in broadcasting infrastructure, meant that national radio and later national television was provided as a public service. On the European continent radio

[76] A flagrant example is the Sun tabloid paper, see V. Adelmant and B. Cali, The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate, Bonavero Report 3/2025, Oxford University, Faculty of Law, available at https://www.law.ox.ac.uk/sites/default/files/2025-09/European%20Convention%20on%20Human%20Rights%20and%20Immigration%20Control%20in%20the%20UK_4%20Sept%202025.pdf, retrieved, 2026-01-15.

[77] See as to the very broad definition of "journalistic purposes" in EU law, Judgment of the ECJ of 16 December 2008, Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy, Case C-73/07, EU:C:2008:727, para. 62.

[78] See for instance, J. Fiske, Introduction to Communication Studies, Routledge, 2010.

and television were provided by a public body or with public funding, and media independence was ensured at some level through regulation. Public service media should be educational and freed from private interests and profit maximation. In contrast, attempts by the government led by Winston Churchill to gain control of national radio broadcasting were met with suspicion in the United Kingdom (UK). Hence, the British Broadcasting Company (BBC) has always been separated from government control and funded mainly by user licence fees pursuant to the public service remit.[79]

Given the limited demand for foreign newspapers and radio as well as the state of technological development at the time, the Union focused originally on cross-border audiovisual media services.[80] Whereas the competence to decide on ownership structures in the media sector and to regulate news and current affairs reporting were questionable because of the close relationship to national identity and forms of governance, cross-border television broadcasting was indisputably an aspect of the internal market. Hence, by avoiding issues of industrial organisation and funding of public media, the service to broadcast programmes to the general public became subject to market integration and liberalisation. Consequently, also supranational competition law addressing abuse of dominance, anticompetitive collaboration and mergers, as well as the rules on state aid, become applicable.[81] However, in the *Magill Case* 1991, the ECJ found that denying access to television programme listings did not constitute an abuse of a dominant position in the market for weekly magazines.[82]

With a view to specify the obligations of Member States under primary law, Directive 89/552/EEC on the coordination of laws, regulations or administrative provisions, concerning the pursuit of television broadcasting activities, was adopted in 1989.[83] By allowing people in one Member State to receive media services from other Member States under the conditions

[79] See https://www.bbc.co.uk/historyofthebbc/100-voices/birth-of-tv/the-bbc-steps-in/, retrieved 2026-01-16.

[80] See, however, for instance Judgment of the ECJ of 8 March 2001, Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP), Case C-405/98, EU:C:2001:135, regarding magazines.

[81] For an overview see https://competition-policy.ec.europa.eu/system/files/2024-01/stateaid_decisions_to_media.pdf, retrieved 2026-01-16.

[82] Judgment of the ECJ of 6 April 1995, Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission of the European Communities Joined Cases C-241/91 P and C-242/91 P., EU:C:1995:98

[83] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ 1989 L, 298/23.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

applicable in the country of origin of the broadcast, national public service media providers were exposed to competition in the internal market.[84] Although the Directive did not specify the ban on state monopolies under Article 37 of the TFEU, it created pressure for deregulation. Moreover, the Television without Frontiers Directive, established that television advertising should be accepted as a source of revenue as long as health and human dignity was protected. Television advertising should be readily recognisable and separated from programmes, and discriminatory advertising and advertising of tobacco products should be prohibited. Yet, television advertising was still banned in the 1990s for instance in Sweden. Although the public limited company Swedish Television (SVT) no longer had a monopoly position, the broadcasting of programs with commercial breaks from the United Kingdom (UK) raised concerns especially regarding advertisement aimed at children. In response to questions referred by the Swedish Market Court, the ECJ explained in the 1997 *Da Agostini et al* Case that advertising is a service *per se* and that the provision of that service can be restricted only if necessary to safeguard other fundamental rights or interests specified in the Directive.[85]

On the international scene the Union sought to develop a clear identity. In the negotiations that resulted in the creation of the World Trade Organisation (WTO) which replaced the GATT in 1995, the European Parliament maintained that audiovisual services should not form part of the General Agreement on Trade in Service (GATS).[86] Free flow of media content from third countries could undermine the European audiovisual market model embracing a mix of state financed public service media providers and commercial actors with or without a public service permit.[87] Although unleashed market forces and international cutthroat competition can generate funds for lavish shows, short term profit maximation also tends to streamline media content. Then again, public media service providers shall promote cultural diversity, education and social cohesion. Hence, within the scope of the ECHR-system, the representatives of public service media in

[84] See Case Judgment of the ECJ of 9 February 1995, Société d'Importation Edouard Leclerc-Siplec v TF1 Publicité SA and M6 Publicité SA, Case C-412/93, EU:C:1995:26; and Judgment of the ECJ of 10 September 1996, Commission v United Kingdom, Case C-222/94, EU:C:1996:314.

[85] Judgment of the Court of 9 July 1997, Konsumentombudsmannen (KO) v De Agostini (Svenska) Förlag AB et al., Joined cases C-34/95, C-35/95 and C-36/95, EU:C:1997:344.

[86] https://www.europarl.europa.eu/doceo/document/TA-10-2025-0256_EN.html, retrieved 2026-01-16.

[87] See the European Audiovisual Observatory report, Governance and independence of public service media, https://rm.coe.int/iris-plus-2022en1-governance-and-independence-of-public-service-media/1680a59a76, retrieved 2026-01-15.

the European Broadcasting Union (EBU) were sceptical to international approximation.[88] Although, audiovisual services in general and public service media in particular have been continuously debated under the GATS, and the EU also engaged in related negotiations on deepened collaboration in the area with 23 other WTO members within a trade in service agreement (TiSA), no commitments have so far been made by the Union.[89] Consequently, the Union and its Member States are free to discriminate against foreign providers of audiovisual services in accordance with the internal distribution of competences.

Within the EU, the relationship between the integration of national markets and public service was clarified as a result of the Lisbon revision in 2009 by the adoption of protocol 29 to the TFEU. In the introduction to the protocol, the Member States emphasise that public broadcasting is "directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism." Hence, EU competences to regulate media markets are accepted only with reservations.

The provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting and in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

After being amended on several occasions, Directive 89/552/EEC was replaced by Directive 2010/13/EU, which extends the scope of approximation of national rules in the audiovisual media sector to video-streaming platforms provided by undertakings established in Member States.[90] In addition to providers of on-demand video streaming services such as Netflix and Disney+, providers of over-the-top (OTT) services such as YouTube are caught by the Directive. In contrast, platform services designed primarily for audio on demand such as Spotify, or interaction between end-users such as TikTok and WhatsApp, may escape the scope of the Directive.

---

[88] See for instance https://www.ebu.ch/news/2025/10/european-parliament-defends-eu-media-rules-against-us-pressure, retrieved 2026-01-16.

[89] See https://www.europarl.europa.eu/legislative-train/theme-international-trade-inta/file-trade-in-services-agreement-(tisa), retrieved 2026-01-16.

[90] Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ 2010 L 95/1. It also covers radio but not newspapers or magazines, see recital 28 of the preamble to the Directive.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

Like the revoked Television without Frontiers Directive, the Audiovisual Media Service Directive focuses on the liberalisation of services.[91] Although it is mainly silent on public media services including current affairs and news reporting, the right to information under Article 11 of the EU Charter is recognised.[92] In addition to the general right to receive broadcasts and on demand videos, the diversity of news production and programmes across the Union is emphasised. According to Article 14 of the Directive, a service provider must not have exclusive rights to broadcast an event which is of major importance of society "in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television." Although exclusive broadcasting rights are accepted under the Directive, any broadcaster in the EU shall, therefore, pursuant to Article 15 of the Directive have access "on a fair, reasonable and non-discriminatory basis to events of high interest to the public."

In external relations, Member States remain free to take whatever measures they deem appropriate regarding audiovisual services provided from a third country insofar as the measure complies with domestic rules and regulations, primary EU law and international commitments.[93] Furthermore, Member States shall ensure that broadcasters covered by the Directive reserve a portion of the transmission time for European works created by producers who are independent of broadcasters primarily for informational, educational and cultural reasons.[94]

In general, the Audiovisual Media Service Directive particularises the conditions for advertising in television programmes and services provided on-demand by platforms in the light of the fundamental rights and interests enshrined in the provisions of the EU Charter and Treaties. Article 19 thereof, inculcates that television advertising and teleshopping shall be "readily recognisable and distinguishable from editorial content." However, news and current event programmes must not be sponsored, although commercial breaks should be allowed also in programmes of that kind. Product placement is generally prohibited, but there are several exceptions specified in Article 11 of the Directive such as in cinematographic works and sports programs. These

[91] See also the Creative Europe Media Programme at https://digital-strategy.ec.europa.eu/en/policies/creative-europe-media, retrieved 2026-01-16.

[92] Recitals 48 and 55 of the preamble to the Audiovisual Media Services Directive, supra note 91.

[93] Recital 54 of the preamble to the Audiovisual Media Services Directive, supra note 91.

[94] Articles 13, 16 and 17 of the Audiovisual Media Services Directive, supra note 91.

rules shall be read in conjunction with the framework for consumer protection and unfair commercial practices.[95] Furthermore, the Directive specifies the requirement to combat hate speech. There are special requirements regarding children's programmes, and Member States are encouraged to collaborate with the Commission to develop codes of conduct.[96]

In 2018, the Audiovisual Media Service Directive was amended by Directive (EU) 2018/1808.[97] Among other things, the transparency requirements were tightened so that information about ownership of media providers, including the beneficial owners, must be made publicly available.[98] Whereas high transparency standards are often set in the public sector, decisions at board meetings in private broadcasters as well as reports, projects, program tables etc. can be kept secret under corporate and civil law akin to intellectual property rights.[99] Moreover, media pluralism implies, as mentioned, that service providers may, within necessary limitations, sympathise with any political, religious, philosophical or ideological view they like. As media sectors become increasingly privatised, transparency regarding ownership gains importance to reconcile media pluralism and the interest in reliable current event and news reporting. Hence, there is a need to protect professional journalists and their sources from threats.[100]

As to external relations, Article 13 of Directive (EU) 2018/1808 clarifies that "Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works." Member States can also impose levies on third country providers of video-on-demand services to promote the production and acquisition of rights in European works.

---

[95] See primarily Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ("Unfair Commercial Practices Directive"), OJ 2005 L, 149/22.

[96] Article 9(2) of the Audiovisual Media Services Directive, supra note 91.

[97] Directive (EU) 2018/1808 amending the Audiovisual Media Services Directive, OJ 2018 L, 303/69

[98] Article 5 of the Directive (EU) 2018/1808, supra note 98.

[99] See Joined Cases C-241/91 P and C-242/91 P, Magill, supra note 83.

[100] Commission Recommendation (EU) 2021/1534 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union OJ L 331/8 and https://commission.europa.eu/publications/2025-rule-law-report-communication-and-country-chapters_en, revised 2026-01-16.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

2. *Democracy, media freedom and public services*

As a result of the geopolitical situation, there is an interest in more co-operation to ensure informed opinion formation through media freedom and diversity, editorial independence and trustworthiness. In April 2025, the EBU and its 123 members from 56 countries, launched Eurovision News Spotlight, which is a network for fact-checking and open-source intelligence (OSINT) to "combat misinformation and support trusted news" across Europe.[101] Within the scope of EU law, the EMFA is an essential element in the Democracy Shield as it establishes a common framework for media services and compliance control in the internal market by amending Directive 2010/13/EU.[102] After decades of harmonisation of audiovisual media services, and in view of that all types of media services are available online, the EU could adopt the Act which applies as domestic law in the Member States and develops the system for collaboration between national authorities. As to the organisation of media industries, the Member States shall pursuant to Article 3 of the EMFA "respect the right of recipients of media services to have access to a plurality of editorially independent media content and ensure that framework conditions are in place in line with this Regulation to the benefit of free and democratic discourse." According to Article 4 thereof, media service providers, such as providers of television and radio broadcasts, on-demand audiovisual media services, audio podcasts and press publications, are entitled to exercise economic activities without restrictions "other than those allowed pursuant to Union law".[103] As always within the scope of the EU Treaties, proportionate restrictions on the right to conduct a business in the media sector pursuant to Article 16 of the EU Charter may be justified to safeguard other fundamental rights and interests recognised under EU primary law.

Public service media providers are defined in the Regulation as undertakings entrusted with a public service permit and receiving public funding for the fulfilment of that remit. Furthermore, the Member States have an obligation under Article 5 of the EMFA to ensure that the undertakings concerned "are editorially and functionally independent, and provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service remit" as well as in line with the above-mentioned Protocol No. 29 to the TFEU. Although media mar-

---

[101] See https://www.ebu.ch/news/2025/04/ebu-launches-spotlight-fact-checking-network-to-combat-misinformation-and-support-trusted-news, retrieved 2026-01-16.

[102] See the Media Pluralism Monitor published by the Centre for Media Pluralism, ttps://cmpf.eui.eu/projects-cmpf/media-pluralism-monitor/, retrieved 2026-01-15.

[103] See also recital 9 of the preamble to EMFA, supra note 17.

kets cannot be fully harmonised pursuant to the Protocol, state-owned as well as private media monopolies sit uncomfortably with editorial independence and media pluralism that is required under Article 11(2) of the EU Charter. Instead, concessions for access to infrastructure is important for balancing independence, plurality and trustworthy information.[104] Undertakings whose primary purpose is the provision of programs including news reporting must meet legal and ethical standards to obtain a permit *ex ante*, and once the permit has been obtained these standards can be invoked *ex post facto*. For instance, the public watchdog may be subject to supervision by an authority or body such as an ombudsman or adhere to a co-regulatory or self-regulatory mechanism. However, as broadcasting is replaced by streaming media, the possibility for the State to charge service providers for access to infrastructure is under challenge. For instance, in Sweden, where SVT has partly been financed by concession fees from other service providers, the public media service sector may need to be restructured again. Perhaps advertising funded public media services must eventually be accepted.

At first blush, it may seem to be a systematic anomaly that the Union has adopted a regulation regarding media services, since the Member States have conferred powers to the EU institutions only to adopt directives to liberalise service markets under Article 59 of the TFEU.[105] However, the scope of the EMFA extends beyond trade in media services *stricto sensu*, as it for instance addresses interrelations between media service providers and platform providers. Therefore, the EU institutions could rely on their general powers to regulate the internal market set out in Article 114 of the TFEU as the legal basis for the adoption of the Regulation. Moreover Article 23 of the EMFA, introduces an obligation for Member States to adopt transparent, objective, necessary and non-discriminatory rules and procedures for the assessment of market concentrations that could have a significant impact on media freedom and pluralism. As the objective of the rules and procedures is to promote media pluralism and editorial independence as opposed to undistorted competition, the requirements regarding merger control differ from those applicable when national competition authorities or the European Commission's Directorate-General for Competition (DG-Comp) intervenes under Regulation 139/2004. Anyhow, the special media market merger control cannot be based on Union competences to deliberate cross border trade in media services under Article 59 of the TFEU. Also, the rules on audience measurement under Article 24 of the EMFA and on

[104] See Commission Recommendation (EU) 2022/1634 on internal safeguards for editorial independence and ownership transparency in the media sector OJ 2022 L, 245/56.

[105] See recital 1 of the preamble to EMFA, supra note 17.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

allocation of public funds for state advertising under Article 25 thereof require a broader basis in the TFEU.

In addition to the framework for regulatory and administrative collaboration between national authorities, the EMFA establishes the European Board for Media Services. Although the Board is composed of representatives of competent national regulatory authorities it shall act in full independence. It has more far-reaching powers than the preceding European Regulatory Group for Audiovisual Media Services. For instance, the Board can after consulting the European Commission request cooperation between regulatory authorities or bodies and mediate in disputes between these actors or bodies, draw up opinions on dialogues between media service providers and providers of very large online platforms, and issue opinions on media market concentrations. According to Article 17 of the EMFA, the Board shall, at the request of national regulatory authorities from at least two Member States, "coordinate relevant measures by the national regulatory authorities or bodies concerned related to the dissemination of or access to media services originating from outside the Union […]".[106] It may also in consultation with the Commission issue opinions on appropriate national measures in relation to the dissemination or access to media services from third countries, and develop criteria for assessment of such services by national authorities. As always when the Union requires service providers targeting the internal market from a third country to comply with EU standards, EU law may appear to apply extraterritorially. However, there are no good reasons for accepting transmissions in the internal market from for instance state controlled Russian media houses that knows of no media freedom.

3. *Democracy and transparent political advertisements*

Social media has blurred the lines between facts and fiction and the difficulty distinguishing between information and entertainment, personal opinions and political campaigns, endangers democracy and erodes trust in public institutions. Online platforms may reinforce alternative realities in filter bubbles and be used by politicians to attack the press which operates under editorial responsibility. Populism thrives when truth is relativised in a media landscape that grows wild. In addition to trustworthy editorial content, transparent political advertising is the antidote.[107]

---

[106] Compare with Article 3 of the of the Audiovisual Media Services Directive, supra note 91.

[107] Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector, supra note 105, at 61-64.

In the media-driven democracy, the ability to identify the sponsor behind the promotion of political ideas, or the ridicule of political opponents, enable voters to form well-founded opinions. Ever since the Cambridge Analytica scandals, in which a British consulting firm collected large amounts of personal data to tailor political advertising to Facebook users, the vulnerability of voters to influence operations and FIMI has been considered a real threat to democracy. More recently, Romania's Constitutional Court annulled the second round of the 2024 national elections since it was excessively influenced by partly AI generated mis— and disinformation, disseminated by Russian state actors and their proxies on social media such as TikTok.[108] Transparency regarding sponsors and providers of political advertising services is a remedy against undue influence from groups within a society, as well as against the risk of FIMI.[109] Hence, in March 2024, the TTPA was adopted and it took effect on the 10th of October 2025.[110] A Union-wide definition of "political advertising" is provided in Article 3(2) of the Regulation:

> political advertising means the preparation, placement, promotion, publication, delivery or dissemination by any means, of a message normally provided for remuneration or through in-house activities or as part of a political advertising campaign:
>
> a) by, for, or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or
> b) which is liable and designed to influence the outcome of an election or referendum, voting behaviour or a legislative or regulatory process, at Union, national, regional or local level.[111]

Official information provided by a Member State or the Union that is strictly limited to the modalities for participating in elections or referendums, as well as public communication that aims to provide official information to the public, or presentation of candidates in specified public spaces or media while ensuring equal treatment of candidates, is not political advertising.

---

[108] https://apnews.com/article/romania-election-president-georgescu-court-585e8f8f-3ce7013951f5c7cf4054179b, retrieved 2026-01-16.

[109] Guidelines to support the implementation of Regulation (EU) 2024/900, supra note 19, at 27-35.

[110] TTPA, supra, note 17.

[111] See also Article 8 of the TTPA, supra, note 17.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

As the Regulation aims to enable citizens in the Union to exercise their democratic rights in an informed manner, it applies to any means for dissemination of or access to political advertisements. As particularised in recital 2 of its preamble, the Regulation, therefore, applies when political advertising is published or is intended to be published "via traditional offline media such as newspapers, television and radio, but also increasingly via online platforms, websites, mobile applications, computer games and other digital interfaces." As regards the Union's powers to legislate to protect democracy, recital 4 of the preamble clarifies that ensuring transparency in conformity with the values shared by the Union and its Member States pursuant to Article 2 of the TEU, is a legitimate public goal. Although that is of course true, it would be an infringement of Articles 4 and 5 of the TEU to invoke the Regulation *ultra vires*, i.e. beyond the powers conferred on the Union. Therefore, market integration is highlighted as the *rationale* for the adoption of the Regulation in recital 1 of the preamble to the TTPA. More to the point, the objectives are pursuant to Article 1(4) thereof, to "contribute to the proper functioning of the internal market for political advertising and related services", and to protect fundamental rights recognised by the Union, "in particular the right to privacy and the protection of personal data." Hence, the Act is primarily based on Articles 16 and 114 of the TFEU.

Political advertising is typically provided under the direct or indirect control of a *sponsor*.[112] Pursuant to Article 3(10) of the TTPA, the sponsor of political advertising is "the natural or legal person at whose request or on whose behalf a political advertisement is prepared, placed, promoted, published, delivered or disseminated in the internal market." A combined reading of Articles 3(2)(a) and 3(4) of the Regulation provides that the sponsor can be a political actor such as a political party, a political alliance, a political campaign organisation, a candidate for or holder of an elected office, a member of Union institutions, or any natural or legal person representing or acting on behalf of such a legal entity. However, the sponsor can also be a legal or natural person that is not classified among political actors, but takes measures that are specified in Article 3(2)(b) of the Regulation. Furthermore, another entity may ultimately exercise control over the sponsor for instance in terms of decisive influence over decision making.

According to Article 3(5) read in conjunction with Article 3(6) of the TTPA, any natural or legal person that engages in the preparation, placement, promotion, publication, delivery or dissemination of political advertising ser-

[112] Recital 22 to the Regulation. See also Guidelines to support the implementation of Regulation (EU) 2024/900, supra note 19, at 3.

vices in the Union, with the exemption of purely ancillary services, can be held liable as a *provider of political advertising services*.[113] As stated in recital 1 of the preamble to the Regulation, there is an abundance of services associated with political advertising and the provider can be for instance "political consultancies, advertising agencies, 'ad-tech' platforms, public relations firms, influencers, and various data analysts and brokage operators." However, political advertising services provided without consideration as part of platform services, are exempted from the applicability of the TTPA. Conversely, if the platform provider would for instance charge an extra fee for an account that can be used for advertising purposes, the platform provider is a publisher of political advertising under the TTPA.

In addition to the situation where a legal entity provides a political advertising service under the direct or indirect control of a sponsor, the sponsor may provide the service in-house. For instance, a political party or a state actor that has its own public relations department and publish political advertising on its own website or in a periodical publication is caught by Article 3(2) of the TTPA. Similarly, if a legal entity disseminates political advertisements via social media, and the platform provider publishes the advertisements without consideration, the advertisements are disseminated by a provider of political advertising services without a sponsor.

According to Article 5(1) of the TTPA, sponsors must not be discriminated solely based on their place of residence or establishment. However, in the last three months preceding an election or referendum organised at Union, national, regional, or local level, the services may pursuant to Article 5(2) thereof only be provided to sponsors or their proxies who are Union citizens, third-country citizens permanently residing in the Union, or legal persons establishes in the Union which are not ultimately controlled by third country nationals. This is an important tool for repression of FIMI.

In order to ensure transparency in accordance with Article 6 of the TTPA, the provider of political advertising shall according to Article 7 thereof request sponsors and providers of political advertising acting on behalf of sponsors, to declare whether the requested service concerns political advertising and whether the above-mentioned requirements regarding sponsoring prior to elections are met. Providers of political advertising shall pursuant to Article 9 also "retain to the extent necessary", information that they collect when providing the service regarding for instance the nature of the service, the amount charged for the service, contact details to the spon-

[113] See also Guidelines to support the implementation of Regulation (EU) 2024/900, supra note 19, at 4.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

sor and whether the requirements under Article 5 are met. These data shall pursuant to Article 10 be transmitted in "a timely, complete and accurate manner to political advertising publishers to enable them to comply" with the Regulation.

According to Article 11 of the TTPA, the political advertising *publisher* shall by means of a label, indicate in a clear, salient and unambiguous way that the statement is a political advertisement, who the sponsor is and where applicable who the entity ultimately controlling the sponsor is, whether targeting or ad-delivery techniques have been used and whether the political advertisement is linked to a political election or referendum. In addition, an easily accessible transparency notice shall be provided. It shall according to Article 12 contain comprehensive information about for instance the identity of the sponsor, and where applicable about the entity that ultimately controls the sponsor, the period during which the political advertisement is intended to be published and the aggregated amounts and value received by the service providers. A notice can be referred to by means of a link or quick response (QR) code.

As the TTPA took full effect, the Swedish private television broadcaster TV 4 AB, made inquiries into advertisements published on social media by the undertaking AiP Media AB. Several posts published in paid advertising spaces on various online platforms qualified as political advertisements and they lacked labels and transparency notices. According to the the definitions in the TTPA, AiP Media AB appeared to be the sponsor, and the platform providers appeared to be political advertising publishers. AiP Media AB in turn is sponsored by the Social democratic labour party, albeit it is disputable whether the party can be considered controlling AiP Media AB. Anyhow, under scrutiny, the posts were soon taken down by the sponsor or the advertising publishers.[114]

According to Article 15 of the TTPA the political advertising publisher must have in place mechanisms to enable natural or legal person to report potential infringements. As political advertisement publishers are so called public interest entities under Directive 2013/34/EU, they must also provide national authorities with periodical information about the amounts, value or other benefits that they have received for their services. National competent authorities may also request information from providers of political advertising in order to ensure compliances with statutory requirements. In addition, categories of persons such as researchers, political actors and journalists are entitled to receive statistics upon request from the provider of

[114] https://www.tv4.se/artikel/xxhvye5HFcfw3mHKHnn2w/expert-socialdemokraternas-annonser-kan-bryta-mot-lagen, retrieved 2026-01-03.

political advertising. Micro and small entities are exempted from most obligations of the service providers.

Targeting and ad-delivery techniques are pursuant to Article 18 of the TTPA allowed only insofar as the processing activity is based on data collected with explicit consent by the data subject in accordance with the General Data Protection Regulation (GDPR) or Regulation (EU) 2018/1725 regarding data processing by EU institutions. Profiling using sensitive personal data is prohibited.[115] Political advertising targeting a data subject that is known by the controller with reasonable certainty to be at least one year under the voting age under national law is also prohibited.[116]

In parity with the obligations under the DSA and the GDPR, a provider of political advertising services in the Union that does not have an establishment in the Union, shall designate a legal representative in one of the Member States where it provides the advertising services.[117] Whereas national data protection authorities and the European Data Protection Board are competent authorities regarding the provisions enshrined in the TTPA regarding targeting and ad-delivery techniques, other authorities designated by the Member States shall monitor compliance with the transparency requirements. A network of competent national authorities and bodies shall be established and cooperate with the European Commission to develop best practices, guidelines and rules. According to Article 22 of the TTPA, a national contact point shall be designated by the Member State to facilitate the exchange of information and collaboration. It shall also work in close cooperation with European Cooperation Network on Elections, European Board for Media Services and similar networks within the Democracy Shield.[118]

[115] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L, 119/1; and Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ 2018 L, 295/39.

[116] Article 18(2) of the TTPA, supra note 17.

[117] Compare Article 21 TTPA, supra note 17 with Article 13 DSA, supra note 16, and Article 27 of the GDPR, supra note 116. Since the EU institutions are per definition in the EU no such requirements exists under Regulation (EU) 2018/1725, supra note 13.

[118] See sections and II.2 and III.2 above.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

IV. **Democracy, transparency and platform providers**

1. *Platform providers and media content*

In the late 1990s the development of streaming media and content sharing over online platforms added a dimension to the integration of media markets as well as to external trade in media services. According to Article 14 of Directive 2000/31/EC, on certain legal aspects of information society services (E-commerce Directive) the provider of a hosting service i.e., platform service, is "not liable for the information stored at the request of a recipient of the service" on condition that a) "the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent", or b) "the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information."[119]

Due to sociotechnological changes, the E-commerce Directive was amended by the DSA in 2024.[120] Article 6 of the DSA states that the platform provider is not liable for information stored at the request of end-users, unless the platform provider has actual knowledge of an activity or content that is illegal, or as regards damages, is aware "of the facts or circumstances from which the illegal activity or illegal content is apparent". Furthermore, the platform provider becomes liable when upon obtaining such knowledge or awareness does not act expeditiously to remove or to disable access to the content.

As providers of online video-streaming platforms and providers of OTT services designed for video sharing, actively modify the media content on-demand, they are as mentioned in section III.1, media service providers under Directives 2010/13/EU and (EU) 2018/1808, and the EMFA. Conversely, for instance providers of platforms for hosting and sharing of media content that is uploaded by end-users, such as TikTok, X and Meta, are not media service providers. However, given the refined computational methods for tailoring media content and creating 'filter bubbles', platform providers are increasingly involved in shaping the media experience. Although the content is provided by the users, the platform provider designs the presentation. It has been said that Brexit was largely driven by social media, presenting one-sided information

---

[119] 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

[120] Article 39 of the DSA, supra note 16.

which fueled fears and prejudices primarily about immigration among end-users.[121] Even if platform providers cannot be held liable for the content uploaded to or downloaded from their online platforms, Article 25 of the DSA imposes an obligation on them to refrain from designing, organizing or operating their online interfaces "in a way that deceives or manipulates the recipients of their service or in a way that otherwise distorts or impairs the ability of the recipients of their service to make free and informed decisions."[122]

Those who provide the technological infrastructure, including artificial intelligence (AI), are also in a position to transpose fundamental rights into machine code and monitor content and activities.[123] However, it would sit uncomfortably with the right to privacy and data protection enshrined in Articles 7 and 8 respectively of the EU Charter, and as particularised in the GDPR and Regulation (EU) 2018/1725 regarding data processing by EU institutions, to require platform providers to constantly monitor end-users' communication and content sharing on the platforms. Monitoring of uploading and downloading of media content, and active search for incriminating information, was therefore prohibited under Article 15 of the E-commerce Directive. Then again, as the DSA entered into force, Article 15 of the E-commerce directive was deleted and the absolute ban on monitoring and inquiries by platform providers was modified.[124] Article 8 of the DSA now instead establishes that "[n]o general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers."

Along with the sophistication of algorithms used to organize and operate online platforms, the likelihood that the platform provider has actual knowledge of an activity or content on the platform increases. With the deployment of AI, also the meaning of 'monitoring' is obscured since it is difficult for the machine not to 'know' in some sense how end-users might perceive an online interface. Whereas public bodies may not impose a gen-

[121] See for instance Y. Gorodnichenko, T. Pham, and O. Talaver, Social media, sentiment and public opinions: Evidence from #Brexit and #USElection, European Economic Review, Vol. 136, 2026.

[122] See Commission Decision against X December 5, 2025, regarding among other things the deceptive design of the "blue checkmark" service, https://ec.europa.eu/commission/presscorner/api/ files/ document/print/en/ip_25_2934/IP_25_2934_EN.pdf, retrieved 2026-01-16. In response, X has closed the Commission's advertising account on the platform.

[123] Articles 14, 34, 35 and 40 of, and recitals 81, 84, 88, 91 of the preamble to, the DSA, supra note 16.

[124] Article 89(1) the DSA, supra note 16.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

eral monitoring obligation, they can request platform providers to make inquiries. Moreover, platform providers may, pursuant to Article 7 of the DSA, take own-initiative voluntary measures with a view to detect, identify, remove or disable access to illegal content. If so, they shall not be deemed ineligible for the exemptions from liability under Article 6 of the DSA if conducting the voluntary investigation "in good faith and a diligent manner." Platform providers shall, according to Articles 16 of the DSA also have a notice and action mechanism in place which allows end-users to notify them about possible illegal content.[125] If the platform provider considers it necessary to moderate the information uploaded to the platform by a recipient of the platform service, the platform provider shall pursuant to Article 17 of the DSA provide a clear and specific statement of reasons to any affected recipient.[126] In case the platform provider becomes aware of information on the platform that gives rise to a suspicion that a serious criminal offence has taken place or is likely to place, it shall pursuant to Article 18 of the DSA immediately inform the law enforcement or judicial authorities. In order to promote foreseeability, the platform provider shall, according to Article 14 of the DSA, provide information on restrictions regarding the use of the service, as well as on procedures and tools used for content moderation, in the terms and conditions for the service.[127]

As the meaning of "illegal" content and activities is vague, the obligation of platform providers under the DSA to moderate and take down media content largely remains a subject of contention.[128] Although the uncertainties have been much criticised from a rule of law perspective, it must be said that the statutory framework is efficient from a normative perspective because without the rules and regulations, courts would need to develop obligations from scratch in reactive and casuistic rulings.[129] Obviously, a platform provider that becomes aware of for instance hate speech or discrimi-

[125] See as to the possibility for legal persons such as media service providers to have fundamental rights under the ECHR that justify a take-down decisions Delfi AS v Estonia Appl. No. 64569/09, 16 June 2015.

[126] These statements are collected in the DSA Transparency Database, see Article 24(5) of, and recital 66 of the preamble to, the DSA. See the database at https://transparency.dsa.ec.europa.eu, retrieved 2026-01-16.

[127] See Articles 13-23 of the DSA supra note 16, regarding internal complaint handling systems, out-of-court disputes, trusted flaggers, measures and protection against misuse, and exemptions for micro and small enterprises.

[128] See for instance, O. Fathaig, N. Appelman and N. Helberger, The perils of legally defining disinformation, Internet Poliicy Review, Vol. 10(4), 2021.

[129] Compare with A. Portaru, How the EU Digital Service Act (DSA) Affects online Free Speech in 2025, https://adfinternational.org/commentary/eu-digital-services-act-one-year, retrieved 2026-01-16.

nation, may be held liable for not limiting the end-user's freedom of expression on the platform.[130] Then again, it is questionable to what extent mis— and disinformation is illegal, and the ambiguity of these notions *per se* has sparked quite a debate about the lawfulness of private censorship.[131] In order to reduce information thresholds and costs, the industry has since 2018 adopted self-regulatory standards on disinformation, and most recently 42 platform providers including VLOPs such as Meta and TikTok, and VLOSEs such as Google, adopted a Code of Conduct on Disinformation which was endorsed by the European Commission in February 2025.[132] Nonetheless, the necessary vagueness of the words implies that further clarification is needed. Indeed, VLOPs tend to overregulate content uploaded by end-users, and unjustified content moderation is in most cases based on the platform provider's terms and conditions.[133] Sometimes one might wonder if excessive policing is a strategy used by platforms providers established in third countries to stir up a debate on obligations under the DSA. In any event, platform providers shall at least once a year make a comprehensible report on content moderation publicly available in an accessible manner under Article 15 of the DSA.[134]

In view of the aforementioned, the European Commission's proposal for a Regulation laying down rules to prevent and combat child sexual abuse has sparked quite a debate since it, if adopted, would require platform providers to evaluate real time communication between end-users.[135]

Special rules and procedures apply to providers of VLOPs and VLOSEs due to their societal importance. According to Article 33(1) and (4) of the DSA, VLOPs and VLOSEs are online platforms which have more than 45 million users in the EU and are designated by the European

[130] See file///C:/Users/User/Downloads/code_of_conduct_on_countering_illegal_hate_speech_online_ en_C08AC7D9-984D-679D-CAEF129AD536E128_42985.pdf, retrieve 2026-01-15.

[131] See an interesting account here, https://www.csis.org/blogs/europe-corner/does-eus-digital-services-act-violate-freedom-speech, retrieved 2026-01-16.

[132] See Commission Opinion of 13.2.2025 on the assessment of the Code of Practice on Disinformation within the meaning of Article 45 of Regulation 2022/2065, C(2025) 1008 final; See also European Commission digital strategy Next generation digital Commission, C(2022) 4388 final.

[133] See the DSA Transparency Database, https://transparency.dsa.ec.europa.eu, supra note 127.

[134] See also Article 24(1) of the DSA, supra note 16.

[135] Proposal for a Regulation laying down rules to prevent and combat child sexual abuse, COM/2022/209 final. See also the European Parliament's position, Interinstitutional File: 2022/0155 (COD), 15318/25, 13 November 2025.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

Commission.[136] Providers of VLOPs and VLOSEs shall according to Article 34 of the DSA diligently identify, analyse and assess systematic risks in the Union related to their services. According to Article 35 thereof they shall also take proportionate mitigation measures such as a compliance function with a management body and compliance officers, i.e. 'fact checkers', which are independent from the operational functions, under Article 41 thereof. As to transparency reporting, VLOPs and VLOSEs should typically publish the reports referred to in Article 15 of the DSA at least every six-month pursuant to Article 42 thereof. In times of crisis, i.e. when "extraordinary circumstances occur that can lead to serious threat to public security or public health in the Union or significant parts thereof", the European Commission can require providers of VLOPs and VLOSEs to initiate a crisis response, including content moderation and adoption of tailored terms and conditions under Article 36 of the DSA.[137] In that connection, the Commission may also initiate the drawing up of a voluntary crisis protocol for a collective cross border response in the online environment.[138] In addition, providers of VLOPs should be encouraged to develop individual crisis protocols that may include monitoring of targeted activities for a limited period of time.[139] Then again, such measures must not amount to general monitoring obligations or be considered justifying active search for facts and circumstances indicating illegal content or activities. VLOPs or VLOSEs have no general obligation to police the internet on behalf of societies.

When it comes to the relationship between professional media service providers including public media service providers, and providers of VLOPs, the rules in the DSA on liability for information stored at the request of platform users, are supplemented by Article 18 of the EMFA. As media service providers may find it problematic that platform providers act as an extra editor of the content, and moderation regarding news reporting is very sensitive, they should have a possibility to notify providers of VLOPs of the nature and intended use of the account. In addition, media service providers should be able to declare that they are editorially independent and subject to the regulatory requirements for the exercise of editorial responsibility as well as to declare that media content is not AI generated and subject to human review.

---

[136] See as to designated platforms see https://digital-strategy.ec.europa.eu/en/library/designation-decisions-first-set-very-large-online-platforms-vlops-and-very-large-online-search, last visited 2026-01-08.

[137] Recital 91 of the preamble to the DSA, supra note 16.

[138] Recital 108 of the preamble to the DSA, supra note 16.

[139] See also 'Rethinking societal resilience in a time of polycrisis', supra note 11.

In case the provider of the VLOP that has been notified nevertheless finds it necessary to suspend or modify the media content, the media service provider shall according to Article 18(4) of the EMFA shall be given time to respond to the statement of reason issued under Article 17 of the DSA.[140] However, this right to respond does not apply when platform providers suspend the provision of a media services to protect minors under Article 28 of the DSA, to assess systematic risks under Article 34 thereof, or to mitigate such risks under Article 35. Nonetheless, if a media service provider considers that the provider of the VLOP has repeatedly restricted or suspended the provision of the platform service without sufficient grounds, an *inter partes* dialogue in good faith with a view to find an amicable solution is required. In case the parties cannot find an amicable solution, they may resort to mediation under Regulation 2019/1150 on fairness and transparency for business users of online platforms, or alternatively, an out-of-court dispute settlement procedure under Article 21 of the DSA.[141] If there are no sufficient grounds for restricting or suspending the service, the platform provider can be held responsible for illegal interference in the provision of programs or press publications.[142]

2. *Platform providers and political advertisements*

Considering the broad definition of political advertising in Article 3(2) of the TTPA, a platform provider can be classified among sponsors of political advertising pursuant to Article 3(10) of the TTPA and political advertising service providers pursuant to Articles 3(5) and (6) of the TTPA. A platform provider that publishes political advertisements for compensation on the platform can, therefore, be held liable under the TTPA as the publisher of a political advertisement. Conversely, if the criteria in Articles 3(2), (5), (6) or (10) of the TTPA are not met, the fact that the design, organization or operation of an online platform affects an electoral or legislative process in violation Article 25 of the DSA, does not *per se* make the platform provider a sponsor or provider of political advertising services that can be held liable under the TTPA. Moreover, a general exemption from liability under the TTPA is provided in Article 3(5) thereof. A platform service that meets the criteria of a political advertising service does, according to that provision, not constitute a political advertising service if it is pro-

[140] Recital 50 EMFA, supra note 17.

[141] Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation service, OJ 2019 L, 186/ 57.

[142] See recital 63 of the preamble to the DSA, supra note 16.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

vided without consideration. Consequently, the platform provider is not a publisher of political advertising when, for instance, influencers post political advertisements as generic content on their accounts. Then again, platform providers can be held liable under the TTPA to the extent that political advertising is published for compensation, for instance via a paid online advertising account.

According to Article 2(3)(i) of the TTPA, the rules regarding political advertising enshrined in the Regulation, shall be without prejudice to the application of the rules laid down in the DSA.[143] On that note, political advertising is covered by the general rules on advertising in the DSA.[144] According to Article 26 of the DSA, platform providers that present advertisements on their online interfaces shall ensure that each recipient of the platform service is able to identify, "in a clear, concise and unambiguous manner and in real time" that the post is an advertisement; on whose behalf the advertisement is presented; who paid for the advertisement; and the parameters used to determine the recipient to whom the advertisement is presented as well as how to change these parameters. If the provider of the online platform service uses a recommender system, i.e. an AI tool that provides suggestions for end-users regarding media content, the main parameters of the system and any option for the recipients to modify or influence those parameters, shall be set out in the terms and conditions in a plain and intelligible language.

Although the TTPA shall not affect the obligations for platform providers with regard to advertising under the DSA, providers of platform services are encouraged to facilitate the identification of political advertising which is uploaded or disseminated by end-users on the platform insofar as the measures do not constitute monitoring of content or activities on the platform.[145] In addition, the TTPA specifies the obligations of providers of VLOPs and VLOSEs.[146] Whereas Article 34(2)(d) of the DSA clarifies that the required risk assessment shall take into account systems for selecting and presenting advertisements, recital 46 of the preamble to the TTPA, clarifies that providers of VLOPs and VLOSEs "should diligently identify, analyse and assess any systemic risks that their political advertising services pose" under Article 34 of the DSA. Similarly, whereas Article 35(1)(e) of the DSA stipulates that the providers of VLOPs and VLOSEs shall

[143] Recital 51 of the preamble to the TTPA, supra note 17.

[144] Recital 57 and 69 of the preamble to the TTPA, supra note 17.

[145] See recitals 44, 54 and 55 of the preamble to the TTPA, supra note 17; and Guidelines to support the implementation of Regulation (EU) 2024/900, supra note 19, at 7.

[146] See Guidelines to support the implementation of Regulation (EU) 2024/900, supra note 19, at 5.

adapt "their advertising systems" and adopt "targeted measures aimed at limiting or adjusting the presentation of advertisements in association with the service they provide", they shall pursuant to recital 46 of the preamble to the TTPA "put in place reasonable, proportionate and effective mitigation measures in accordance with Article 35 of that Regulation".[147]

Furthermore, providers of VLOPs and VLOSEs shall according to Article 13(2) of the TTPA, ensure that the information in transparency notices regarding political advertisements required by Article 12(1) thereof, is available in a repository referred to in Article 39 of the DSA. According to that provision, the providers of VLOPs and VLOSEs shall make information about the content, sender and sponsor etc of the advertisements uploaded on the platform available "in a specific section of their online interface, through a searchable and reliable tool that allows multicriteria queries and through application programming interfaces." As providers of platforms that are not classified among VLOPs and VLOSEs have no such obligation under the DSA, the European Commission shall according to Article 13(1) of the TTPA set up a European Repository that collects and makes publicly available information about online political advertisements published within the Union or directed to EU citizens or residents.

As mentioned above, platform providers shall provide a notice and take down mechanism under Article 16 of the DSA, and political advertisements publishers shall provide a corresponding notice and take down mechanism under Article 15 of the TTPA. According to Article 15(5) of the TTPA, a provider of VLOPs and VLOSEs that is a political advertisements publisher has a particular responsibility to assess notifications and take actions quickly.[148]

3. *Public and private enforcement of platform responsibilities*

Compliance with the DSA is promoted through public monitoring. In view of the overlapping obligations under the TTPA and the DSA, the same national authorities are often involved in the monitoring and enforcement of both legal frameworks.[149] Member States shall according to Article 49 of the DSA designate one or more competent authorities to be responsible for supervision of

[147] See also Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the migration of systematic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065, OJ 2024 C 2024/3014.

[148] See Guidelines to support the implementation of Regulation (EU) 2024/900, supra note 19, at 40-41.

[149] See e.g. recitals 91, 96, 100 and 105 of the preamble to the TTPA, supra note 17.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

compliance and enforcement of the DSA. One of these authorities shall be designated as the Member State's Digital Service Coordinator.[150] In addition to coordination of the activities on national level, these bodies shall according to Article 57 of the DSA cooperate closely and provide each other with mutual assistance. High-level officials representing the national Digital Service Coordinators shall make up an independent European Board for Digital Services pursuant to Articles 61-63 of the DSA.

With regard to providers of VLOPs and VLOSEs the European Commission assisted by the in-house Digital Service Committee introduced in Article 88 of the DSA, is the supervisor of compliance.[151] Since, VLOPs and VLOSEs are often provided by undertakings having their main establishment in third countries, this distribution of labour within the Union tallies with the competences conferred on the EU institutions to take other external actions.[152] Indeed, the mere negotiating powers of providers of VLOPs and VLOSEs tell against an enforcement model that relies on measures by the national authorities.

In order to apply the Regulation in a consistent and efficient manner across the Union, the Digital Service Coordinators and the Commission cooperate closely and provide mutual assistance. In that connection, the Commission's information sharing system based on reports from platform providers pursuant to Article 15 of the DSA has become an important tool for enforcement.[153] For instance, based on the reporting requirements in conjunction with the above mentioned duties under Article 25 of the DSA, the Commission is investigating TikTok in relation to the influencer campaign that led to annulment of the 2024 Romanian election.[154] Based on best practices the European Board for Digital Services and the Commission shall adopt guidelines and promote the development of technology standards.[155] They shall also encourage and facilitate for the industry and stakeholders to adopt voluntary codes of conduct, such as the Code of Conduct on Disinformation mentioned above.[156] Sometimes, codes of conduct adopted under

[150] See Articles 49-55 of the DSA, supra note 16.

[151] See Articles 56-60 of the DSA supra note 16. Ses also Commission Implementing Regulation (EU) 2023/1201 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council ('Digital Services Act'), OJ 2023 L, 159/51.

[152] See section II.2 above.

[153] See section 5 of the DSA supra note 16 and in particular Article 85 thereof.

[154] See https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6243, last visited 2026-01-09.

[155] Article 44 of the DSA, supra note 16.

[156] Articles 45-47 of the DSA, supra note 16.

other legal frameworks concern also the DSA.[157] For instance, the Code of Conduct on Countering Illegal Hate Speech Online was adopted pursuant to a Commission Framework Decision regarding the establishment of an area of Freedom, Security and Justice, and the Code of Conduct on Data Processing in Advertising Activities was adopted on basis of Article 40 of the GDPR before the entry into force of the DSA.[158] According to Articles 87 and 88 of the DSA, the Commission may also adopt delegated and implementing acts.[159]

When it comes to the repression of disinformation and FIMI also the European Digital Media Observatory (EDMO) should be mentioned. In brief, it is a pan-European, independent and interdisciplinary network of researchers that act as fact-checkers and can notify competent authorities.[160]

Competent national authorities and the European Commission respectively may order platform providers to provide information, make inquiries and moderate and take down content on the platforms.[161] Naturally, protection of personal data yields in the specific case where monitoring or investigation is ordered by a competent national authority or the Commission for overriding reasons. In order to facilitate communication with national authorities or the Commission, the platform provider shall according to Article 11 of the DSA designate a point of contact within the Union. If a platform provider that offers services in the Union does not have an EU establishment, it shall appoint a representative in a Member State where the service is provided.[162]

Private enforcement of fundamental rights is promoted by the notice and action mechanism that platforms providers shall have in place to police

---

[157] See for an overview of existing codes of conduct https://digital-strategy.ec.europa.eu/en/policies/dsa-codes-conduct, retrieved 2026-01-15.

[158] See as to hate speech ///C:/Users/User/Downloads/code_of_conduct_on_countering_illegal_hate_ speech_online_en_C08AC7D9-984D-679D-CAEF129AD536E128_42985.pdf; and as to advertising https://www.edpb.europa.eu/system/files/2021-04/code_of_conduct_data_processing_in_advertising_activities_en.pdf, retrieved 2026-01-15.

[159] See for instance, Commission Implementing Regulation (EU) 2023/1201 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to the Digital Services Act, supra note 149.

[160] See https://edmo.eu, retrieved 2026-01-16.

[161] See Articles 9, 10, 40, 51(2)(b), 72, 73 of, and recitals 30, 34 and 103 of the preamble to, the DSA supra note 16.

[162] Article 13 of the DSA, supra note 16. As stated in recital 89 of the preamble to the TTPA, supra note 17, the same legal entity can be appointed as a representative under the DSA, TTPA and GDPR. See as to the notion of an establishment in the Union Judgment of the ECJ of 15 September 2011, Criminal proceedings against Jochen Dickinger and Franz Ömer, Case C-347/09, EU:C:2011:582.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

illegal content and activities on the platform.[163] There is a delicate balance to be made between, on the one hand, the end-users' right to privacy, and on the other hand, their interest in being protected against harm by media content. For instance, a news agency may expect the platform provider to take measures in order to prevent or restrict copyright infringement and other unfair use of the editorial material.[164] However, the platform provider has no duty to share information about an end-user to facilitate the enforcement of intellectual property rights.[165] If information uploaded to the platform is moderated or suspended, any recipient of the platform service who is affected can based on the statement of reason required under Article 17 of the DSA, lodge a complaint against the platform provider with the Digital Service Coordinator in the Member State where the recipient of the service is located or established. According to Article 53 of the DSA, "any body, organization or association mandated to exercise the rights conferred [by the Regulation]" is entitled to lodge such a complaint.[166]

In addition to the specific regimes regarding obligations for platform providers, the application of general competition law and the DMA, may promote the formation of well-founded opinions. Since people to an ever-greater extent access media services through online platforms, competition between platform providers may affect even current affairs and news reporting. In the field of competition law, economic theory may be used to reveal connections and effects on markets that may be difficult to discern without econometrics. However, efficient resource allocation according to one economic theory or another, is an aspect of the functioning of markets that *per se* provides no normative guidance. It is trite that 'efficiency' is a yardstick for how well an objective is achieved, and a measure that is efficient for achieving one objective may be ineffective for achieving another. Scholars inclined to rely on economic theory when making normative proposals often assume that short term productivity for an undertaking is the guiding star for market regulation. However, this arbitrarily chosen objective is a Cinderella in a legal system designed to promote stable long-term conditions for industrial and overall societal development by reconciling conflict-

[163] Article 16 of the DSA, supra note 16.

[164] See Article 17 of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ 2019 L, 130/92.

[165] See Judgment of the ECJ of 29 January 2008, Productores de Música de España (Promusicae) v Telefónica de España SAU, Case C-275/06, EU:C:2008:54.

[166] Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ 2012 L, 351/1.

ing rights and interests through proportionate limitations. As mentioned, the EU Charter always applies within the competences of the Union.[167]

Although the aim of competition law is to promote a proper functioning of markets as opposed to protect fundamental rights such as free and pluralistic media or privacy, infringements of fundamental rights may constitute an abuse of a dominant position. Because a violation of fundamental rights can result in unjustifiable competitive advantages that at least potentially distort existing or future competition in the relevant market. After much debate this was clarified by the ECJ in Case 252/21, *Facebook Germany*.[168] In response to questions referred from the German Administrative Court in a case between the German Federal Cartell Office and primarily Facebook Germany, the ECJ explained that it may be an infringement of Article 102 of the TFEU not to afford the end-users a real choice regarding data processing for tailoring of commercial offers by offering them access to platform services without requesting such data. A valid consent under the GDPR must be freely given, specific, informed and unambiguous. In contrast, consent that is forced by information asymmetry and lack of choice is invalid under the GDPR. In addition, such terms and conditions are anti-competitive if they effectively foreclose competition from undertakings that can provide equivalent platform services but are not in a position to collect and trade in the same amount of personal data. Hence, the ECJ concluded that the provider of a VLOP must offer end-users a possibility to access an equivalent service, without requiring them to give a way personal data that are intended to be used for profiling, targeting and tailoring of messages including advertising.[169] A platform provider may instead charge a proportionate fee for access to an equivalent platform services. As stated in recital 81 of the preamble to the TTPA, the reasoning of the ECJ in the *Facebook Germany* Case may apply also to data processing for targeting and tailoring of political advertising.

In addition to abusive consumer contracts, a large search engine that without objectively acceptable reasons primarily refers the end-users to its own trading platforms (self-preferencing) may constitute an abuse of a dominant position under Article 102 of the TFEU.[170] As mentioned, the ECJ has

---

[167] Commission report by J. Crémer, Y-A de Montjoye, H. Schweitzer, *Competition Policy for the Digital Era*.

[168] Judgment of the ECJ of 4 July 2023, Meta Platforms Inc and Others v Bundeskartellamt, Case C-252/21, EU:C:2023:537, para 48.

[169] Meta Platforms Inc and Others v Bundeskartellamt, Case C-252/21, supra note 169, para. 102.

[170] See Commission decision against Google 5 September 2025, https://ec.europa.eu / commission/ presscorner/api/files/document/print/en/ip_25_1992/IP_25_1992_EN.pdf, retrieved 2026-01-16.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

previously also addressed media pluralism and abuse of dominance by limiting media providers' access to essential information under Article 102 of the TFEU, as well as anticompetitive agreements tying copyrights to broadcasting rights in breach of Article 101 thereof.[171] In addition, merger control from a competition law perspective is relevant for media pluralism albeit the merging of media houses are also subject to assessment under the EFMA.[172]

Since the entry into force of the DMA, providers of VLOPs which are designated as gatekeepers pursuant to Articles 2 and 3 thereof, must ensure end-users access by informed consent on fair terms. According to Article 5(2) of the DMA, the gatekeeper must not combine, or cross use, personal data collected from the core platform service in order to provide another service, such as marketing of commercial offers, without informed consent from the end-user. In that connection, the European Commission, which oversees the gatekeepers, has invalidated a business model used by Meta and Apple where the end-users must either consent to the terms or pay for accessing a very limited service (the consent or pay model).[173] According to the commission, the services provided if end-users pay for not receiving targeted advertising are not equivalent to the services obtained if personal data are freely given away and cross-used by the platform providers to target commercial offers.[174] Meta has, therefore, introduced a third option, namely consent to share less personal data and accept less tailored commercial offers to get the full service without payment. It remains to be seen to what extent consent to cross-use of personal data can be accepted under the GDPR and, hence, be captured by the DMA. Similarly, agreements restricting access to news reporting may be deemed anti-competitive.

V. **Conclusions**

In hindsight, it must be said that Jean Monnet's scepticism regarding the ability of politics to unite countries and his belief in trade as a uniting

---

[171] Joined Cases C-241/91 P and 242/91 P, Magill supra note 82; Judgment of the ECJ of 4 October 2011, in Joined Cases Football Association Premier League Ltd and Others v QC Leisure and Others (C-403/08) and Karen Murphy v Media Protection Services Ltd (C-429/08), EU:C:2011:631.

[172] See recital 70 of the preamble to the EFMA.

[173] See as to the decisions 23 April 2025 here https://ec.europa.eu/commission/presscorner/api/files/ document/print/en/ip_25_1085/IP_25_1085_EN.pdf, retrieved 2026-01-16.

[174] See further regarding the requirements, European Data Protection Board Opinion 08/24 on Valid Consent in the Context of Consent or Pay Model Implemented by Large Online Platforms, ps://www.edpb.europa.eu/system/files /2024-04/edpb_opinion_202408_consentorpay_en.pdf, retrieved 2026-01-16.

force was well founded. Indeed, the framework for economic integration provided by the Treaty of Rome laid a solid foundation for European unification. If it had been left to popular vote and political opportunism the EU would not have existed. True, the European Parliament has been given increasing powers with virtually each revision of primary law to anchor supranational decision making in the will of the people of Europe. And the democratic element in the Union's separation of powers, now goes far beyond popular representation in the European Parliament and the representation of national governments. But the EU largely remains a *sui generis* polity without the characteristics of a democracy. Furthermore, the Union has limited formal powers to ensure that Member States retain a democratic form of governance, although only democratic states in Europe can join the Union. Nonetheless, under current circumstances, there is a strong will at both national and supranational level to protect democratic processes through more coordination and collaboration.

In late 2025, efforts to protect the European way of life were consolidated in the Democracy Shield. Based on the Union's powers to establish and maintain an internal market and the requirement pursuant to the Lisbon revision in 2009 to take fundamental rights recognised in the EU-Charter into consideration, the regulation of media and platform services within the Union has become an important way to promote the ability of voters to form well-founded opinions. Primarily the requirement to safeguard freedom of expression and information enshrined in Article 11 of the EU Charter, is formative for the repression of disinformation and FIMI. Whereas media freedom and pluralism along the lines of the right to receive and impart information and ideas promote a rich information base, there is a need to ensure that fact-checked editorial materials do not disappear in an overwhelming media flow organised by platforms. Schematically, a distinction needs to be made between media and platform service providers insofar as providers of online interfaces do not produce the content stored at the platforms.

Under the EMFA, all kinds of media service providers, including providers of television and radio broadcasts, on-demand audiovisual media services, audio podcasts and press publications, are entitled to exercise their economic activities to the extent that limitations are necessary in order to safeguard other Union rights and interests including repression of disinformation. When it comes to political advertising, the TTPA establishes mechanisms to ensure transparency regarding the nature, origin and financing of the kind of media content concerned. A main goal of the TTPA is to reduce the risk of influence campaigns from third countries. Although platform providers often meet the definition of a political advertisement publisher, they are exempted from liability under the TTPA if the ad is hosted without

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es

consideration. However, the DSA contains related rules regarding the liability of platform providers. Conversely, particularly the extensive obligations for providers of VLOPs and VLOSEs under the DSA, are complemented by tailored rules set out in both the EMFA and the TTPA. Hence, to understand the Democracy Shield with regard to informed opinion formation, it is necessary to read the normative frameworks for media service providers and platform providers together without confusing the roles and responsibilities of the different market participants. Moreover, the systems for public and private enforcement of the legal regimes are coordinated, and the Shield consists in practice largely of collaboration between public law entities.

When it comes to VLOPs and VLOSEs, the Union speaks with one voice through the European Commission. In addition to monitoring compliance with the DSA, the Commission can invoke competition law to combat anticompetitive behaviour in the form of violations of fundamental rights. Insofar as providers of VLOPs and VLOSEs have their main establishments in third countries, the distinction between regulation of the internal market and external trade policy collapses.

In the big picture, the Union's limited powers to protect democratic processes, combined with the requirement to always respect and reconcile fundamental rights and interests, result in a reinterpretation of the notion of democracy with repercussions for the Member States' form of governance. Whereas democracy has traditionally been understood in terms of representative popular sovereignty, and the rule of law has appeared to be the rule of the legislature, democracy is now conditioned on the rule of law in terms of legal norms which are aligned with fundamental rights. Indeed, the Democracy Shield is just as important for preventing domestic erosion of values as it is for the protection of informed opinions against destructive influences from third countries.

About the author

Dr. Claes Granmar was appointed as a senior lecturer at Stockholm University, Faculty of Law in 2012, and has been an associate professor in European Law there since 2017. Dr. Granmar defended his thesis at the Euruopean University Institute (EUI) in Florence, Italy, in 2010, where he is also an alumnus. During the academic years 2017-2018 and 2018-2019 he was a visiting fellow at the Institute for European and Comparative Law (IECL) at Oxford University. As a member of the Senior Common Room of the Lady Margereth Hall College he also became an alumnus of Oxford University. Moreover, in 2019 Dr. Granmar was an Honorary Fellow of

Melbourne Law School. He has earlier been a trainee at the European Free Trade Association (EFTA) Court. Dr. Granmar is director of the undergraduate course in European Law at Stockholm University. Furthermore, he is the director of two elective courses at advanced level; European Procedural Law; and European Union External Trade Relations Law and Policy. Dr. Granmar is the founder and director of the Nordic Forum for European Convention Studies and head of the renowned Nordic Human Rights Moot Court Competition.

Sobre el autor

El **Dr. Claes Granmar** fue nombrado en 2012 Profesor Titular de la Facultad de Derecho de la Universidad de Estocolmo donde es Profesor Asociado de Derecho Europeo desde 2017. El Dr. Granmar defendió su tesis doctoral en el Instituto Universitario Europeo (IUE) en Florencia, Italia, en 2010, siendo también exalumno del IUE. Durante los años académicos 2017-18 y 2018-19, fue Profesor Visitante en el Instituto de Derecho Europeo y Comparado (IECL) de la Universidad de Oxford. Como Senior Fellow del Lady Margaret Hall College, también se convirtió en exalumno de la Universidad de Oxford. En 2019, el Dr. Granmar fue nombrado Miembro Honorario de la Facultad de Derecho de Melbourne. Anteriormente, fue Miembro del Tribunal de la Asociación Europea de Libre Comercio (AELC). El Dr. Granmar es Director del curso de pregrado de Derecho Europeo en la Universidad de Estocolmo. Además, imparte dos cursos optativos avanzados: Derecho Procesal Europeo y Derecho y Política de las Relaciones Comerciales Exteriores de la Unión Europea. El Dr. Granmar es fundador y director del Foro Nórdico para Estudios de la Convención Europea y presidente del prestigioso Concurso de Simulación de Tribunales del Tribunal Nórdico de Derechos Humanos.

Cuadernos Europeos de Deusto
ISSN: 1130-8354 • ISSN-e: 2445-3587, No. 74/2026, Bilbao, págs. 59-104
doi: https://doi.org/10.18543/ced.3483 • https://ced.revistas.deusto.es