

Joan Barata - Abstract - Free speech implications of new legislation in Europe: the DSA and the EMFA proposal

“The Digital Services Act has been finally adopted. The DSA is a remarkable and unique proposal in the field of online platform regulation. It encompasses important and necessary duties of transparency, accountability, redress and, more broadly, protection of users’ rights. These provisions represent a unique step forward from the point of view of comparative legislation on platform regulation and content moderation. This being said, it is important to note that the implementation of certain provisions included in the DSA by both national regulators and the European Commission may have a significant impact on the right to freedom of expression and the dissemination of information within the online public sphere. These problematic areas include powers to police how online platforms handle content in times of serious crises through an “emergency mechanism” as well as vague obligations towards platforms that may incentivise them to remove and restrict certain legal speech to avoid liability, among others. Legal discussions about intermediary liability are currently being somewhat overshadowed by other debates and proposals, including the establishment of (more or less) sophisticated rules regarding the way platforms moderate and shape user’s speech as well as the power of regulatory bodies when monitoring or regulating the activities of intermediary services providers. In this context the imposition of legal obligations regarding “legal but harmful speech” are being observed with concern from a human rights perspective. Last but not least, the recent proposal by the European Commission of a draft European Media Freedom Act seems to introduce specific regulatory conditions as to the manner online platforms may treat media content. Provisions of this kind may not only create serious problems of interpretation, and force online service providers to engage in extremely complex assessments, but also establish arbitrary and unjustified differentiations between protected categories of speech.”