STRENGTHENING THE EUROPEAN UNION BY REGULATING THE DIGITAL SINGLE MARKET[1]

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Abstract: Polarization of the society is nowadays easier than ever due to the strong influence of social media. Opaque algorithms personalize news feed of users through massive data processing and thus creating effects that are fueling extremization of opinions. Negative effects of social media can be used by third parties to influence society to achieve their goals, however antidemocratic. Digital Markets Act and Digital Services Act aim to regulate Digital Single Market through fair competition and consumer protection regulation. This regulation can have significant impact on the democratic deficit of the European Union as it has potential to eradicate analyzed negative effects of social media on the polarization of society.

Keywords: Digital Single Market; Digital Services Act; Digital Markets Act; Democratic Deficit; Fake News; Public Spheres; European Union Identity

1. INTRODUCTION

Ever since there have been strengthening tendencies towards the executive powers of the European Union, the debate on the democratic deficit has flourished significantly.[2] The decision-making process on the European Union level has shifted from the national arenas and from the "politics" that would reflect the ideas of its citizens.[3]

Many academic papers about the democratic deficit of the European Union are highlighting the legitimacy on the institutional level, focusing primarily on the necessity to reform the internal mechanism of the European Union[4]. But if we look at the ultimate

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[2]   LONGO, M. No ode to joy?: reflections on the European Union's legitimacy. *International Politics* [online]. 2011, Vol. 48, pp. 667–690 [cit. 2023-02-18]. Available at: https://link.springer.com/article/10.1057/ip.2011.29.
[3]   HABERMAS, J. Democracy in Europe: Why the Development of the EU into a Transnational Democracy Is Necessary and How It Is Possible. *European Law Journal*. 2015, Vol. 21, No. 4, p. 547.
[4]   Such as, for example, FOLLESDAL, A. – HIX, S. Why There is a Democratic Deficit in the EU: a Response to Majone and Moravcsik. *Journal of Common Markets Studies*. 2006, Vol. 44, No. 3, pp. 533–562.

goals or the purpose of the European Union reflected in the Agreements, we must necessarily conclude that institutional reform is not the solution we need to seek.[5]

In my opinion, the issue of the democratic deficit should be more focused on the union identity of the European Union's citizens, how to support its development, how to strengthen it and, in some cases, how to prevent citizens from rejecting the politics of the European Union, or even the basic idea behind the organization.[6]

In this regard it is very important to acknowledge that significant amount of time is spent in the digital world. Digitalization of the everyday tasks and tendencies to spend more time online than in the real world raise questions not only about how to successfully regulate the digital space, but also how to protect democracy. The cyber space might be a threat to democracy for its vast boundless possibilities of influencing the lives of others. Privacy is becoming only illusory, and the amount of information is overwhelming. Even though the cyberspace has the potential to support democratic deliberation,[7] it can also be used either by the populists or even other global players such as Russia or China to destabilize democracy.[8, 9]

The intrusion of privacy and the influence of *malae fidei* third parties can be multiplied by now more than ever operating artificial intelligence mechanisms. Big Data and machine learning are included in more and more processes online, from simple search of pictures and information on the search engines, to complex algorithms sorting news feeds and other points of interest on social media. Artificial intelligence is deciding what we perceive, in what intensity, and even the context of it. Artificial Intelligence can therefore be easily used to mingle reality and lie to manipulate democratic processes and undermine the legitimacy of the democratic institutions.[10, 11]

In connection with the abovementioned, the hypothesis is that the union identity can be strengthened, or at least that its weakening can be prevented,[12] by efficient regulation of privacy (specifically regarding the social media).

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5   More on this topic in MORAVCSIK, A. The Myth of Europe's Democratic Deficit. *Intereconomics*. 2008, Vol. 43, No. 6, p. 334.
6   MCNAMARA, K. R. When the Banal Becomes Political: the European Union in the Age of Populism. *Polity*. 2019, Vol. 51, No. 4, p. 5.
7   SCHWARTZ, P. M. Privacy and Democracy in Cyberspace. *Vanderbilt Law Review*. 1999, Vol. 52, No. 6, p. 1648.
8   RADU, G. Russian Influence in European Policies. *Research and Science Today*. 2018, Vol. 16, No. 2, pp. 53–54.
9   KERMER, J. E. – NIJMEIJER, R. A. Identity and European Public Spheres in the Context of Social Media and Information Disorder. *Media and Communication*. 2020, Vol. 8, No. 4, p. 34.
10 MANHEIM, K. – KAPLAN, L. Artificial Intelligence: Risks to Privacy and Democracy. *Yale Journal of Law and Technology*. 2019, Vol. 21, p. 108.
11 BRKAN, M. Artificial Intelligence and Democracy: the Impact of Disinformation, Social Bots and Political Targeting. *Delphi Interdisciplinary Review of Emerging Technologies*. 2019, Vol. 2, No. 2, p. 68.
12 Because the destabilization of democracy is a process that is, especially in case of Russia, done through its citizens by manipulating the facts, spreading fake news on social media etc. Citizens are more vulnerable to the populists' polity, supporting them and trying to replace the governing elites by the populists. More on this topic in MCNAMARA, K. R. When the Banal Becomes Political: the European Union in the Age of Populism. *Polity*. 2019, Vol. 51, No. 4, pp. 5–6; and in HARRISON, S. – BRUTER, M. Media and identity: the paradox of legitimacy and the making of European citizens. In: RISSE, T. (ed.). *European Public Spheres* [online]. Cambridge: Cambridge University Press, 2014, p. 181 [cit. 2023-02-18]. Available at: https://doi-org.ezproxy.is.cuni.cz/10.1017/CBO9781139963343.

Therefore, digital autonomy should be one of the priorities of the European Union to succeed in the world controlled by global superpowers. This is very closely connected to the regulations regarding Digital Single Market.

In this article, my goal is to analyze social media that can pose either an imminent danger or a tremendous opportunity for the European Union's democracy and I will try to answer the question, whether the regulation on the European Union's level is eligible to reduce (eliminate) the danger that threatens to deepen the psychological democratic deficit of the European Union.[13]

The analysis of the regulations should be specifically focused on the Digital Markets Act[14] and Digital Services Act[15] as these regulations focus on creating rules for the Digital Single Market, which is a virtual space where most Europeans meet every day.[16]

2. SOCIAL MEDIA AND DEMOCRACY

2.1 PUBLIC SPHERES AND THEIR POSSIBLE ROLE IN (RE)BUILDING THE EU IDENTITY

Many authors believe that to form the union identity, it is crucial to develop the so-called European public sphere, or at least to develop "Europeanization" of existing national public spheres.[17] Public spheres can be defined as important arenas of common public deliberation based on the opinions of informed citizens. To provide meaningful arena for democratic discourse, allowing the citizens to *"monitor and critically evaluate governance, inform citizens about the political process"*,[18] the public spheres must bear some minimum level of quality and satisfy some normative criteria.[19]

For example, Habermas brings to the forefront civil society which, as he hopes, can pinpoint new agendas to politics by including new groups of citizens into the political

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[13] More about the psychological democratic deficit in DENEMARK, J. Psychologický demokratický deficit Evropské unie a možná role právníků [Psychological Democratic Deficit and Possible Role of the Lawyers]. *Právník*. 2022, Vol. 161, No. 11, pp. 1063–1083.

[14] Proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), 15 December 2020, COM(2020) 842 final, 2020/0374 (COD) (DMA).

[15] 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, 15 December 2020, COM(2020) 825 final, 2020/0361 (COD) (DSA).

[16] SCHWARTZ, *c. d.*, p. 1652.

[17] KOOPMANS, R. How advanced is the Europeanization of public spheres: Comparing German and European structures of political communication. In: RISSE, T. (ed.). *European Public Spheres* [online]. Cambridge: Cambridge University Press, 2014, p. 59 [cit. 2023-02-18]. Available at: https://doi-org.ezproxy. is.cuni.cz/10.1017/CBO9781139963343.

[18] MCNAIR, B. *Journalism and Democracy: an Evaluation of the Political Public Sphere*. London and New York: Routledge, 2000. Cited from: RISSE, T. (ed.). *European Public Spheres* [online]. Cambridge: Cambridge University Press, 2014, p. 5 [cit. 2023-02-18]. Available at: https://doi-org.ezproxy.is.cuni. cz/10.1017/CBO9781139963343.

[19] Ibid., p. 4.

debate.[20] According to Habermas, these civic societies should be meeting in coffee-houses, restaurants, and other meeting points appropriate to face-to-face democratic deliberation, as they used to meet in such places in times where civil political debate constituted opinion-formation processes.[21]

However idealistic this approach might sound, it cannot be successful in the times of best standard of life in history and in countries with fully democratic systems. Arenas of erudite deliberation are nowadays reserved solely for well-informed elites that are barely a representative sample of society.[22]

To be successful, Habermas' concept requires people from all social classes, with various education and political attitudes, to be present in the same arena (arenas) and deliberate based on objectively truthful information and observations.

2.2 ARE SOCIAL MEDIA A SOLUTION OR A DEAD END?

However, other academics, retrieved from Habermas' theory, were depending on the internet to increase the coverage of EU topics and thus create necessary mycelium for creating the Europeanized public sphere.[23] Social media might have the potential to provide necessary space for arenas of social deliberation for people from all of the nations across the European union. However, there are many other aspects that need to be considered such as algorithms creating the "newsfeed," excluded social stratification, posts containing fake news etc. that could have the opposite effect on the union identity than the ideal model of public spheres.

The social media and generally internet are providing access to an infinite amount of information, thus creating chaos in some cases. Most of the academics agree that identity is shaped, reformed, and even transformed through "media communication".[24] Media give narrative to the topics, they choose what news they are going to inform the society about, how they will inform and what context they will give to that information. By creating this information momentum, the media are eventually shaping the world around us; topics of discussion on all levels of social spheres.[25] Media can inform truthfully on the European events, however most of the "mainstream" media are not often covering events happening on the European union level, simply because those events

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[20] HABERMAS, J. *Between Facts and Normss: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. Cited from: LANCE, B. – W. – LANG, S. – SEGERBERG, A. European issue public online: the cases of climate change and fair trade. In: RISSE, T. (ed.). *European Public Spheres* [online]. Cambridge: Cambridge University Press, 2014, p. 108 [cit. 2023-02-18]. Available at: https://doi-org.ezproxy.is.cuni.cz/10.1017/CBO9781139963343.

[21] HABERMAS, J. *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. Darmstadt, Neuwied: Luchterhand, 1980. Cited from: RISSE, T. (ed.). *European Public Spheres* [online]. Cambridge: Cambridge University Press, 2014, p. 6 [cit. 2023-02-18]. Available at: https://doi-org.ezproxy.is.cuni.cz/10.1017/CBO9781139963343.

[22] HOUSKA, O. in: DENEMARK, J. (ed.). Vztah Čechů k Evropské unii an existence demokratického deficitu [The Relationship of Czech citizens to the European union and existence of democratic deficit] [epizoda podcastu]. In: *zEvropy* [online]. [cit. 2023-02-20]. Available at: https://open.spotify.com/episode/70FIONKyJ1DQtNvSsAbmSw.

[23] KERMER – NIJMEIJER, *c. d.*, p. 28.

[24] Ibid., p. 30.

[25] Ibid.

are not interesting enough for the targeted audience,[26] or in other words, because most European politics are *boring*.[27]

On the other hand, the media on the other spectrum from "mainstream", whose target audience is the same target audience as for the populists, are mentioning European Union in many connotations, mostly as the source of most of the problems in the society, whether it being up-to-date problems such as energetic crisis or long-lasting problems such as generally bad social situation of the lower social class citizens.[28]

The European Union works for the populist simply as the scapegoat, the one that is *responsible* for most (or even all) of the problems even on the national level. Moreover, the same narrative is used by media or "trolls" of foreign global powers that are trying to destabilize the political system of the European Union, such as Russia, because fragmented Europe is more vulnerable than Europe unified through the European Union.[29]

Through empirical experiment conducted by Sarah Harrison and Michael Bruter,[30] important results were shown on how the news about the European Union is affecting (and whether they are affecting) the European identity. In the research, the identities are divided into three categories, namely civic identity, cultural identity, and general identity. Civic identity consists of the "citizenship" feeling and our belonging to the political system. Cultural identity represents bigger closeness to people belonging to the same polity in comparison to those who do not.[31] General identity represents identity as is usually described by other authors ("the" identity).

The experiment revealed that when citizens are exposed to news about the European Union, this has, indeed, an impact on the European identity, mostly on the civic identity and on the general identity.[32] Very interesting is the effect which the authors call the "time-bomb". Even though some of the recipients were increasingly sophisticated or cynical while being exposed to the biased news about the European Union and, thus, were realizing that the news is biased, the subjects showed increasing subconscious influence over the time. In other words, even though the recipients were aware that the presented news is biased, for which reason they could critically confront it with reality, the subjects still showed great subconscious influence by the kind of bias the news had.[33]

More importantly, it has been proven that exposing citizens to the bad news about the European Union has a great influence on the identity in a way that is described by the authors as "identity killer".[34] On the other hand, if citizens are regularly exposed to the good news about the European Union, the European identity is developing positively.

26 HARRISON – BRUTER, *c. d.*, p. 167.
27 MORAVCSIK, A. The Myth of Europe's "Democratic Deficit". *Intereconomics* [online]. 2008, Vol. 43, No. 6, p. 339 [cit. 2023-02-18]. Available at: https://www.academia.edu/2829768The_myth_of_Europes _democratic_deficit.
28 KERMER – NIJMEIJER, *c. d.*, p. 34.
29 RADU, *c. d.*, pp. 53–54.
30 HARRISON – BRUTER, *c. d.*
31 Ibid., p. 175.
32 Ibid., p. 179.
33 Ibid., p. 184.
34 Ibid., p. 185.

It is, nonetheless, obvious from the experiment that the negative, bad news has a bigger effect on the identity than good, positive news.[35]

In conclusion, this experiment is extremely important in realizing that the negative, bad news (while the strongest source of the bad news about the European Union being the fake news media) has a greater immediate effect on the European identity than good news. Even if the recipients of the fake news are aware of the untruthfulness of the information contained in the news, they can be, thanks to the so-called "time-bomb" effect, affected by this negative news in a way that their identity, either civic or general, is being decreased. Cultural identity is not as strongly affected by the news about the European union as other categories of identity.

Regarding social media, it is necessary to connect the above mentioned experiment to the so-called "information disorder". Information disorder contains three aspects of harmful informing – disinformation, misinformation and malinformation, where disinformation represents *"the deliberate intent to spread false information"*,[36] misinformation represents *"the accidental spreading of false information"*,[37] and malinformation represents *"true information spreading with the intent to cause harm"*.[38]

For the European identity, it is crucial that the citizens acquire, process and store new information in the coveted manner.[39] Although social media have the potential to strengthen the transnational deliberation, thus empowering the "unionship" as the identity milestone, they are also the perfect space to spread false information about the European Union, influencing the minds and hearts of European citizens.[40] Social media are highly dangerous in the Europeanized discourse, because their algorithms prefer visibility and potentially sharing of the content with the biggest auditory potential, thus preferring "virality over factuality".[41] Furthermore, social media provide the perfect space for the "simplified narrative"[42] (some of the social media even require simplified language due to the limited number of characters per post, such as Twitter) and emotive language,[43] nourished by the possibility of anonymity and detachment from reality. Simplification of such complex topics as policies of the European Union can lead to belittling and eventually to dangerous "information disorder" caused by the misunderstanding by the end user.[44]

Information disorder can only be efficiently used by the Eurosceptics, populists and world powers trying to destabilize the European Union, because methods described above have no place in the democratic debate.[45] Social media provide perfect arenas for these subjects, as they allow these subjects to reach the audience the "old-fashioned" media would never allow. Fact-checking agencies and mechanisms are not efficient

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[35] Ibid., p. 186.
[36] KERMER – NIJMEIJER, *c. d.*, p. 33.
[37] Ibid.
[38] Ibid.
[39] Ibid., p. 34.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] DENEMARK, *c. d.*, p. 1069.
[45] Although there might be some exceptions, such as using fake news as counter-propaganda in the war.

enough as the algorithms of the social media prioritize to show to users such posts that are most likely to arouse emotions.[46, 47]

It is important to emphasize that the issue of information disorder and its impact is not limited on the topic of European Union identity, or even democracy as a whole. Information disorder is a problem potentially affecting all aspects of life including politics, but also e.g. environmental issues, tabloids, and even e-commerce.[48]

Social media allow people to communicate more easily, to pinpoint problems that would be otherwise hidden to the rest of the society and consequently to the politicians.[49] Even though social media are used by so many people from different socio-economic backgrounds, thanks to the algorithms people with similar interests are usually confronted only by people with the same or similar opinions on various topics. When these people talk to each other, they usually end up having even more extreme opinions than they had before.[50]

Cass Sunstein, the former administrator of the White House Office in Information and Regulatory Affairs and currently a professor at Harvard University, argues that the goal of the company Meta, Inc., which is the most personalized news feed possible while stating that *"something that one person finds informative or interesting may be different from what another person finds informative or interesting"*[51] is rather dangerous for democracy.[52] Sunstein on the contrary says that for the democracy and deliberation immanent to democratic pluralism is crucial that the citizens are constantly being exposed to the topics that are outside their comfort zone or even irritating. Furthermore, citizens should have a common experience that is able to bind them emotionally. And lastly, efficient processes that help people when other *"people are knowingly spreading lies, and if nations are attempting to disrupt other nations"*[53] should be implemented.[54]

In other words, people should not be forced only into topics that are evaluated by an algorithm as most like-minded, as well as debating only with groups of people with the same or similar opinion. This approach is dangerous not only for the European Union's identity but also for the democracy itself. People should be confronted with other topics than the ones they would have chosen in advance, they should be interconnected by

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[46] MOSSERI, A. Building a Better News Feed for You. In: *Facebook Newsroom* [online]. 29.6.2016 [cit. 2023-02-20]. Available at: https://about.fb.com/news/2016/06/building-a-better-news-feed-for-you/. Cited from: SUNSTEIN, C. R. Is Social Media Good or Bad for Democracy? *Sur – International Journal on Human Rights*. 2018, Vol. 15, No. 27, p. 85.

[47] As was also proved by the leaked documentation of company Meta Platforms by whistleblower Frances Haugen; The Facebook Files or Facebook Papers, Meta uses those algorithms to artificially arouse more negative emotions (such as anger) that force people to follow certain pages and comment on certain post more, hence creating more activity and, consequently, bigger profit. More on this topic in MERRILL, J. B. – OREMUS, W. Five points for anger, one for "like": How Facebook's formula fostered rage and misinformation. *The Washington Post* [online]. 26.10.2021 [cit. 2023-02-20]. Available at: https://www.washingtonpost.com/technology/2021/10/26/facebook-angry-emoji-algorithm/.

[48] KERMER – NIJMEIJER, *c. d.*, p. 34.

[49] SUNSTEIN, *c. d.*, p. 84.

[50] Ibid.

[51] MOSSERI, *c. d.*, p. 85.

[52] SUNSTEIN, *c. d.*, p. 85.

[53] Ibid.

[54] Ibid.

common emotional experience, and they should be able to recognize the difference between fake news and truthful information. I find it very important to stress that none of the precautions are linked to censorship. Preventing dissemination of deliberate and purposeful lies that can disrupt democratic systems, regardless of whether it is for the purpose of political points or for the purpose of hybrid war led by Russia, is a crucial tool of defense for modern society.

Sunstein has conducted experiments in Colorado to analyze the polarization of groups of people with the same or similar opinions. During the experiment, many groups, each of them consisting of six people with the same political orientation (liberals or conservatives), were created and were presented with three topics that they would be discussing. The first topic was same-sex marriages, the second topic was implementation of affirmative action by private employees, and the third topic was whether the United States should sign an international treaty to combat global warming.[55] The group members were obliged to write their opinion on the presented topic anonymously 15 minutes before the group discussion, and again right after the discussion.

The results were concerning and can be fully applied to what was discussed earlier in this article. The discussion on the topics by like-minded people showed that all opinions expressed before the discussion were tremendously amplified by the deliberation. Not only were the opinions of the groups after the experiment more radical, but the groups were more ideologically homogeneous.[56] This consequently leads to expansion of an empty space between the two groups, even though some liberals and some conservatives were opinion-wise very close before the experiment. This effect is called "echo chambers".

Sunstein aptly notes that the problem of polarization of the same opined groups of citizens was here as far back as the history of mankind.[57] However, the difference between today and the beginning of time is that polarization is nowadays much easier than ever, thanks to social media. Sunstein specifically stresses that *"[…] targeting people who are especially likely to believe specific falsehood, and on-click echo chambers, [is] something new".*[58]

Hojun Choi in his analysis of social media identifies key criteria that need to be analyzed to assess the quality of coveted space for the democratic deliberation provided by social media. First, how social media create a space where individuals can freely voice their political opinions. Second, as Sunstein also stressed, whether and how people are exposed to a variety of opinions. Lastly, whether the individuals are engaging in political debates in a way of criticizing the ideologies without using *argumentum ad hominem* and what mechanism the social media have implemented to support it.[59]

As for the freedom of speech, the debate regarding the balance between freedom of speech and moderating the content by fact-checking, hiding, or erasing posts and even

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[55] Ibid., p. 86.
[56] Ibid.
[57] Ibid, p. 87.
[58] Ibid.
[59] CHOI, H. The Modern Online Democracy: an Evaluation of Social Media's Ability to Facilitate Political Discourse. *Technium Social Sciences Journals*. 2020, Vol. 12, No. 1, p. 278.

deleting accounts became even more vociferous during and shortly after the U.S. presidency of Donald Trump.[60] Trump was, through his frequent tweets and posts without any context whatsoever, spurring racism, civil disobedience, hatred, and thus expanding the trenches between liberal and conservative citizens, and even trying to destabilize democratic system of political pluralism by questioning the results of presidential elections, which consequently led to the United States Capitol attack on 6 January 2021, one of the most tragic events in the modern U.S. history, leading to five deaths.

Twitter finally decided to delete Trump's account and Facebook suspended it after the Capitol attack happened.[61, 62] The approach towards Trump's posts prior to the attack was nonetheless different by Twitter and Facebook. Twitter was actively labeling Trump's claims as being false, fact-checking his statements, and was actively involved in demystifying them.[63] Facebook, on the other hand, had chosen a more "neutral" approach without any such interference into Trump's activity on the social platform.[64]

However, the approaches of both these social media platforms were criticized: Twitter for creating dangerous precedent for restricting freedom of speech – one of the pillars of democracy, and Facebook, on the other hand, for allowing any individual to spread lies and thus manipulate the public, which can consequently lead to the disruption of the democratic pluralism. Ultimately, nonetheless, it is necessary to find the balance between moderating malicious content and freedom of speech. However, as Choi notes and I agree, absolute freedom to disseminate fake news can be more harmful than moderating the content.

Another dangerous aspect of social media is the so-called "spiral of silence".[65] This phenomenon means that people are subconsciously less willing to speak up about controversial issues in fear of the social backlash. In other words, people would rather pretend to agree or not talk about controversial issues in the social group they belong to in order not to jeopardize their position in such a group.[66] This closely relates to the effect the social media have on the polarization discussed earlier in this article.

The spiral of silence alongside how social media operate is strengthening the effect of "echo-chambers" (already described by the experiment conducted by Sunstein) and is the basic cause of polarization of society. Some social media, as for example Facebook, even allow creating closed groups, where usually polarization thrives even more because like-minded people are more intensively exposed to negative phenomena.[67]

An experiment to analyze the real effect social media are having on polarization was conducted in 2020 and confirmed the results of Sunstein's experiment, even though

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[60] Ibid., p. 281.
[61] CULLIFORD, E. – SHEPARDSON, D. – PAUL, K. Twitter permanently suspends Trump's account, cites "incitement of violence" risk. In: *Reuters* [online]. 9.1.2021 [cit. 2023-02-20]. Available at: https://www.reuters.com/article/us-usa-election-trump-twitter-idUSKBN29D355.
[62] However, the new owner of Twitter – Elon Musk – recently restored the account of Donald Trump – https://time.com/6235372/musk-trump-twitter-account/.
[63] CHOI, *c. d.*, p. 278. Ibid., p. 280.
[64] Ibid.
[65] Ibid., p. 281.
[66] Ibid.
[67] Ibid.

Sunstein conducted his experiment offline (in the "real world"; outside of social media interface).[68]

The experiment, however, showed another issue confirming the hypothesis already noted in this article. Both Twitter and Facebook (or Twitter and Meta, Inc.) are implementing such mechanisms that limit *"the extent to which users could be exposed to others' opinions"*.[69] It is important to know what is actually meant by "others' opinions". Not only is it the posts of other users with different opinions, but also posts of legal persons, targeted commercials, political posts etc. A study of Twitter in 2016 revealed that in the 2016 U.S. presidential elections the like-minded voters have seen significantly more like-minded information in their news feed than any other.[70]

The last issue of social media is the potential to allow users to hold productive political discussion through supporting "civility".[71] Social media allow information to flow freely, in a constant stream, overwhelming the recipients constantly, creating the so-called "state of flow" in which the recipients are not actively encouraged to get involved in the political debate, but rather consume the information passively.[72]

In conclusion, social media are not yet suitable for creating the arenas for ideal democratic deliberation. Though there is undoubtedly the potential, a reform of their functioning is inevitable. Among the biggest issues that the social media show nowadays is the paradox of information disorder, where the triad of disinformation, misinformation and malinformation is best used by populists, Eurosceptics and foreign powers pursuing the destabilization of the European Union.

The effect of information disorder is even multiplied by "echo-chambers", where like-minded people affirm each other's opinions and these opinions are at the same time extremized thanks to the "state of flow" effect, where people consume information passively. These effects can, when used properly, destabilize democratic systems even more on the European level, where citizens usually do not have common emotional experience or strong cultural identity with the EU as a political hegemon.

In this regard, it is up to the social media to modify the algorithms that personalize news feeds and to develop mechanisms that will effectively fight against fake news, hate speech, "trolls",[73] while protecting freedom of speech at the same time.

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68 CINELLI, M. et al. The echo chamber on social media: a comparative analysis. *Proceedings of the National Academy of Sciences* [online]. 2021, Vol. 118, No. 9 [cit. 2022-02-27]. Available at: https://www.pnas.org/doi/10.1073/pnas.2023301118. Cited from: CHOI, *c. d.*, p. 282.

69 Ibid.

70 HALBERSTAM, Y. – KNIGHT, B. Homophily, group size, and the diffusion of political information in social networks: Evidence from Twitter. *Journal of public economics*. 2016, Vol. 143, pp. 73–88. Cited from: CHOI, *c. d.*, p. 282.

71 CHOI, *c. d.*, p. 283.

72 Ibid.

73 *"A 'troll farm' is an organized group that has come together for the specific purpose of affecting public opinion through the generation of misinformation and/or disinformation on the Internet. An individual engaged in such activity is referred to as a troll or Internet troll."* Cited from: MCCOMBIE, S. – UHLMANN, A. J. – MORRISON. S. The US 2016 presidential election & Russia's troll farms, Intelligence and National Security. *Intelligence and National Security*. 2020, Vol. 35, No. 1, p. 3.

2.3 CAN THE DIGITAL MARKETS ACT AND THE DIGITAL SERVICES ACT BRING LIGHT TO THE DARK WATERS OF SOCIAL MEDIA?

The fast-paced development of new technologies brings along new challenges for the regulatory framework. Not only is there a market with rules and characteristics different from the "old fashioned" perception which brings new challenges for the competition law, but there are also new threats faced by the consumers.

As for the competition law, the dynamics of the digital market, multihoming and specifics of defining the relevant market call for *ex ante* regulation. Regarding consumer protection, the existing regulation needs to be amended so that consumers are protected against usually rather opaque mechanisms of social media and profiling algorithms. Therefore, both the DMA and the DSA have been adopted as a solution for the upcoming digital age with the potential to regulate digital market in respect of fair competition and consumer protection.[74]

Moreover, both the regulations have the potential to tackle the already described issues regarding the social media, mostly by forcing the social media providers to implement more transparent mechanisms for assessing harmful or malicious content, to explain and reveal how the algorithms work, to allow the users optimize whether their newsfeed will work based on the profiling or other criteria, and other rules in a similar manner.

Although, to some extent, those regulations constrain the freedom of business in order to tackle the issues raised above in their own way, and even the freedom of consumers to choose information channels, it is important to regulate the online environment as it has been overlooked for too long now. As any other business or consumer's rights are regulated in many aspects in the "physical reality", it is only natural that the online reality is subject to regulations as well. These regulations then need to be tailored to the specifics of the online world.

2.3.1 DMA

Even though the DMA is a complementary regulation to the already existing fair competition laws,[75] some obligations laid upon the gatekeepers[76] will directly affect the safety of social media especially regarding personal data protection.

First, DMA forbids the gatekeepers to combine personal data from various sources and core platforms that are controlled by the same gatekeeper and to combine personal data from core services of the gatekeeper and from third-party services, unless the data subject has been presented with the choice and even after that specifically agreed with such data processing.[77]

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[74] DI PORTO, F. – GROTE, T. – VOLPI, G. – INVERNIZZI, R. "I See Something You Don't See": a Computational Analysis of the Digital Services Act and the Digital Markets Act. *Stanford Computational Antitrust*. 2021, Vol. I, pp. 90–92.

[75] Point 9 of the reasoning of DMA.

[76] A business that meets the criteria set in Article 3 of the DMA. Basically, every large technological company on the European market, including Meta, Inc.

[77] Article 5, let. (a) of DMA.

This obligation prevents extensive personalization of commerce or generally personalization of news feed based on the detailed profiling of the data subject, usually connected with the processing of special categories of personal data.[78]

Such detailed profiling cannot only be used as a commercial tool, but also for political propaganda or as a psychographic micro-targeting tool with the goal of spreading false information to politically manipulated individuals.[79]

This behavior is not unusual, as the company Meta, Inc. is combining personal data of the users from Facebook, WhatsApp, and Instagram with personal data collected from third-party web sites, thus creating a complete picture of one's life. This behavior is currently being scrutinized by the European Court of Justice in the preliminary ruling.[80]

Furthermore, DMA makes it mandatory for the gatekeepers to provide access and use personal data *"only where directly connected with the use effectuated by end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679"*.[81]

This means that the gatekeeper is restricted from using or giving access to data processed originally with the connection of a specific product or service for another purpose, without prior explicit opt-in action from the user. This obligation systematically follows the Regulation (EU) 2016/679 (GDPR). In theory, such a provision may prevent, for example, Meta, Inc. from processing users' personal data for the purpose of personalized advertising. The primary purpose of Meta, Inc.'s use of its services is the very nature of a social network – communication with a group of people, self-presentation, etc., whereas profiling for the purpose of personalized advertising is an economic interest of Meta, Inc., which generates profit – and the more successful the shared advertising is the bigger the profit there is. Hence, the profiling for personalized advertising might not be *"directly connected with the use effectuated by the end user in respect of the products or service […]"*.[82]

The above mentioned correlates with the reasoning of DMA, where the necessity of transparent profiling mechanisms is stressed.[83] Furthermore, DMA requires for every gatekeeper to, within 6 months of being designated as a gatekeeper, submit to the European Commission an independent audit with the description of *"any techniques for profiling of consumers"*.[84]

DMA introduces even more protective measures regarding the data use within the competition that can ultimately benefit the data subjects, such as prohibition to use

[78] Point 46 of the opinion of advocate general Rantos, C-252/21, *Meta Platforms Inc. et al. v. Bundeskartellamt et al.*, ECLI:EU:C:2022:704.
[79] BRKAN, M. Artificial Intelligence and Democracy: the Impact of Disinformation, Social Bots and Political Targeting. *Delphi Interdisciplinary Review of Emerging Technologies*. 2019, Vol. 2, No. 2, p. 68.
[80] C-252/21, *Meta Platforms Inc. et al. v. Bundeskartellamt et al.*, ECLI:EU:C:2022:704. The question is whether the National Office for the Protection of Fair Competition may determine that the business is abusing its dominant position by describing processing.
[81] Article 6, let. (i), 2nd *alinea* of DMA.
[82] Ibid.
[83] Point 61 of the reasoning of DMA.
[84] Article 13 of DMA.

non-public data generated by business users while competing with them on their own platform (including data of end users)[85] and allow data portability of *inter alia* end users[86]. Even though those measures are focused mainly on the competition regulation, they are very likely going to affect the overall processes with regard to data protection and, thus, help to eradicate negative effects of misuse of such data.

2.3.2 DSA

One of the key roles of DSA is to fight against *"coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of fake or misleading information, sometimes with a purpose of obtaining economic gain [...]"*.[87]

DSA sets rules regulating responsibilities and accountability of *inter alia* social media platforms such as *"notice-and-action procedure for illegal content"*, *"possibility to challenge the platforms' content moderation decision"* and rules that regulate transparency and accountability on advertising and on algorithmic processes.[88]

The provider of intermediary services (e.g., social media services provider) will have the obligation to include information in terms and conditions about content moderating mechanisms, including the information regarding the use of AI or another sophisticated software (algorithmic decision-making) and the use of a human review (in which case either of them are used). This information shall be clear and easily accessible.[89]

An important obligation set by DSA is the so-called "notice and action mechanism" pursuant to Article 14 of DSA. The service providers are obliged to implement mechanisms that allow any user to notify the provider of content that is perceived by them as illegal. This mechanism must be *"easy to access, user-friendly, and allow for the submission of notices exclusively by electronic means"*.[90] Furthermore, the mechanism shall allow the users to submit a notice that is *"sufficiently precise and adequately substantiated"* so that the suspected content can be closely assessed.[91] In other words, the user must be allowed to explain in their own words why the content is illegal according to them.

If the service provider concludes that the content needs to be removed or the access to that content needs to be disabled (either for illegality of the content, not being compatible with the terms and conditions, or for other legally allowed reasons), the recipient of the service (originator of the content) must be informed about such a decision pursuant to Article 15, para. 1 of DSA. The decision of removing or disabling access to a content shall contain a minimum amount of information, such as facts and circumstances that led the provider to make the decision and whether (where relevant)

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[85] Article 6, let. (a) of DMA.
[86] Ibid., let. (h) of DMA.
[87] Point 68 of the reasoning of DSA.
[88] Explanatory memorandum of the Commission on the Proposal for DSA, COM(2020) 825 final, 2020/0361 (COD), p. 2.
[89] Article 12, para. 1 of DSA.
[90] Article 14, para. 1 of DSA.
[91] Ibid., para. 2 of DSA.

the decision-making process was triggered by the notice of another user.[92] I find this part quite controversial, as the information whether the content was removed (or the access to the content was disabled) upon the notice of another user can deepen the polarization of society, invoking unfounded suspicion or even paranoia among users (despite the fact that the user who notified about the content remains anonymous).

Nonetheless, the information shall also include at least the information regarding why exactly the content was found to be illegal[93] or why it is incompatible with the terms and conditions[94] and, also importantly, information on the processes an appeal against the decision.[95]

The above mentioned mechanisms are crucial for nourishing the democratic deliberation, while at the same time protecting freedom of speech. Nowadays, it is not common that the notice of harmful content can be precisely reasoned. Instead, "premade" choices are usually offered to the user submitting a notice about the harmful content, which might not be sufficient. Social situations are not "black and white" and usually a detailed description of the issue is necessary. This will now be allowed thanks to DSA.

Moreover, every decision on the removal of content will need to be reasoned in a comprehensive and clear manner so it is clear why exactly is the content harmful for the community. This transparent approach, along with the information on the implemented mechanisms, can help to create a forum free of information disorder.

Pursuant to Article 19 of DSA, each Member State can appoint so-called "trusted flaggers" which are persons (either legal or natural) meeting criteria such as expertise for detecting and identifying illegal content,[96] representing collective interest while being independent from online platform,[97] and *"carrying out its activities for the purpose of submitting notices in a timely, diligent and objective manner".*[98]

The notice submitted by appointed trusted flaggers shall be handled by the service provider without undue delay and with priority.[99] I think that this mechanism can be helpful in detecting illegal fake news that may meet the definition of criminal offense, even with the potential to destabilize democracy. For example, in the Czech Republic, there are various groups that are trying to demystify fake news and bring them to the attention of the public.[100] These groups that have vast experience in detecting and demystifying fake news are, in my opinion, capable of the role of trusted flaggers.

However, one might object that the position of a trusted flagger can be abused. For example, a government made of populists, far-right of far-left extremists, authoritarians (e.g., the Hungarian government) might avoid appointing trustworthy trusteed flaggers, or might even appoint trusted flaggers with the task to notify any content that might

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92 Ibid., para. 2, let. (b) of DSA.
93 Ibid., let. (d).
94 Ibid., let. (e).
95 Ibid., let. (f).
96 Article 19, para. 2, let. (a).
97 Ibid., let. (b).
98 Ibid., let. (c).
99 Article 19, para. 2 of DSA.
100 For example "Czech elves" (available at: https://cesti-elfove.cz/), or "Manipulators" (available at: https://manipulatori.cz/).

be harmful for the governing political power. DSA, however, sets measures that might (theoretically) prevent such a misuse pursuant to Article 20, para. 2 of DSA.

Under the above mentioned provision, the service provider can suspend *"for a reasonable period of time"* the ability of a person to submit notices if the person is frequently submitting "manifestly" unfounded notices or complaints.[101]

Article 24 of DSA was especially stressed by the Commission as necessary for protecting the democracy in the digital age[102]. Pursuant to this provision, every advertisement shall clearly inform the recipient that the displayed information is advertisement, inform on the natural or legal person on whose behalf the advertisement is displayed and provide meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed.[103] By these transparency measures, hidden advertisements shall be prevented and even political advertisements shall be more transparent. Moreover, this provision and its goal shall be complemented by proposed regulation on the transparency and targeting of political advertising[104] which is currently in the first reading conducted by the Council.

The Commission in its European action plan acknowledges the threat that the technologies can have on citizens and potentially on democracy, stating that: *"New techniques used by intermediaries/service providers to target advertising on the basis of users' personal information enable political adverts to be amplified and tailored to an individual's or a group's specific profiles, often without their knowledge. Micro-targeting and behavioural profiling techniques can rely on data improperly obtained, and be misused to direct divisive and polarising narratives. This process makes it much harder to hold politicians to account for the messaging and opens new way for attempts to manipulate the electorate. Other concerns are the concealment and/or misrepresentation of key information such as the origin, intent, sources and funding of political messages."*[105]

In this regard it is crucial that the political advertisement is transparent, not only is it important to know who the source of the advertisement is, but also why the recipient is targeted by such advertisement to better maintain personal data privacy.

The above mentioned provisions are applicable to all enterprises, regardless of other criteria such as size or revenue. However, realizing the increased risks of the biggest online players, DSA introduces special rules for the so-called "very large online platforms". According to Article 25, para. 1 of DSA, an online platform is designated as very large when its provided service has an average of at least 45 million active

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[101] Article 20, para. 2 of DSA.

[102] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan, 2020, COM(2020) 790 final, pp. 4–5.

[103] Article 24, let. (a), (b) and (c) of DSA.

[104] Proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, 2021, COM(2021) 731 final, 2021/0381 (COD).

[105] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan, 2020, COM(2020) 790 final, p. 4.

recipients in the Union per month. Needless to say that most of the "mainstream" social media fall within this category.

These platforms are pursuant to Article 26 of DSA obliged to annually identify, analyze, and assess risks stemming from using their services. It is mandatory for the platform to reflect *inter alia* the risk of dissemination of illegal content[106] and intentional manipulation of the service, including by means of inauthentic use of automated exploitation of the service, with an actual or foreseeable negative effect on the civic discourse or related to electoral processes[107].

The very large online platforms shall especially assess whether the implemented above-described mechanisms are efficient enough to prevent the analyzed risks.

Based on the conclusions in risk assessment and pursuant to Article 27 of DSA, the very large online platforms shall implement such measures that are tailored to each of the identified systematic risks. The measures are basically amplified measures already described (such as transparency, advertisement measures, cooperation with trusted flaggers etc.)

To independently assess, whether the very large online platform is implementing and complying with the measures to prevent and mitigate risks, and to confirm that the analysis of the very large platforms is truthful and not misleading in any way, the very large platforms are pursuant to Article 28 of DSA obliged to, at their own expense and at least once a year, be subject to an independent audit. The auditor must be independent from the very large online platform, show sufficient level of expertise, objectivity, and professional ethics.[108]

DSA introduces more additional obligations for very large online platforms to strengthen protection measures against risk immanent to the functioning of such platforms such as obligation of advertising repository, where advertisements published on the platforms are stored one year after being displayed to public, with information about the advertisement including the total number of recipients,[109] and appointing a compliance officer for monitoring compliance with DSA.[110]

Each Member State shall appoint a Digital Service Coordinator – an organ designated for enforcing DSA.[111] These Digital Service Coordinators will be quasi-supervised (rather advised) by the European Board for Digital Services established by DSA (an institution of the European Union).[112] The cooperation between Digital Service Coordinators and possibly even between Digital Service Coordinators and the European Board for Digital Services is described very similarly as in GDPR.

The obligations in DMA and DSA can help fight against the mechanisms threatening to harm union identity. Either the rules on transparency of algorithms and advertising, actual possibility to choose privacy over personalization, accurate moderating system of the harmful content, and accountability of social media for the false or misleading

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[106] Article 26, para. 1, let. (a) of DSA.
[107] Ibid., let. (c).
[108] Article 28, para. 2, let. (a) – (c) of DSA.
[109] Article 30 of DSA.
[110] Article 32 of DSA.
[111] Article 38 of DSA.
[112] Article 47.

content in case that they are unable to implement mandatory protective measures or assess the risks to prevent them is a huge step forward. If those obligations would be strictly followed by the platforms (especially by the very large platforms), the political debate could be at least more resilient to what was described as information disorder.

4. CONCLUSION

The current state of social media cannot help to establish the forum necessary for the creation of Europeanized public spheres. However generally utopist the idea behind the public spheres as an almost miraculous solution for the union identity crisis can be, I believe that forum for democratic deliberation can at least help to strengthen the union identity by providing the channel for dissemination of truthful information.

Social media are nowadays one of the main reasons why the trench between groups of people with different opinions is exponentially growing. Information disorder plays a significant role in spreading fake news and thus is one of the main factors responsible for the polarization. It is necessary for social media to be more transparent, especially focusing on the transparency of the news feed algorithms and on the mechanisms preventing further dissemination of harmful content.

In this regard, DSA and DMA play significant role as they introduce regulation partially (in case of DMA) or mainly (in case of DSA) focused on the opaque processes of social media. This regulation has, in my opinion, the potential to decrease negative effects of social media such as information disorder, echo chambers and state of flow, and to help create a less biased environment that can be eventually more resilient to the fake news.

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