

**Digital Harmonization--the Digital Services Act, the EU, and Digitalized Free
Speech**

Cyrus Gazdar

POL314

Dr. Alexander Reisenbichler

February 11, 2025

Introduction

The European Union (EU) regularly implements directives, regulations, and recommendations to its member states, delivering on its end goal of a single market under the four freedoms of free movement of goods, services, capital, and labour.¹ Oftentimes, directives seek to “harmonize” national laws into EU laws that would increasingly integrate member states. While harmonization at times operates on an economic basis—such as the establishment of the Banking Union,² they also attempt to address social and political differences between member states, such as the integration of the asylum-seeking process³ or on a common anti-discrimination process.⁴

As the world moves further into the digital age, social media has increasingly played a role in Liberal democracies like those in the EU. While there are benefits to social media, it has also been used to boost the voices of conspiracy theorists, demagogues, anti-democratic advocates, and agents who can perpetuate misinformation at a much faster rate.⁵ As well, it gave rise to previously “unelectable” far-right, populist parties.⁶ Social media now shapes EU politics, so it makes sense the EU might start to seek out ways to harmonize the digital market, something the Digital Services Act (DSA) attempts to do. While the harmonization process may run into obstacles on its way to passing, there are also times when this does not occur, as was the case with the DSA. This essay will begin with a timeline of the DSA starting-- with its early

¹ Amy Verdun, Achim Hurrelmann, and Emmanuel Brunet-Jailly, eds., *European Union Governance and Policy Making: A Canadian Perspective*, Second edition (Toronto Buffalo London: University of Toronto Press, 2023), 9–10.

² Verdun, Hurrelmann, and Brunet-Jailly, 154.

³ Verdun, Hurrelmann, and Brunet-Jailly, 172.

⁴ Verdun, Hurrelmann, and Brunet-Jailly, 356.

⁵ How civil wars start page 235

⁶ Barbara F. Walter, *How Civil Wars Start: And How to Stop Them*, First Edition (New York: Crown, 2022), 206–207.

mentions to its eventual passing. After this, the reader's attention will be turned to the legislation of the DSA and how it has been used.

Part 1: The History of the DSA

Laws combating hate speech are not new to the EU. Germany passed the Network Enforcement Act in 2017, with France following suit via their Law on combating the manipulation of information in 2018.⁷ While these are national laws, the EU itself has not shied away from regulating hate speech, passing a number of laws to tackle its explicit forms. This includes forcing an assortment of regulations on several actors, including EU member states, civilians, and private corporations.⁸ The purpose of the DSA was to integrate and harmonize these pre-existing national laws.

The DSA had been in the works well before its final passing in 2022. During her Commission presidential run in 2019, Ursula von der Leyen suggested a Digital Services Act would “upgrade [the EU’s] liability and safety rules for digital platforms, services and products, and complete our Digital Single Market.”⁹ Around a year after her election victory, in 2020, the Commission brought forward a proposal for a “Single Market for Digital Services” regulation. Since 2015, the Commission has been consulting a number of stakeholders (including but not limited to service providers, social partners, civil society organizations, academia and international organizations) on the adoption of such an act. Stakeholders responded positively--

⁷ Sara Tommasi, *The Risk of Discrimination in the Digital Market: From the Digital Services Act to the Future*, SpringerBriefs in Law (Cham: Springer, 2023), 101–2.

⁸ See Part II of Chapter V of: Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (New York: Oxford University press, 2020).

⁹ Ursula von der Leyen, “A Union That Strives for More: My Agenda for Europe. POLITICAL GUIDELINES FOR THE NEXT EUROPEAN COMMISSION 2019-2024.” (European Union, July 17, 2019), 13, https://commission.europa.eu/document/download/063d44e9-04ed-4033-acf9-639ecb187e87_en?filename=political-guidelines-next-commission_en.pdf.

expressing a desire to address online safety and continuing development of an internal digital market, supported by further integration and stronger consumer protections.¹⁰ Support was also bolstered by present political issues, such as the COVID-19 pandemic.¹¹

Stakeholders were not the only ones who were supporting of the initiative, as the member states also backed it. The proposal was adopted on December 16th, 2022, by the Commission. Two years later, the EP gave its position after the first reading on July 5th, 2022, and three months later, the Council approved the first reading.¹² The Council vote was unanimous,¹³ and the vote in the EP went through with almost no resistance, with the final vote coming out to 539 in favour, 54 against, and 30 abstentions.¹⁴ Finally, on the 19th of November, the President of the EP and the President of the Council delivered the joint signature for its passing.¹⁵ The lack of friction from all bodies of the EU signals that member states wanted to form a unified effort to address misinformation and illegal content.

While support existed at large among stakeholders and EU bodies, there was still a discourse regarding the DSA, its morality, and what it meant for free speech. Companies such as Google publicly expressed their distaste towards the legislation, and informed the EU that it would not incorporate fact-checking requirements as outlined in the DSA.¹⁶ Independent

¹⁰ European Commission, “Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and Amending Directive 2000/31/EC,” December 15, 2020, 8, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0825>.

¹¹ European Commission, 9.

¹² European Union, “Procedure 2020/0361/COD,” Government website, European Union, 2022, <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:32022R2065>.

¹³ Council of the European Union, “Council of the European Union, “Voting Result • REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services and Amending Directive 2000/31/EC (Digital Services Act) (First Reading),” April 10, 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_13164_2022_INIT.

¹⁴ European Parliament, “Digital Services: Landmark Rules Adopted for a Safer, Open Online Environment | News | European Parliament,” July 5, 2022, <https://www.europarl.europa.eu/news/en/press-room/20220701IPR34364/digital-services-landmark-rules-adopted-for-a-safer-open-online-environment>.

¹⁵ European Union, “EUR-Lex.”

¹⁶ “Google Rejects EU Fact-Checking Commitments for Search and Youtube,” Online Newspaper, The Verge, January 17, 2025, <https://www.theverge.com/2025/1/17/24345747/google-eu-dsa-fact-checks-disinformation-code-search-youtube>.

organizations also expressed concern over potential overreach from the EU on the ability to freely communicate online. ADF International, a conservative think-tank expressed concerns over government intervention.¹⁷ It has also been argued that technical issues might lead to unnecessary government overreach. For example, the Commission has struggled to come up with a good definition for misinformation and other terms that are included with the DSA which means the legal basis for its invocation is often arbitrary, resulting in a form of de facto-censorship.¹⁸

Some Americans have also expressed concern that the ‘Brussels effect’ may spread to the United States, causing constitutional violations.¹⁹ Concerns surrounding the DSA expanded due to the notion that it disproportionately targeted American corporations. Former US Trade Representative Charlene Barshefsky claimed that the EU was engaging in protectionism and “techno-nationalism” when the DSA went after large American tech corporations like Meta and Amazon.²⁰ Concerns were already voiced in 2020 from Meta regarding the same theme of digital protectionism.²¹ Nevertheless, support for the DSA remains strong, as NGOs are encouraging the EU to stand firm against forces opposing it, including the new American

¹⁷ “How the EU Digital Services Act (DSA) Affects Online Free Speech in 2025,” Advocacy Group, ADF International, January 28, 2025, <https://adfinternational.org/commentary/eu-digital-services-act-one-year#:~:text=The%20Implications%20on%20Free%20Speech&text=Under%20the%20DSA%2C%20tech%20platforms,part%20of%20the%20DSA's%20focus>.

¹⁸ Ruairí Harrison, “Tackling Disinformation in Times of Crisis: The European Commission’s Response to the Covid-19 Infodemic and the Feasibility of a Consumer-Centric Solution,” *Utrecht Law Review* 17, no. 3 (October 12, 2021): 19, <https://doi.org/10.36633/ulr.675>.

¹⁹ Adam Candeub, “The Digital Services Act, the First Amendment, and Deputised Surveillance,” *Journal of Media Law* 16, no. 1 (January 2, 2024): 66, <https://doi.org/10.1080/17577632.2024.2362479>.

²⁰ Anu Bradford, *Digital Empires: The Global Battle to Regulate Technology* (New York: Oxford university press, 2023), 224.

²¹ Bradford, 246.

government.²² It also likely that new security threats that may be posed may result in the further usage of the Act, such as the worries about TikTok.²³

Apart from the restrictions on free speech that have been levied against, there is also the argument on the validity of the Act itself. Article 1 of the DSA states that the primary purpose of the law is to create a safe and trusted environment online, the existence of the DSA might place the ideas in people's minds that they are not being told the whole truth, and as such, might be skeptical of the DSA even if its restrictions are both well-intentioned and operating strictly on legitimate grounds.²⁴ Additionally, it has been argued that the DSA has been unable to adequately protect users against disinformation online during election periods, and has failed to regulate the digital space to ensure the right to political participation.²⁵ Finally, arguments have been made against the idea of de-platforming misinformation if it does not violate national laws. This is exacerbated by emerging technologies such as AI that can result in more mistakes when moderating content, as well as the possibility that content creators and consumers may shift to other platforms that are not within the DSA umbrella and therefore cannot be moderated by the EU.²⁶

²² "Europe 'Must Not Be Bullied' by Trump and Musk on Tech Laws, NGOs Say," Online Newsletter, The Guardian, January 29, 2025, <https://www.theguardian.com/world/2025/jan/29/europe-must-not-be-bullied-by-trump-and-musk-on-tech-laws-ngos-say>.

²³ Bradford, *Digital Empires*, 170.

²⁴ Martin Husovec, "The Digital Services Act's Red Line: What the Commission Can and Cannot Do about Disinformation," *Journal of Media Law* 16, no. 1 (January 2, 2024): 55, <https://doi.org/10.1080/17577632.2024.2362483>.

²⁵ Elena Abrusci, "The UK Online Safety Act, the EU Digital Services Act and Online Disinformation: Is the Right to Political Participation Adequately Protected?*", *Journal of Media Law*, December 2, 2024, 26, <https://doi.org/10.1080/17577632.2024.2425551>.

²⁶ Natalie Alkiviadou, "Platform Liability, Hate Speech and the Fundamental Right to Free Speech," *Information & Communications Technology Law*, October 7, 2024, 6–7, <https://doi.org/10.1080/13600834.2024.2411799>.

Part 2: Legislation of the Act

The purpose of the DSA is to address and regulate illegal and harmful goods, services and content online. The Act applies only to intermediary services, but specifically to those that are received by people residing in the EU, making it irrelevant if the service provider has an establishment located within the EU or not.²⁷ The horizontal initiative establishes a framework of harmonized rules on services in the internal market. It sets out to align legal differences between national laws regarding penalties on third-party service providers, as well as the safety of users.²⁸ The DSA's model also has a focus on consumer protections on technical obligations such as user transparency, reporting, increased accountability, and content moderation.²⁹ The DSA's Article 9 lays out how the legislation overrides national law and provides instructions on how to address infringements.³⁰ The case of the DSA therefore represents the EU at its strongest capacity—a regulatory power.³¹ acting as a consumer protection service, as outlined in Article 2 C of the Lisbon Treaty.³²

The DSA has specific targets—it goes after what the EU considers “very large online platforms” and “very large online search engines,” the former being made up of 17 companies including Amazon, Twitter, Meta, and others. The latter covers two search engines, Google

²⁷ Bence Kis Kelemen and Balázs Hohmann, “Is There Anything New Under the Sun? A Glance at the Digital Services Act and the Digital Markets Act from the Perspective of Digitalisation in the EU,” *Croatian Yearbook of European Law and Policy* 19, no. 1 (December 30, 2023): 229, <https://doi.org/10.3935/cyelp.19.2023.542>.

²⁸ Maria Luisa Chiarella, “Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment,” *Athens Journal of Law* 9, no. 1 (December 29, 2022): 43–44, <https://doi.org/10.30958/ajl.9-1-2>.

²⁹ Mark Leiser, “Reimagining Digital Governance: The EU’s Digital Service Act and the Fight Against Disinformation,” *Free University of Amsterdam*, May 4, 2023, 1–14.

³⁰ See Article 9, Sections 3-6 of: European Union, Regulation - 2022/2065 - EN - DSA - EUR-Lex.

³¹ Verdun, Hurrelmann, and Brunet-Jailly, *European Union Governance and Policy Making*, 10.

³² The Member States, “TREATY OF LISBON AMENDING THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY” (Official Journal of the European Union, December 17, 2007), 49, https://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19.

Search and Bing.³³ So far, the use of the Act has notably been cited as cause for investigations against X (formerly Twitter) and Meta (formerly Facebook).³⁴ In both cases, the primary reasons for the evocation of the Acts come from some variation of consumer exploitation. Meta released a statement abiding by the Act,³⁵ whereas adequate measures were not taken by X, launching formal proceedings.³⁶

Conclusion

While there were anti-discrimination laws already in place in major EU countries such as France and Germany, the Digital Service Act regulation would seek to harmonize these laws, moving the European Union closer towards a single market in a large and growing digital world. The purpose of the Act would require pre-defined companies and search engines to moderate harmful conduct, monitor misinformation, along with other regulations. The Act has been used in a few high-profile cases, such as the ones with Meta and X. While Meta worked with the EU on meeting the criteria for the DSA, X took a more aggressive approach, indicating that the bloc will be faced with further obstacles that they have to overcome.

While there was debate over both the president that the DSA would set for free speech, as well as the questioning of the necessity of the Act itself, the DSA passed with almost no resistance from either the EU or stakeholders, with strong support from the DSA remaining high

³³ “DSA: Very Large Online Platforms and Search Engines,” Text, European Commission - European Commission, accessed January 28, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2413.

³⁴ “DSA: Commission Opens Formal Proceedings against Meta,” Text, European Commission - European Commission, accessed January 26, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2664; European Union, “Commission Opens Formal Proceedings against X under the Digital Services Act,” *European Commission*, December 17, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6709.

³⁵ “Meta’s Progress Implementing the Digital Services Act,” *Meta* (blog), November 28, 2024, <https://about.fb.com/news/2024/11/metas-progress-implementing-the-digital-services-act/>.

³⁶ Adam Satariano and Jeanna Smialek, “E.U. Expands Investigation of X Over Spread of Illicit Content,” *The New York Times*, January 17, 2025, sec. Business, <https://www.nytimes.com/2025/01/17/business/eu-investigation-x-musk.html>.

among these groups today. This indicates that the EU is committed to maintaining its status as a strong regulatory power moving into the new digital world.

Bibliography

- Abrusci, Elena. "The UK Online Safety Act, the EU Digital Services Act and Online Disinformation: Is the Right to Political Participation Adequately Protected?*" *Journal of Media Law*, December 2, 2024, 1–28. <https://doi.org/10.1080/17577632.2024.2425551>.
- ADF International. "How the EU Digital Services Act (DSA) Affects Online Free Speech in 2025." Advocacy Group, January 28, 2025. <https://adfinternational.org/commentary/eu-digital-services-act-one-year#:~:text=The%20Implications%20on%20Free%20Speech&text=Under%20the%20DSA%20C%20tech%20platforms,part%20of%20the%20DSA's%20focus>.
- Alkiviadou, Natalie. "Platform Liability, Hate Speech and the Fundamental Right to Free Speech." *Information & Communications Technology Law*, October 7, 2024, 1–11. <https://doi.org/10.1080/13600834.2024.2411799>.
- Bradford, Anu. *Digital Empires: The Global Battle to Regulate Technology*. New York: Oxford university press, 2023.
- . *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University press, 2020.
- Candeub, Adam. "The Digital Services Act, the First Amendment, and Deputised Surveillance." *Journal of Media Law* 16, no. 1 (January 2, 2024): 65–73. <https://doi.org/10.1080/17577632.2024.2362479>.
- Chiarella, Maria Luisa. "Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment." *Athens Journal of Law* 9, no. 1 (December 29, 2022): 33–58. <https://doi.org/10.30958/ajl.9-1-2>.
- Council of the European Union. "Council of the European Union, "Voting Result • REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services and Amending Directive 2000/31/EC (Digital Services Act) (First Reading)," April 10, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_13164_2022_INIT.
- European Commission. "Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and Amending Directive 2000/31/EC," December 15, 2020. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0825>.
- European Commission - European Commission. "DSA: Commission Opens Formal Proceedings against Meta." Text. Accessed January 26, 2025. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2664.
- European Commission - European Commission. "DSA: Very Large Online Platforms and Search Engines." Text. Accessed January 28, 2025. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2413.
- European Parliament. "Digital Services: Landmark Rules Adopted for a Safer, Open Online Environment | News | European Parliament," July 5, 2022.

<https://www.europarl.europa.eu/news/en/press-room/20220701IPR34364/digital-services-landmark-rules-adopted-for-a-safer-open-online-environment>.

European Union. “Commission Opens Formal Proceedings against X under the Digital Services Act.” *European Commission*, December 17, 2023.

https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6709.

———. “Procedure 2020/0361/COD.” Government website. European Union, 2022. <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:32022R2065>.

———. Regulation - 2022/2065 - EN - DSA - EUR-Lex, Pub. L. No. Directive 2000/31/EC (Digital Services Act) (2022). <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>.

Harrison, Ruairí. “Tackling Disinformation in Times of Crisis: The European Commission’s Response to the Covid-19 Infodemic and the Feasibility of a Consumer-Centric Solution.” *Utrecht Law Review* 17, no. 3 (October 12, 2021): 18–33. <https://doi.org/10.36633/ulr.675>.

Husovec, Martin. “The Digital Services Act’s Red Line: What the Commission Can and Cannot Do about Disinformation.” *Journal of Media Law* 16, no. 1 (January 2, 2024): 47–56. <https://doi.org/10.1080/17577632.2024.2362483>.

Kis Kelemen, Bence, and Balázs Hohmann. “Is There Anything New Under the Sun? A Glance at the Digital Services Act and the Digital Markets Act from the Perspective of Digitalisation in the EU.” *Croatian Yearbook of European Law and Policy* 19, no. 1 (December 30, 2023). <https://doi.org/10.3935/cyelp.19.2023.542>.

Leiser, Mark. “Reimagining Digital Governance: The EU’s Digital Service Act and the Fight Against Disinformation.” *Free University of Amsterdam*, May 4, 2023, 1–14.

Meta. “Meta’s Progress Implementing the Digital Services Act,” November 28, 2024. <https://about.fb.com/news/2024/11/metas-progress-implementing-the-digital-services-act/>.

Satariano, Adam, and Jeanna Smialek. “E.U. Expands Investigation of X Over Spread of Illicit Content.” *The New York Times*, January 17, 2025, sec. Business. <https://www.nytimes.com/2025/01/17/business/eu-investigation-x-musk.html>.

The Guardian. “Europe ‘Must Not Be Bullied’ by Trump and Musk on Tech Laws, NGOs Say.” Online Newsletter, January 29, 2025. <https://www.theguardian.com/world/2025/jan/29/europe-must-not-be-bullied-by-trump-and-musk-on-tech-laws-ngos-say>.

The Member States. “TREATY OF LISBON AMENDING THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY.” Official Journal of the European Union, December 17, 2007. https://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19.

The Verge. “Google Rejects EU Fact-Checking Commitments for Search and YouTube.” Online Newspaper, January 17, 2025. <https://www.theverge.com/2025/1/17/24345747/google-eu-dsa-fact-checks-disinformation-code-search-youtube>.

Tommasi, Sara. *The Risk of Discrimination in the Digital Market: From the Digital Services Act to the Future*. SpringerBriefs in Law. Cham: Springer, 2023.

Ursula von der Leyen. "A Union That Strives for More: My Agenda for Europe. POLITICAL GUIDELINES FOR THE NEXT EUROPEAN COMMISSION 2019-2024." European Union, July 17, 2019. https://commission.europa.eu/document/download/063d44e9-04ed-4033-acf9-639ecb187e87_en?filename=political-guidelines-next-commission_en.pdf.

Verdun, Amy, Achim Hurrelmann, and Emmanuel Brunet-Jailly, eds. *European Union Governance and Policy Making: A Canadian Perspective*. Second edition. Toronto Buffalo London: University of Toronto Press, 2023.

Walter, Barbara F. *How Civil Wars Start: And How to Stop Them*. First Edition. New York: Crown, 2022.