



THE EU'S SECRET WEAPON AGAINST DISINFORMATION

How the Digital Services Act is Rewiring Free Speech & Enforcement in Real Time

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Abstract

The Digital Services Act (DSA), in force since November 2022, represents an important regulatory instrument for online platforms in the European scenario. This policy brief aims to show how the DSA acts, its first application and the complex challenges it poses, particularly with regard to freedom of expression, business resilience and geopolitical consequences. By giving the EU the power to act swiftly during a crisis, the DSA challenges the balance between security and rights, stimulating democratic scrutiny but also raising concerns about its international influence and potential abuse by authoritarian regimes.

Keywords: Digital Services Act, online governance, platform regulation, crisis response, freedom of expression

Introduction

The driving force behind the DSA is Article 36, which gives the European Commission the power to declare a “crisis” in the event of situations that pose a serious threat to public health or security, such as armed conflicts, disinformation campaigns or electoral

interference. In such cases, on the advice of the European Digital Services Board, the Commission can issue binding orders to very large online platforms (VLOPs) and search engines (VLOSEs) –those with more than 45 million monthly users in the EU¹ –, requiring them to assess and mitigate their role in the crisis through measures such as content moderation or algorithmic adjustments and communicate in detail to the Commission the actions taken.² Such measures must be necessary, time-limited and rights-respecting and providers must retain autonomy of implementation.

These emergency powers effectively allow the Commission to bypass national legislation and impose uniform responses at European level.³ The most extreme measure, known as the “nuclear option”, even allows for the temporary restriction of access to platforms that cause serious harm due to persistent non-compliance. Courts must determine that the breach constitutes a crime threatening life or safety, ensure proportionality and respect fundamental rights (such as freedom of expression).⁴ This framework, inspired by national precedents such as the emergency rules for the 2022 French elections,⁵ marks a significant step

¹ EUROPEAN COMMISSION, *DSA: Very large online platforms and search engines*, Shaping Europe’s digital future, April 2023.

² DORIS BUIJS/ ILARIA BURI, *The DSA’s crisis approach: crisis response mechanism and crisis protocols*, DSA Observatory, February 2023.

³ CHRISTOPHER THOMAS/ ALEXANDRA BRAY, *European Commission’s powers to fine, impose remedies, and block access to VLOPs under the DSA*, Hogan Lovells, March 2025.

⁴ PAULINE CELEYRON / LAURIE OFFREDO, *Explore the Law on Securing and Regulating the Digital Space: untangling the content regulation obligations applicable to online service operators*, A blog by Baker McKenzie, June 2024.

⁵ NICOLAS ROCHER, *Impact of the French Elections on national and EU digital policies*, Lighthouse Europe, May 2022.



towards centralized and real-time crisis intervention.⁶ However, it falls into a “grey zone” due to the lack of a precise definition of “crisis”, which creates ambiguity.

This policy brief examines how Article 36 of the DSA affects the balance between rapid crisis response, platform independence and fundamental rights (in particular freedom of expression). It aims to examine the legal framework, the first use of the Article and relevant national case law to assess the implications of concentrating crisis regulation at EU level. While Article 36 implements the EU’s ability to act rapidly during digital emergencies, its effectiveness will depend on a transparent decision-making process, well-defined criteria and strong safeguards to prevent political abuse.

First Test Case: Elon vs. Brussels

The October 2023 Israel-Hamas war served as the first major test of the DSA. On 11 October, EU Commissioner Thierry Breton issued a binding order to X (formerly Twitter)⁷ to remove potentially illegal content or face sanctions.⁸ X initially responded quickly, removing 72% of flagged content within an hour, including Hamas-linked accounts and graphic or misleading posts. However, flaws emerged: a week later, 96% of flagged hate

speech remained online, some promoted by verified accounts.⁹

X struggled with limited moderation staff and a lack of EU language expertise, leading to uneven enforcement and advertiser pullback. Legitimate conflict content was also removed without an appeals process. An EU stress test found X’s algorithm amplified violent content five times faster than neutral posts.¹⁰ This led to formal infringement proceedings on issues like illegal content moderation, dark patterns, ad transparency and researcher access.¹¹ The EU conducted a surprise inspection (dawn raid) at X’s San Francisco HQ and warned of fines up to 6% of global turnover.¹² Commissioner Breton stated this marks the end of platforms being “too big to care”.¹³

Free Speech or Digital Sovereignty?

The DSA creates a complex oversight mechanism involving the Commission, national DSCs and designated “Trusted Reporters” (NGOs, government bodies, private entities that meet criteria of competence, diligence and independence).¹⁴ The requirement for platforms to prioritize Trusted Reporters’ notices is concerning, as the threat of heavy

⁶ DEGREGORIO GIOVANNI / POLLICINO ORESTE, *Auditing Platforms under the Digital Services Act*, VerfBlog, 2024.

⁷ EURONEWS AND AP (ASSOCIATED PRESS), *EU’s Thierry Breton gives Elon Musk 24-hour ultimatum to deal with Israel-Hamas misinformation on X*, October 2023.

⁸ EURONEWS AND AP, *Elon Musk’s X removes thousands of Israel-Hamas misinformation accounts and posts amid EU demand*, October 2023.

⁹ AISLING NÍ CHÚLÁIN, *X is failing to moderate antisemitic and Islamophobic hate speech, according to a new report*, Euronews, November 2023.

¹⁰ RAMSHA JAHANGIR, *Understanding the EU’s Digital Services Act Enforcement Against X*, Tech Policy Press, April 2025.

¹¹ FEDERICO BACCINI, *X could face the axe of DSA for possible violations in online risk management violations*, EU News, December 2023.

¹² EUROPEAN COMMISSION, *Commission addresses additional investigatory measures to X in the ongoing proceedings under the Digital Services Act*, January 2025.

¹³ ANNA PINGEN, *Overview of the Latest Developments Regarding the Digital Services Act*, Eucrim, pp 94 – 95.

¹⁴ JEREMY WERNER, *European Commission Escalates Investigation into X Over Digital Services Act Compliance*, Babl AI, January 2025.



finances may push platforms to over-remove content, risking censorship.

Users often face a lack of transparency and clear avenues to appeal content removal, especially in rapidly evolving crisis situations. Critics suspect that this could lead to the creation of a full-blown system of censorship.

Furthermore, the Commission's power to override national laws and operate through this network centralizes authority, blurring the lines between enforcement and legislative roles. The EU describes the DSA as a rebalancing of power from Silicon Valley to democratic oversight. Commissioner Breton has established direct channels of communication (e.g. Signal, WhatsApp) with platform CEOs for real-time dialogue and enforcement.¹⁵ The aim is to shift decision-making from company boards to EU institutions representing democratic interests and ensure compliance with European standards on security, transparency and fundamental rights. Trusted Flaggers, despite concerns, are a necessary mechanism for efficient identification of illegal content, subject to oversight and potential suspension in case of inaccuracy.¹⁶

The Next Frontier: AI-Generated Disinfo

The EU is preparing to classify AI-generated deepfakes as systemic risks under the DSA, especially during elections. This will require platforms like Meta to implement proactive measures such as watermarking or blocking, despite the limitations of detection technology.¹⁷ This is in line with the EU Artificial

Intelligence Act (in force from August 2024), which specifically addresses risks from AI-generated content in sensitive contexts. The DSA and the AI Act are driving a significant shift in liability. In particular, they place the burden of proof on platforms when illegal or harmful AI-generated content, such as deepfakes, goes viral.¹⁸ Platforms are required to demonstrate that they have made "best efforts" to prevent such content, which means demonstrating that they have robust risk management systems, compliant AI moderation tools, clear policies, human oversight and effective redress mechanisms. Failure to comply with these standards exposes platforms to penalties under the DSA of up to 6% of global turnover, unless they demonstrate due diligence.

This marks a reversal of the traditional approach, shifting the burden of proof from authorities to platforms, which must now demonstrate compliance. Under the DSA, platforms risk retroactive sanctions if they don't act promptly to remove harmful content. The "best efforts" standard pushes platforms to adopt proactive risk management instead of relying solely on reactive measures.

Global Copycat Effect

The DSA is a prime example of the "Brussels Effect",¹⁹ where regulations emanating from the EU influence laws beyond its borders. Notable cases include Brazil's "Fake News

¹⁵ MARK SCOTT, *The EU's online content rule-book isn't ready for primetime*, Politico, February 2024.

¹⁶ ASSOCIATED PRESS, *EU visits Silicon Valley: Thierry Breton puts Twitter under 'stress test' over bloc's new law*, Euro News, June 2023.

¹⁷ GIUSEPPE MUTO, *The use of AI in electoral campaigns: key issues and remedies*, MediaLaws, 2025.

¹⁸ FRAGALE MAURO/ VALENTINA GRILLI, *Deepfake, Deep Trouble: The European AI Act and the Fight Against AI-Generated Misinformation*, Columbia Journal of European Law, Preliminary Reference, November 2024.

¹⁹ ANU BRADFORD, *The Brussels Effect: How the European Union Rules the World*, Oxford University Press Inc, 2021.



Bill” (PL 2630/2020),²⁰ which draws heavily on the DSA’s crisis powers and systemic risk framework but goes further by introducing criminal liability for platform executives, including the possibility of imprisonment for non-compliance. Its uniform application to all large platforms without the DSA’s proportionality safeguards raises concerns about government overreach among civil society groups.²¹

In India, the IT Amendment Rules (2023) impose much stricter timelines, requiring platforms to comply with government takedown orders within 15 minutes (much faster than the one-hour standard required by the DSA). The change reflects a greater focus on state control of content, raising concerns about the protection of free speech and the practicality of such rapid enforcement.²²

Meanwhile, in the US, legislative proposals such as the “Protect Elections from Deceptive AI Act” and the “Protecting Consumers from Deceptive AI Act” echo key aspects of the DSA and AI Act, requiring clear labeling of AI-generated content, such as watermarks and disclosures, highlighting the EU’s regulatory influence.

Growing global regulations are pushing platforms toward fragmented compliance models. For instance, TikTok maintains separate legal teams for EU-wide (in Brussels) and national obligations (in Berlin). This “geo-fenced compliance” approach can lead to inconsistent moderation and threatens the EU’s

goal of a unified digital market, contributing to a fragmented “splinternet”.

Conclusion

The DSA shows an important change in how online platforms are regulated, especially in times of crisis. Under Article 36, the European Commission has been given special powers to respond quickly to serious threats like disinformation, election interference or armed conflict. The war between Israel and Hamas in October 2023 was the first real test of how these powers would work in practice.

In that moment, the DSA revealed both its strengths and its weaknesses. On one hand, it shoved platforms to act quickly. On the other hand, it posed serious problems: inconsistent enforcement, lack of resources to fight harmful content and constant friction with fundamental rights, notably freedom of expression.

This policy brief focuses on the DSA's rebalancing of government oversight and platform autonomy. It also warns of traps such as unclear definitions of “crisis”, the danger of misuse and inadequate tools for user challenges. The analysis also observes the DSA's wider repercussions: jurisdictions like Brazil and India are conforming to it, raising complex questions about managing compliance within varied legal environments.

Essentially, the ambition of the DSA is to introduce digital sovereignty, increase the accountability of online platforms and create the online governance framework that respects users' rights. This goal could be

²⁰ BAPTISTA LUZ, *Comparative Analysis - Digital Services Act Vs. PL 2630/20*, May 2023.

²¹ TOMAZ TALEZ, *Brazilian Fake News Bill: Strong Content Moderation Accountability but Limited Hold on Platform Market Power*, Javnost - The Public, 30(2), pp. 253–267. AGNERIS SAMPIERI/ VERIDIANA ALIMONTI, *Brazil must hold digital platforms*

accountable using human rights standards, Access Now, 2023.

²² AARYAPACHISIA, *The Ministry of Electronics and Information Technology notifies the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 to regulate online gaming*, Saikrishna & Associates.



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achieved ensuring clarity, democracy and continuous international cooperation to prevent regulatory fragmentation and guarantee balanced, transparent and proportionate digital governance.

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