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Digital Campaigns and Deliberative Politics:

The EU regulatory framework of online political advertising under the ECHR

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Abstract

The impact of online political advertising on democratic integrity, political deliberations and electoral outcomes is a central topic of political discourse and a main concern for EU citizens regarding the future of Europe. Unlike offline political communication, algorithmic dissemination in digital campaigning allows for constant, unfiltered and highly personalized messaging, transforming democratic dialogue. From the Brexit referendum and the 2016 US presidential elections to the 2026 Hungarian Elections, online political advertising has exposed significant regulatory gaps and democratic vulnerabilities in the digital era.

This raises the question of how democracies adapt to rapid technological developments while effectively maintaining human rights and democratic values. The European Union has adopted an ambitious regulatory framework composed of the 2022 Digital Services Act and the 2024 Regulation on the Transparency and Targeting of Political Advertising, aiming to protect freedom of movement and competition in the Common Market and enhance democratic legitimacy. In implementing this framework domestically, EU Member States are obliged to uphold freedom of expression and the right to free elections under ECHR.

This research critically analyses whether EU law effectively protects deliberative capacity in the digital era while upholding these ECHR standards. Methodologically, this thesis adopts the theoretical lens of deliberative democracy and conducts a doctrinal legal analysis of ECHR jurisprudence and EU legislation, but grounds findings to empirical illustrations. By performing this analysis, this thesis argues that the EU digital acquis remains only partially effective in safeguarding democratic participation, as practical and structural features of online infrastructure inherently limit regulatory reach.

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**To my parents, for always supporting me wholeheartedly,
even when they are not exactly sure with what.**

I hope one day I'll be able to understand as well

Thank you, for being there for me

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List of Abbreviations

AI	Artificial Intelligence
CoE	Council of Europe
DSA	Digital Services Act
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
Commission	The European Commission
EBDS	European Board for Digital Services
EBMS	European Board of Media Services
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDS	European Democracy Shield
EU	European Union
GC	Grand Chamber
GDPR	General Data Protection Regulation
ICT	Information and Communication Technologies
NGOs	Non-Governmental Organisations
OJ	Official Journal of the European Union
TEU	Treaty of the European Union
TTPA	Regulation on the Transparency and Targeting of Political Advertising
TV	Television
UK	United Kingdom
US	United States
Venice Commission	European Commission for Democracy through Law
VLOP	Very Big Online Platform
VLOSE	Very Big Search Engine

Chapter 1

Networks and Political Arenas

1.1 Background

The dawn of the digital era and rise of online social networks as the dominant marketplace for ideas, brought a global technological revolution in the ecology of political communication, as Internet connectivity allowed continuous peer-to-peer dissemination of information, at a speed unprecedented to human history¹.

At the turn of the century, scholars like the sociologist Manuel Castells heralded the Internet's potential for democratising societies, as horizontal information sharing and connectivity could revolutionise civil empowerment and pave the way to a more egalitarian social structure, a network of multiple nodes rather than a central gravitational point². For the first 15 years, this “amazing pollinator”³ seemed to be delivering on its promises. In the 2004 Orange Revolution in Ukraine, online newspaper *Ukrainskaya Pravda* had a seminal role in disseminating information about the attempted electoral fraud, rising at the revolution's end as “the most widely read news source of any kind in Ukraine”⁴. Twitter (now X) was seminal in the first days of the Occupy Wall Street movement in 2011, connecting indignant voices for the devastating effects of 2008 financial crisis and the aftermath of unaccountability⁵. Mass protests in Europe, especially in the south,⁶ sprouted and coordinated multi-week efforts via Facebook groups, leaving traditional-systemic conductors of demonstrations in the

¹ Klaus Schwab, *The Fourth Industrial Revolution* (World Economic Forum 2016), 7–10.

² Felipe Arocena, Sebastián Sansone and Nicolás Alvarez, ‘Technological Disruption and Democracy in the Twenty-First Century’ (2022) 10 *European Journal of Futures Research* 3, <https://doi-org.ezproxy.its.uu.se/10.1186/s40309-022-00189-4> 8.

³ The phrase is attributed to UK Prime Minister David Cameron. In a 2009 speech about data at Imperial College, he characterised the Internet as “an amazing pollinator, spreading ideas and information all over the globe in minutes. It turns lonely fights into mass campaigns; transforms moans into movements; excites the attention of hundreds, thousands, millions of people and stirs them to action” available at: http://news.bbc.co.uk/2/hi/uk_news/politics/8119047.stm

⁴ Michael McFaul, ‘Transitions from Postcommunism’ (2005) 16 *Journal of Democracy* 5, 12

⁵ Mark Tremayne, ‘Anatomy of Protest in the Digital Era: A Network Analysis of Twitter and Occupy Wall Street’ (2014) 13(1) *Social Movement Studies* 110 <https://doi-org.ezproxy.its.uu.se/10.1080/14742837.2013.830969>

⁶ Paolo Gerbaudo, “‘We are not on Facebook, we are on the streets!’: The Harvesting of Indignation” in *Tweets and the Streets: Social Media and Contemporary Activism* (Pluto Press 2012) 76–101, <https://doi-org.ezproxy.its.uu.se/10.2307/j.ctt183pdzs> 78.

passenger seat⁷. During the so-called Arab Spring (2010-2013), Facebook, Twitter and YouTube provided a safe space for people not only to disseminate their ideas and organise but – most importantly - to “believe they had a say in public affairs”⁸, giving rise to a feeling of empowerment that was unprecedented in autocratic regimes⁹. This rise of techno-optimism however did not last for much longer.

In 2013, the Snowden revelations on mass data collection and manipulation by US and UK intelligence agencies, sent a shock throughout the globe. The collaborating role of online platforms like Facebook and search engines as Google¹⁰, gave the world a first taste of the vulnerabilities and working patterns of internet connectivity and social media and the challenges posed for human rights and societies in the 21st century. The involvement of Cambridge Analytica in the 2016 US presidential elections¹¹ and Brexit referendum¹² marked the end of techno-optimism. Lack of regulatory and oversight mechanisms, technical loopholes in platforms’ designs and minimal considerations over misuse of data contained therein¹³, allowed Cambridge Analytica to harvest the data of 87 million people from Facebook, more than the entire population of Germany, without their consent. At the same time, foreign electoral interference has been tantalising democracies in Europe and abroad, as misinformation campaigns and opaque political funding seek to sow division and undermine democratic integrity¹⁴.

⁷ Eva Anduiza, Camilo Cristancho and José M Sabucedo, ‘Mobilization through Online Social Networks: The Political Protest of the Indignados in Spain’ (2014) 17(6) *Information, Communication & Society* 750 <https://doi.org/10.1080/1369118X.2013.808360>

⁸ Adam Smidi and Saif Shahin, ‘Social Media and Social Mobilisation in the Middle East: A Survey of Research on the Arab Spring’ (2017) 73(2) *India Quarterly* 196, 04 <https://doi.org/10.1177/0974928417700798>

⁹ Ibid.

¹⁰ Derechos Digitales, ‘11 Years after Snowden: Are We Really More Protected?’ (2024) <https://www.derechosdigitales.org/en/recursos/11-years-after-snowden-are-we-really-more-protected/> accessed 1 March 2026.

¹¹ Alvin Chang, ‘The Facebook and Cambridge Analytica Scandal, Explained with a Simple Diagram’ (*Vox*, 23 March 2018) <https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram> accessed 1 March 2026.

¹² ‘The Science Behind Our Strategy - Leave.Eu’ (*archive.is*, 12 May 2016) <<https://archive.is/rN22u>> accessed 1 March 2026.

¹³ Aja Romano, ‘The Facebook Data Breach Wasn’t a Hack. It Was a Wake-up Call.’ (*Vox*, 20 March 2018) <<https://www.vox.com/2018/3/20/17138756/facebook-data-breach-cambridge-analytica-explained>> accessed 1 March 2026.

¹⁴ ‘Illicit Foreign Finance and Election Integrity | IFES - The International Foundation for Electoral Systems’ (12 June 2024) <<https://www.ifes.org/news/illicit-foreign-finance-and-election-integrity>> accessed 1 March 2026.

Liberal democracy has been backsliding for years¹⁵, leading to public distrust in politics and traditional media¹⁶ and turning citizens to “alternative media”¹⁷, where they are more likely to engage with disinformation and disseminate it¹⁸, deepening distrust to “established structures” and the social other¹⁹. This vicious cycle can be devastating for structured political dialogue and communication, as voters tend to disregard politics when expressed through legacy media and being more receptive to political messaging framed as online content²⁰. Populists are increasingly taking hold of these tools dominating the digital square²¹.

Despite this profound impact of online political communication in deliberative democratic processes, domestic legal frameworks in Europe have elicited varied and fragmented responses, varying from France’s total ban of political advertising during campaign periods to a lack of legislation on online political advertising in Belgium or Malta²². Notably, only 10 EU countries maintain online spending limits provisions²³. After a decade of fragmented efforts, the EU has launched an ambitious legislative initiative to systemically regulate the digital square. In October 2025, Regulation 2024/900 entered into force, setting transparency obligation for political advertising and targeting and regulating the means of online political campaigning, yielding strong reactions from major platforms, that suspended their political advertising services in

¹⁵ Marina Nord and others, ‘Democracy Report 2025: 25 Years of Autocratization – Democracy Trumped?’ (V-Dem Institute, University of Gothenburg 2025) https://www.v-dem.net/documents/60/V-dem-dr_2025_lowres.pdf accessed 2 July 2026, 13.

¹⁶ Edda Humprecht, ‘The Role of Trust and Attitudes toward Democracy in the Dissemination of Disinformation—a Comparative Analysis of Six Democracies’ (2025) 13 *Digital Journalism* 931 <https://doi.org/10.1080/21670811.2023.2200196> accessed 2 July 2026.

¹⁷ Philipp Müller and Anne Schulz, ‘Alternative Media for a Populist Audience? Exploring Political and Media Use Predictors of Exposure to Breitbart, Sputnik, and Co’ (2021) 24 *Information, Communication & Society* 277 <https://doi.org/10.1080/1369118X.2019.1646778> accessed 2 July 2026.

¹⁸ Jay J Van Bavel and others, ‘How Social Media Shapes Polarization’ (2021) 25 *Trends in Cognitive Sciences* 913 <https://doi.org/10.1016/j.tics.2021.07.013> accessed 2 July 2026.

¹⁹ Steve Rathje, Jay J Van Bavel and Sander van der Linden, ‘Out-Group Animosity Drives Engagement on Social Media’ (2021) 118 *PNAS Proceedings of the National Academy of Sciences of the United States of America* <https://doi.org/10.1073/pnas.2024292118> accessed 2 July 2026.

²⁰ *Ibid*, 23.

Giuliano Bobba, ‘Digital Populism: How the Web and Social Media Are Shaping Populism in Western Democracies’ in Reinhard Heinisch, Emanuele Massetti and Oscar Mazzoleni (eds), *Political Populism: Handbook on Concepts, Questions and Strategies for Research* (2nd edn, Nomos 2021)

²² Enea Fiore, Antonella Seddone and Daniela R Piccio, ‘Securing Democracy: Online Political Advertising Regulations and Practices in the EU and Its Member States’ (2024) *Global Policy* <https://doi.org/10.1111/1758-5899.70080> accessed 1 March 2026, 3.

²³ *Ibid*, Table 1.

the EU²⁴. Against the purposes of the new Regulation, this development has so far had the opposite result, undermining free elections and freedom of expression in the EU, the two conditions that form the bedrock of democracy under the European Convention of Human Rights, the instrument encompassing the common constitutional traditions of Europe²⁵.

The present thesis will critically analyse the effectiveness of the EU digital acquis in regulating political advertising to strengthen deliberative democracy in the digital age, while respecting freedom of political speech and electoral freedom under ECHR.

1.2 Research Question

The primary aim of this research is to critically evaluate the effectiveness of EU law in safeguarding democratic deliberation in view of the digitisation of political communication, while respecting freedom of expression and the right to free elections under ECHR. In that regard, this thesis understands *effectiveness* as: the extent that law manages to achieve the purpose(s) set by the legislator²⁶.

The research question is the following:

“Does the EU digital acquis on political advertising effectively protect deliberation in the digital era, with respect to the ECHR standards on freedom of expression and the right to free elections?”

Objective 1: Examine the impact of digitisation of political communication to democratic deliberation.

Objective 2: Review the ECHR standards on freedom of political expression and the right to free elections in the digital era.

²⁴ Anupriya Datta, ‘Big Tech’s Political Ad Blackout Tests New EU Transparency Law’ *Euractiv* (17 October 2025) <https://www.euractiv.com/news/big-techs-political-ad-blackout-tests-new-eu-transparency-law/> accessed 2 July 2026.

²⁵ *Bowman v United Kingdom* App no 24839/94 (ECtHR, 19 February 1998) para 42.

²⁶ Maria Mousmouti, *Designing Effective Legislation* (Edward Elgar 2019) 9–10.

Objective 3: Critically analyse standing EU law on online political advertising.

This research question addresses both descriptive and normative concerns. It requires an in-depth analysis of architectural and practical differences of political communication in analogue and digital deliberative arenas. This evaluative aspect is critical in understanding the logic, aim and limitations of ECHR standards on political expression and free elections and subsequently of the EU regulatory framework on online political advertising. Consequently, this study moves further from a classic critique on the effectiveness of EU regulatory efforts on a topic as complex and multidisciplinary as political communication and global digital networks. Instead, it aspires to evaluate the impact of these mechanisms and further contribute to building equitable and deliberative democracies in the digital era that uphold human rights and European values. The following sections outline the evaluative methodology and normative theory employed and detail the delimitations and structure of this thesis.

1.3 Methodology

This study conducts primarily a doctrinal analysis²⁷, but grounds findings to empirical illustrations, employing a mixed qualitative methodology of sociolegal research.

Deliberative democracy is the theoretical lens adopted by the present research to analyse the function of dialogue in democracies and the impact of digitization to political communication. A legal doctrinal analysis of ECHR standards on electoral freedoms and freedom of expression will set the benchmark for systematically analysing the EU legal framework of online political advertising. To contextualise deliberative democracy in the European framework, the present thesis analyses contemporary European political and legal texts that highlight the importance of deliberative theory for European democracies.

For the first objective of this research, examining the impact of digitisation of political communication to democratic deliberation, a short but in-depth literature review of

²⁷ Mark Van Hoecke, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' in Mark Van Hoecke (ed), *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 11-12.

elements of deliberative theory is employed, starting from the work of Jurgen Habermas²⁸, and continuing with literature on algorithms and networks to analyse deliberative structures and dynamics in contemporary democracies. For the second objective, reviewing ECHR standards on freedom of political expression and electoral freedoms in the digital era, this research performs a doctrinal legal case analysis concerning Article 10 ECHR and Article 3 Protocol 1 ECHR and recommendations from the Venice Commission on upholding good practises and electoral standards in the online era, as contained in the soft law instruments like the Code of Good Practise on Electoral Matters²⁹. To untangle the relationship between ECHR and the EU, the present study briefly explores the historic relationship between the two systems, the EU commitment to accede to ECHR and the obligations that all EU members states carry under their capacity of ECHR signatories, looking into academic literature, EU Treaties, ECJ decisions and accounts of political developments in the Union³⁰. To achieve its third objective, critically assessing standing EU legislation on online political advertising, this thesis conducts a mixed doctrinal and sociolegal analysis³¹. Starting from the textual requirements and objectives of TTPA and DSA Regulations and looking into empirical findings, this thesis examines the clarity and scope of the provisions of TTPA and the interactions with standing DSA mechanisms and assesses the functional impact of the EU law on online political advertising so far³². To concretely exhibit the impact of EU law on online political communication to democratic deliberations in Europe, this research reflects on a series of examples from the April 2026 Hungarian parliamentary elections, one of the most important electoral events in Europe in 2026³³. Across this research, surveys from EU institutions provide empirical insights into Internet and social media usage in EU

²⁸ J. Habermas, *A New Structural Transformation of the Public Sphere and Deliberative Politics*, 2023.

²⁹ Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press). 140; Hoffmann-Riem, Wolfgang, *The Venice Commission of the Council of Europe – Standards and Impact*, *The European Journal of International Law* (2014) Vol. 25 no. 2, p. 579–597.

³⁰ *Shaping Rights in the ECHR : The Role of the European Court of Human Rights in Determining the Scope of Human Rights*, edited by Eva Brems, and Janneke Gerards, Cambridge University Press, 2014. *ProQuest Ebook Central*,
<https://ebookcentral.proquest.com/lib/uu/detail.action?docID=1578933>.

³¹ Terry Hutchinson, *Researching and Writing in Law* (2nd edn Thomas Lawbook Co 2006) 85.

³² Van Hoecke (n 27).

³³ Election in Hungary: a national vote with European consequences' (*Friends of Europe*, 20 March 2026) <https://www.friendsofeurope.org/insights/critical-thinking-election-in-hungary-a-national-vote-with-european-consequences/> accessed 2 July 2026.

societies, the level of trust in European institutions and platform compliance to EU law so far.

By bringing together literature review, doctrinal legal analysis and empirical assessments, this methodological mix allows to evaluate the effectiveness of the current EU legislation on online political advertising in protecting democratic deliberation while upholding ECHR standards.

1.4 Delimitations

The present research concerns the effectiveness of EU law on political advertising in protecting deliberative democracy in the digital era, in conformity with ECHR standards on freedom of expression and electoral participation. Given that 40% of EU citizens use social media and search engines to get informed on social and political issues³⁴, this thesis disregards political advertising in digital forums, like Reddit, or through direct messaging applications like WhatsApp and Telegram, or other forms of political advertising that utilize digital means, such as emailing, Connected TV (CTV) and Over-the-top (OTT) advertising. The interplay between offline and online political advertising, albeit important for democratic deliberation, warrants a distinct thesis.

This study analyses specifically EU law, therefore domestic legal provisions of EU Member States or of the native legal orders of online platforms, US and China, excluded. The focus on EU law is inspired by the demonstrated impact of the Brussels effect in setting global norms on digital rights³⁵ and the fact that the author is a subject of the European legal order. ECHR standards on freedom of expression and electoral participation are used as benchmarks due to the obligation of EU Member States to uphold ECHR standards as Contracting Parties to the Convention and the expressed commitment of the EU under Article 6 TEU to uphold fundamental rights in a level equal to ECHR and ultimately accede in the Convention. International instruments, such as the International Convention on Civil and Political Rights (ICCPR) are excluded from the research framework, tightening the focus.

³⁴ European Commission, *Flash Eurobarometer: Social Media Survey 2025* (Directorate-General for Communication 2025) 3.

³⁵ Dawn Nunziato, 'The Digital Services Act and the Brussels Effect on Platform Content Moderation' (2023) 24 *Chicago Journal of International Law*
<<https://chicagounbound.uchicago.edu/cjil/vol24/iss1/6>>.

The primary focus of this research lies with the Digital Services Act and the Regulation on Transparency and Targeting of Political Advertising, as the latest and most relevant pieces of EU legislation to the research question. Mechanisms of other legislative acts, such as the General Data Protection Regulation, the Artificial Intelligence Act, the Audiovisual Media Services Directive, the Digital Markets Directive, the European Media Freedom Act, the NIS Directive and the Regulation 2025/2445 on the statute and funding of European Parties, are excluded from this research and only touched upon where necessary for fully understanding the pioneering role of the EU as a digital regulator. As it will be discussed in Chapter 2, the capacity for democratic deliberation depends on the quality of a nexus of inherently interconnected, interdependent and interrelated conditions manifested into human rights. The right of participation per se, both nominal and substantial, in terms of access to political spheres and electoral processes, freedom of expression and association as well as the right of education and the implementation of procedural safeguards have a defining impact in realising informed and inclusive political dialogue and democracy³⁶. The present research focuses only on two of these rights, specifically the right to electoral participation and freedom of political expression, which under ECHR constitute the “bedrock of any democratic system”³⁷.

Finally, this study aims to assess the effectiveness of EU law on political advertising in protecting deliberative democracy with respect to ECHR standards in the digital era, rather than proposing legislative reforms. As a critical analysis of legislative effectiveness, this research focuses on identifying practical and structural challenges, lacunas or failures in regulating digital spaces. As the present critical analysis untangles the black letter of the law and reflects on the consequences of implementation of the EU digital acquis so far, the reader will be able to understand where the need for reforms lay and comprehend the limits of law in dictating behaviours and the importance of cultivating a political culture of active participation, respect and trust as well as the corresponding tools. A meaningful discussion on the cultivation of such culture or the development of the necessary tools constitutes more than a separate thesis.

³⁶ UN OHCHR, Human Rights and Elections - A Handbook on International Human Rights Standards on Elections, 2021.

³⁷ *Bowman v United Kingdom* App no 24839/94 (ECtHR, 19 February 1998) para 42.

1.5 Research Structure

The present study conducts a well-rounded assessment of the effectiveness of EU online political advertising regulation in protecting deliberative democracy in the digital era with respect to ECHR standards. Chapter 1 outlines the background to this research question, describes the research aim, sets the delimitations, explains the methodology and develops the structure. As groundwork, Chapter 2 outlines the theory of deliberative democracy and examines the impact of digitization of communication to political dialogue, putting emphasis on dissemination mechanisms and the main contemporary challenges. This is the theoretical lens this study utilises to understand political communication in democratic societies. Chapter 3 analyses ECHR standards relating to freedom of expression and elections, as developed in the case law of the Court of Strasbourg and the recommendations of the Venice Commission, and the relationship between EU and ECHR. These standards will set the benchmark for assessing the effectiveness of EU law in protecting democratic deliberation online. Chapter 4 dives into the EU digital acquis, critically analysing the current regulatory framework and empirically illustrating the impact of implementation. It focuses on DSA and TTPA and examines the specific mechanisms intended to protect democratic dialogue by regulating online political advertising. This analysis provides the reader with a complete picture of standing EU legislation of online political advertising. Chapter 5 synthesizes findings from Chapters 2, 3 & 4 and performs an overall evaluation of the effectiveness of EU law in safeguarding the capacity for democratic deliberation in the digital era under the ECHR. At this point, the reader should be able to comprehend the extent that standing EU law achieves the goal of protecting deliberative democracy online while respecting ECHR standards, as well as the legal, structural and political limitations of regulating exchange of information in digital spaces.

Chapter 2

Deliberative Theory and Online Platforms

2.1 Discursive Democracies

The present Chapter analyses the theoretical framework of this research, deliberative democracy, that will serve as the philosophical lens for assessing the effectiveness of regulation of online political advertising in the EU with respect to the ECHR norms. Starting with a short overview of democratic theory, the following sections explore how the public debate serves as a means of attributing legitimacy to political decisions and the impact of online platforms and algorithms as information gatekeepers in contemporary democratic societies.

The defining characteristic of democracy as a self-governing system, is that, in contrast to hierarchical regimes, legitimacy derives and is diffused amongst its members, not merely as a matter of fact but emphatically as a core moral thesis.³⁸ Empowered with political autonomy, individuals in democracies come together as equal sovereigns to decide upon their affairs, in all sorts of collective discursive procedures. In the words of Joshua Cohen, the Professor Emeritus of political philosophy at Stanford University that served as full-time in-house philosopher at Apple Inc³⁹:

*‘any view of democracy – indeed any view of intelligent political decision-making – will see discussion as important, if only because of its essential role in pooling information against a background of asymmetries in its distribution’*⁴⁰.

This legitimising function of discourse has been justified on different grounds within political theory. Minimalist theorists like Joseph Schumpeter framed democracy as a cold functional arrangement between citizens, free from moral axioms and claims of

³⁸ Robert B Talisse, *Engaging Political Philosophy: An Introduction* (Routledge 2016) 132.

³⁹ Stanford Law School, ‘Apple employs an in-house philosopher, but won’t let him talk to the press’ (*Stanford Law School Press*, 11 November 2019) <https://law.stanford.edu/press/apple-employs-an-in-house-philosopher-but-wont-let-him-talk-to-the-press/> accessed 28 June 2026.

⁴⁰ Joshua Cohen, “Procedure and Substance in Deliberative Democracy,” in *Deliberative Democracy*, ed. James Bohman and William Rehg (Cambridge, Mass: The MIT Press, 1997) https://www.viaeducacion.org/downloads/ap/pn/deliberative_democracy.pdf accessed 2 July 2026, 413.

ethics. In this model, the public debate is understood merely as competition between aspiring officials while individuals simply pursue private interests and appoint officials through vote aggregation. Within this procedural framework, citizens adhere to majoritarianism because it offers a fair, predictable, and equally accessible method for resolving conflict while safeguarding basic legal protections. Periodic elections ensure that the exercise of power remains loosely accountable to the electorate, as officials are incentivized to satisfy their constituencies out of fear of being voted out of office⁴¹.

In contrast, participatory theorists like Benjamin Barber challenged these individualistic views democracy, understanding demos as a collective and morally charged project, and citizenry as a form of public service⁴². Participating in the social and political order entails a moral *civic* obligation to occasionally be willing to set aside personal preferences and interests and rally behind causes that favour the political community instead. Citizens are more than private individuals and democracy is imagined as an amalgam of entangled civic groups that function towards a common good. As such, self-governance is not confined in the ballot-box and the role of social institutions is to foster this civic perspective, by cultivating solidarity, consensus and a feeling of community and belonging through various ways of organising and interacting⁴³.

Where republicanism and communitarians seek legitimacy grounding for democracy in rational choices and political ethos respectively, deliberative theorists emphasise the rationalizing function of discourse. According to theorists of deliberative democracy like Joshua Cohen, people adhere to democratic authority because they participate in the discussions formulating this authority⁴⁴. The deliberative model, expanding the participatory idea that self-governance is a perpetual process, suggests that individuals trust democracy because democratic structures, through the rights guaranteed to citizens, allow for transparent, equitable, inclusive and reasoned debate on common

⁴¹ Frank Cunningham, *Theories of Democracy: A Critical Introduction* (Routledge 2001) 9–11.

⁴² Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (University of California Press 1984) 284–285.

⁴³ Talisse (n 38), 144–146.

⁴⁴ Joshua Cohen, 'Deliberation and Democratic Legitimacy' in James Bohman and William Rehg (eds), *Deliberative Democracy: Essays on Reason and Politics* (MIT Press 1997) https://www.viaeducacion.org/downloads/ap/pn/deliberative_democracy.pdf accessed 2 July 2026, 72–75.

matters, accounting for the lived experiences of citizenry and leading to well-grounded and commonly accepted political decisions⁴⁵.

In the words of Jürgen Habermas, the leading scholar of deliberative democracy:

*“only those statutes can claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted”*⁴⁶

Rule of law plays an instrumental role in cultivating the deliberative ethos. In translating morally valid norms to uniform rules of deliberation, law promises to guarantee observance of these norms and, as such, convince to their adherence. In turn, the harmonised attendance of legal norms allows reconciling the actions of individuals in the deliberative arena⁴⁷. According to the German philosopher, the foundational principles of democracy - freedom of expression and free exchange of ideas, freedom of press, citizen's equality and the principle of pluralism- confer the democratic architecture with strong “truth tracking” potential. However, these elements do not single out democracy as the sole truth-tracking system⁴⁸. Contrary to critical scholars like Hannah Arendt, deliberative democracy theorists reject quasi-Platonic ideas of a singular truth, stipulating that such approaches offer limited resolution in addressing political questions, which instead can be answered in several ways. Due to its foundational principles, democracy is perceived as best equipped to reach more epistemically robust conclusions in complex problems, as, in principle, democracy allows all viewpoints to come to surface and campaign for their validity and subsequently be examined in a commonly accepted way⁴⁹. As such, according to lead theorists Gutmann and Thompson, the effectiveness of deliberation lies upon the virtue

⁴⁵ Ibid.

⁴⁶ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996, <https://teddykw2.wordpress.com/wp-content/uploads/2012/07/jc3bergen-habermas-between-facts-and-norms.pdf> accessed 2 July 2026, 110.

⁴⁷ Michele Blanco and Luigia Altieri, 'Deliberative democracy in Habermas' (2025) 9(1) *Sociology and Social Work Review* <https://globalresearchpublishing.com/wp-content/uploads/Deliberative-democracy-in-Habermas.pdf>, accessed 2 July 2026, 157.

⁴⁸ Simone Chambers, 'Truth, Deliberative Democracy, and the Virtues of Accuracy: Is Fake News Destroying the Public Sphere?' (2021) 69 *Political Studies* 153-154.

⁴⁹ Ibid.

of reciprocity, i.e. offering reasons that others can recognise as reasons, even when they disagree⁵⁰.

Arguably, the feasibility of such wide, equitable and ultimately respectful participation in the democratic debate is rather questionable. Regardless, the normative value of deliberative democracy for the purposes of the present thesis, assessing the effectiveness of EU law in regulating political advertising to protect democratic dialogue participation in the digital political arena, lays with the fact that, as a theoretical model, it focuses on the mechanisms of dissemination of information as political communication in democratic societies and the impact of this dissemination to democratic legitimacy. Under this theoretical lens, political advertisements put forth viewpoints on social issues and suggest political solutions that are then scrutinised in the public debate, challenged by different perspectives and refined according to the reflexes of the electorate.

2.2 Deliberative Communication and Digital Structures

In the deliberative model, political communication is not confined in specific spaces and timeframes of the political system, such as congresses and election days, but continuously permeates the multiple levels of the demos, from everyday conversations to organised panels and parliamentary debates. This transection pierces through the public-private divide, extending to the private spaces, where the burgeoning public sphere originally resided⁵¹. In contrast to intuitional deliberation, which follows formalised processes at the centre of the political system - parliaments, courts, administrative agencies - the citizenry constantly engages in political discourse and formulates public opinions in the *public sphere*, a locus at the periphery of the political system. Building on Rawls' notion of public space⁵², Habermas understands the public sphere to be unstructured and diverse, materialising in civil society and "rooted in

⁵⁰ John S Dryzek, 'Democratization as Deliberative Capacity Building' (2009) 42 Comparative Political Studies <https://scispace.com/pdf/democratization-as-deliberative-capacity-building-a0pax8c36u.pdf> accessed 2 July 2026, 1381.

⁵¹ Habermas, *Between Facts and Norms* (n 46) 354.

⁵² Mayengbam Nandakishwor Singh, 'Jurgen Habermas's Notion of the Public Sphere: A Perspective on the Conceptual Transformations in His Thought' (2012) 73(4) The Indian Journal of Political Science 633

networks for wild flows of messages”⁵³ - news, talks, commentaries, movies, images etc. These messages, or published opinions, circulate between wide and intersecting audiences in a plethora of forms, contents, sources and purposes and carry the popular problems, claims, interests, hopes and dreams that a well-functioning democracy needs to heed and address⁵⁴.

In contrast to Rawls, Habermas did not require the tabula rasa participation of citizens in deliberations as a precondition for reaching unilateral democratic legitimacy⁵⁵. Instead, the German philosopher emphasized the importance of structural equity in deliberative procedures and the communicative action of all social actors, i.e. active and critical participation of all citizens, with a drive for consensus and reasoned argumentation⁵⁶.

Therefore, democratic legitimacy, the willingness of citizens to voluntarily adhere to the authority of the system⁵⁷, is contingent upon the citizens’ belief that discursive structures effectively surface issues of public concern, encourage critical scrutiny of all arguments, allowing for clear and reasoned responses⁵⁸. According to Habermas, this legitimacy is not acquired by mere, unstructured, political communications in the public sphere, but through a perceptually subsequent filtering deliberative process, that is mediated by media professionals and brings together the voices of different social factions, i.e. pressure groups, civil society actors, intellectuals and moral entrepreneurs. Through the editorial mediation, this discursive interplay between the social actors subjects public issues and political opinions to a structured exchange of ideas that allows voters to reflect on political issues and their own respective positions and perceptions, and as such form educated and considered opinions⁵⁹. This process is not understood as a one-way flow but as a recursive mechanism, a “feedback loop” where

53 Jürgen Habermas, “Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research,” *Communication Theory* 16 (2006) 415.

54 *ibid*

55 Singh (n 52) 642.

56 Carlito M Gaspar, ‘Habermas’ Theory of Communicative Action’ (1999) 47(3) *Philippine Studies* 407, 409–410 <https://archium.ateneo.edu/cgi/viewcontent.cgi?article=4539&context=phstudies> accessed 2 July 2026 and Singh (n 52) 633.

57 Fabienne Peter, *Democratic Legitimacy* (Routledge 2009) 56.

58 Habermas (n 46) 413.

59 *ibid* 415-416.

mediated deliberation constantly reflects and accounts for shifts in ever-forming public opinions and subsequently adjusts to those movements. By remaining rooted in political communications at the ground level, mediated dialogue not only maintains its public legitimacy, but also allows politicians to measure sentiment of legitimacy towards political decisions on given topics⁶⁰.

In contextualising deliberative democracy for the present thesis, it is important to stress that, as discussed earlier, Habermas did not consider that political communication in traditional media, particularly radio and television, satisfied normative requirements of deliberative democracy. On the contrary, the philosopher is critical of the impact of electronic media to political communication, joining scholars like Sartori In support of the “videomalaise” hypothesis, which links use of audiovisual media with decreased political trust and a consequential apathy, emphasising the structure of this communication as the culprit for political estrangement⁶¹. In other words, deliberative democracy standards were far from fully realised prior to the rise of social media. What distinguishes social media is the unmatched capacity to circulate vast amounts of content amongst users in a -seemingly- unmediated manner, i.e. the power of intensity and virality⁶².

Online platforms may allow for extensive exchange of ideas and opinions, albeit in discursive enclaves, or echo-chambers. Platform algorithms are designed to mediate the wild flows of internet messages in a way that users predominantly interact with content with a high degree of compatibility their interests, creating filter bubbles that minimise input from opposing or simply varied views and re-affirm one’s own beliefs⁶³. Echo chambers create new and intimate public spheres that, resistant to dissonant voices and fortified by mutual confirmations of judgements blended with unprofessionally filtered knowledge, are feeling more universal in reach and inclusive in contrast to the political sphere of constitutional democracy, that loses its primacy⁶⁴.

⁶⁰ Ibid 418.

⁶¹ Habermas, *Between Facts and Norms* (n 46) 422.

⁶² Simone Chambers, ‘Truth, Deliberative Democracy, and the Virtues of Accuracy: Is Fake News Destroying the Public Sphere?’ (2021) 69 *Political Studies* 150.

⁶³ Eli Pariser, *The Filter Bubble: What the Internet Is Hiding from You* (Penguin Press 2011) https://hci.stanford.edu/courses/cs047n/readings/The_Filter_Bubble.pdf accessed 2 July 2026.

⁶⁴ Habermas, *A New Structural Transformation* (n 28) 55.

This granular insulation and collapse of information diversity is catastrophic from a deliberative democracy viewpoint, leading to a split internet and what has been described as “cyberbalkanization” of the digital sphere. If citizens no longer are exposed to the full exchange ideas on political matters, then, according to the deliberative model, political decisions cannot attain democratic legitimacy. On the contrary, legitimacy becomes contingent upon a citizen’s affiliation with each decision. Furthermore, if citizens do not feel the need to come together as such, it is not only the legitimacy of decisions that takes a blow, but of democratic institutions as spaces of deliberation themselves⁶⁵.

In the deliberative/Habermasian structure, the legitimacy and trustworthiness of the democratic system is justified in the hearts and minds of citizens due to the representatives, inclusiveness and responsiveness of decision-making processes in a broader sense. Such a widely imagined inclusivity is however hard to attain. Critics argue that the normative requirement for an equal and fully informed publicum is a virtue practically unattainable for most with exclusionary and elitist implications, being as such incompatible with democratic ideals⁶⁶. Habermas recognised the uneven stratification of opportunities for and participation to mediate communications and the feedback loop mechanism, pointing to a “colonization of the public sphere by market imperatives”⁶⁷. Social status and cultural identity influence both interest for politics as well as the barrier of entrance, revealing the relationship between the distribution of deliberative capacity in the political public sphere and the class structure of society. In deliberative thinking however, the notion of civil society shifts from a clashing force, as envisioned in the traditional Hegel-Marxist tradition, to a material substratum for the circulation of opinions, acting as a discursive intermediate of all forms of social conglomerations. Crucially, Lynn Sanders notes, substantial discursive equality, how much can someone be heard, is also contingent upon factors unrelated to principles of reasoned argumentation, but rather social status, debating excellence and of course,

⁶⁵ Marshall Van Alstyne and Erik Brynjolfsson, ‘Electronic Communities: Global Villages or Cyberbalkanization?’ in *Proceedings of the Seventeenth International Conference on Information Systems* (Association for Information Systems 1996) 5.

⁶⁶ Jon Elster, ‘The Market and the Forum: Three Varieties of Political Theory’ in James Bohman and William Rehg (eds), *Deliberative Democracy: Essays on Reason and Politics* (MIT Press 1997) https://www.viaeducacion.org/downloads/ap/pn/deliberative_democracy.pdf accessed 2 July 2026, 13-14.

⁶⁷ Habermas, *Between Facts and Norms* (n 46) 421-2.

gender⁶⁸. As such, discursive equality is not just a matter of agreed upon rules, but needs to also account for implicit power dynamics that affect, in the words of Iris Marion Young “the internalized sense of the right one has to speak and not to speak”⁶⁹. In the digital era, the elitist and exclusionary criticism towards deliberative democracy is particularly pertinent as a matter of access to the technological tools vital for participating in the contemporary debate and, most importantly to the technological savviness that determines how impactfully these tools are used, i.e. which voices are heard. As discussed on this Chapter and throughout this thesis, the contemporary shift of the power to mediate the exchange of ideas in societies has added new actors in the public sphere and created novel challenges in promoting equitable and informed participation in democratic processes.

2.3 The discursive actors and the digital mediator

Habermas distinguished two main actors in the public sphere: media professionals, shaping and disseminating messages through their editorial power and politicians, sitting at the political centre and functioning as the original sources and ultimate receivers of political communication.⁷⁰ Additionally, different groups such as lobbyists, civil society and experts constantly put forward their messages and participate in the deliberative processes.

Each group has a different vantage point as well as entry threshold in public dialogue, contingent upon their functionality and status of the groups they represent, revealing a power structure in terms of discursive sway. Out of these actors, mass communication dynamics are of principal importance, as the ability of media to define and frame which narratives are going to make it to the public, provides gatekeeping control over the straits of communication between civil society and the political centre⁷¹. Journalists and editors constantly monitor the wild flows of messages in civil society and single out those they perceive as worthy of shared attention, according to their prevalence or

⁶⁸ Lynn M Sanders, 'Against Deliberation' [1997] 25 Political Theory 365.

⁶⁹ Iris Marion Young, 'Communication and the Other: Beyond Deliberative Democracy' in Seyla Benhabib (ed), *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton University Press 1996), <https://jmikelyons.com/wp-content/uploads/2016/08/young-communication-and-the-other-beyond-deliberative-democracy.pdf> accessed 2 July 2026, 122.

⁷⁰ Habermas, *Between Facts and Norms* (n 46) 416.

⁷¹ Pamela J Shoemaker and Timothy Vos, *Gatekeeping Theory* (Routledge 2009) 1.

importance for society⁷². In their mediating capacity, the media bring together the voices and views of different actors of the public sphere, allowing for a rational discursive examination of contributions. More importantly, legacy media are structured and publicly recognised as established spaces of mediated discussion and people engage with media content in a respective mindset, that also accounts for the dependencies and interests of each outlet.

In the contemporary public sphere, the filtering mechanism of the press has been substituted by the mediating role of algorithms in online platforms, where individuals browse for all sorts of different reasons. What's more, these spaces were not designed to act as deliberative structures or news and information services but as a means of socialising, acquiring the communication mediating function subsequently⁷³. From a technical perspective, an algorithm is the "heart and soul of all software"⁷⁴. However, such a purely mechanical conception of algorithms undermines the function of this technology in democratic societies. As analysed further on, the technical and legal choices made in the designing and implementation process of algorithms define the form and the social impact of algorithmic output. Since validating the procedural credibility of output is a priori considered unattainable, operators as well as service recipients concede to algorithmic authority and adopt and further disseminate the version of truth produced⁷⁵. However, the notion of algorithmic models as inherently opaque and their framing as black boxes is not a natural phenomenon, but rather a human choice⁷⁶.

In the famous remarks of the prominent mathematician and data scientist Cathy O'Neil "[algorithmic] models are opinions embedded in mathematics"⁷⁷. Therefore, if there can be no view from nowhere, algorithmic dissemination inescapably reflects

⁷² Jürgen Habermas, *A New Structural Transformation* (n 28) 45.

⁷³ Chambers (n 62) 150-151.

⁷⁴ Roberto Simanowski, *The Death Algorithm and Other Digital Dilemmas* (Jefferson Chase tr, MIT Press 2018) 50.

⁷⁵ William J Miller 'Algorithmic Authority' in Kerrie Harvey (ed), *Encyclopedia of Social Media and Politics* (SAGE Publications 2014) 43-44.

⁷⁶ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015), <https://raley.english.ucsb.edu/wp-content/Engl800/Pasquale-blackbox.pdf> accessed 2 July 2026.

⁷⁷ Cathy O'Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (Crown Publishing Group 2016) 25.

methodologies, priorities, preferences and assumptions of developers and owners, as well as anyone else involved in the designing process, the so-called designer biases⁷⁸. As such, algorithms perform an important sociopolitical function, shaping and sharing narratives and communications according to the perceptions and understandings of their designers, in a slow but violent way⁷⁹. The algorithmic dissemination of content however does not account for the social importance, credibility or validity of information in the same manner as legacy media do according to deliberative theory, but rather from a private platform perspective.

Therefore, approaching algorithms as sociotechnical constructs seems then more appropriate for our effort to assess the effectiveness of regulating online political advertising in the EU, since the mediating function that Habermas attributed to legacy media has shifted from the traditional media elites to the new elites that own the contemporary popular means of communication.

2.3 Media Independence and Active Citizens

According to Habermas, apart from structural equality, effective deliberative democracy is contingent upon two more fundamental conditions, media independence and active citizens.

For media to perform their mediating function, they must be independent from the milieu they operate. However, the German philosopher acknowledged that this condition could rarely, if ever be fulfilled, as ownership status and financial factors meddle with editorial responsibility and the human nature of journalists⁸⁰. Pointing to Silvio Berlusconi, Habermas highlights political aspirations of media owners as an aggravated challenge to media independence, since such figures can simultaneously exert influence in both directions, i.e. the formation of public opinion and politics and media regulation⁸¹. The realisation of this influence has been concretely demonstrated by the seminal work of Durante, Pinotti and Tesei, that studied the impact of the Italian

⁷⁸ Nardine Alnemr, 'Deliberative democracy in an algorithmic society: harms, contestations and deliberative capacity in the digital public sphere' [2025] *Democratization* <https://doi.org/10.1080/13510347.2025.2522920> accessed 2 July 2026.

⁷⁹ Sue Anne Teo, 'Artificial Intelligence and its "Slow Violence" to Human Rights' (2025) 5(3) *AI and Ethics* 2265 <https://doi.org/10.1007/s43681-024-00547-x> accessed 2 July 2026.

⁸⁰ Alnemr (n 78).

⁸¹ Ibid 421.

mogul's TV network, MediaSet, to electoral behaviours in Italy. According to the 2019 study, individuals who were more exposed to content from MediaSet were also more likely to vote for *Forza Italia*, Berlusconi's political party, and more susceptible to populist rhetoric⁸². Additionally, the media power of MediaSet, characterised by its entertainment-heavy content, managed to depoliticise Italian television, forever changing media culture in Italy⁸³. The example of Berlusconi could therefore be described as what Habermas calls "market colonisation", i.e. a functional restructure of mediated communication inspired by market economy doctrines, where political discourse and entertainment are interbred in pursuit of higher profits. As the scholar noted, the financing constraints of private radio and television stations lead to a commodification of all programmes, where political issues are presented performatively and simplistically, cultivating "civic privatism and a mood of antipolitics"⁸⁴. The digital sphere is a perfect example of the takeover of market imperatives in communication environments. Online platforms, originally created as a fun way to socialise and subsequently evolving as the principal means of communicating and sharing information, have nowadays shifted to advertising servicers that are financially dependent and focused on maximising user engagement. According to the historian Nial Ferguson, this profit-making nature of information sharing in digital networks is what distinguishes online platforms not only from traditional media but also traditional systems of information dissemination, namely social clubs and libraries⁸⁵. This shift however has not left legacy media unshattered, since in the digital attention economy, but has also led in the platformisation of traditional media, "transforming newsrooms into content management coordination centres"⁸⁶.

Considering the apparent difficulties in achieving the deliberative condition of an independent media environment, Habermas emphasises a second condition, the need for equitable, dynamic and informed participation of citizens in the public debate. This

⁸² Ruben Durante, Paolo Pinotti and Andrea Tesei, 'The Political Legacy of Entertainment TV' (2019) 109(7) *American Economic Review* 2497 <https://www.aeaweb.org/articles?id=10.1257/aer.20150958> accessed 2 July 2026.

⁸³ Paul Ginsborg, *Silvio Berlusconi: Television, Power and Patrimony* (Verso 2004) 45

⁸⁴ Habermas, *Between Facts and Norms* (n 46) 422.

⁸⁵ Niall Ferguson, *The Square and the Tower: Networks and Power, from the Freemasons to Facebook* (Allen Lane 2017) 354- 358.

⁸⁶ Habermas, *A New Structural Transformation* (n 28) 49.

condition is even more prevalent in the digital sphere, where information is circulated with unparalleled intensity. However, expecting citizens to be constantly informed and vigilant on their discursive functionality is quite a demanding requirement. Sapiro rightfully notes that deliberation between morally divergent groups about issues that are perceived fundamentally differently, can indeed have the opposite effect, creating a consensus on unbridged division and alienation, instead of common understandings⁸⁷. On the opposite side, Sunstein notes that deliberation without conflict of opinions leads to polarization as opinions are reinforced and validated⁸⁸. As such, a theory of reasoned consensus seems incompatible with the ideal of a liberal pluralistic society, that, united in a diversity not only tolerates but welcomes conflicts of morals and ideas that “offend, shock or disturb”– to borrow the famous phrase of the European Court of Human Rights⁸⁹. Critics even argue that, since the average citizen is far from familiar with or inclined to political topics, deliberative democracy is foundationally unattainable, especially considering the increasing complexity of contemporary decision-making mechanisms and their distancing from voters, let alone in an EU context. However, as the German scholar remarked, contemporary literature on cognitive and information processing mechanisms suggests that extensive political knowledge is not a precondition for knowledgeable political reasoning⁹⁰.

In the digital sphere, the users are an often-underestimated factor in the process of shaping online deliberations. The designer-biased executive decisions that algorithms make on content distribution, are based on data inputs provided at a granular level by users themselves. This interaction defines the algorithm’s behaviour towards a user, adjusting for example related amount of content, but also towards a user’s content in relation to a platform’s rules and to dissemination intensity to the platform society. The so-called “gaming” of a platform’s algorithm, i.e. providing specific content to direct it into behaving in a certain way, is a widespread tactic amongst influencers, activists, politicians etc. As an example of the impact of active deliberative users in the digital sphere, one scholar points to the use of the watermelon emoji from users in major platforms to refer to issues related to Palestine, since the use of the word Palestine itself

⁸⁷ Ian Shapiro, 'Enough of Deliberation: Politics is About Interests and Power' in Stephen Macedo (ed), *Deliberative Politics: Essays on Democracy and Disagreement* (OUP 1999) 28, 31.

⁸⁸ Cass R Sunstein, *Why Societies Need Dissent* (Harvard University Press 2003) 111–14.

⁸⁹ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 49.

⁹⁰ Habermas, *Between Facts and Norms* (n 46) 420.

seems to cause a downgrade in the dissemination of content by the platform algorithms⁹¹. However, this example could prove rather the opposite. By substituting the word Palestine, which is understood by all users, with an emoji, i.e. a symbol that is understood only by those that know the reference, the full meaning of a message containing this symbol can be communicated only between the users familiar with the dual meaning of the emoji. As such, even if the algorithm is gamed to normally disseminate an otherwise restricted message, this message cannot be perceived by all users / participants in the digital sphere, enhancing the entrapment of public debate in distinct echo-chambers.

More importantly, such information is not necessarily true or accurate. False messages pollute the information flows in the public sphere, as fictitious stories compete with lived experiences for shared attention, undermining the creation of public opinion. Deliberative outcomes feel less inclusive. When citizens adopt the projected falsehoods through the feedback loophole mechanism, the epistemic quality and truth-seeking function of the deliberative process is further inhibited. Awareness of this intrusion and its impact to procedural integrity generates public distrust towards public opinion and as such decreased legitimacy of the deliberative process⁹². In a post-truth political milieu, people favour causes over facts. Truth becomes a partisan issue and therefore is of little importance.

However, as Ana Tanasoca, visiting fellow at the Norwegian Nobel Institute, notes, “deliberation is about weighting arguments”⁹³. As discussed in the beginning of this Chapter, in the deliberative model, the capacity of citizens to assess in an educated manner the different messages in the public debate is a *condicio sine qua non* for democratically legitimate political decisions. Nevertheless, forming an educated opinion is not only about receiving true information and a diversity of views but also requires reflecting on the relevant discussion and the positions one holds. Fake (bot) traffic and algorithmic amplification largely skew the capacity of citizens to reflect and deliberate internally the information circulated in online discourse, as new content is

⁹¹ Alnemr (n 78) 9-10.

⁹² Alnemr (n 78) 2.

⁹³ Ana Tanasoca, 'Against Bot Democracy: The Dangers of Epistemic Double-Counting' (2019) 17 *Perspectives on Politics* 989.

constantly flowing and specific arguments are algorithmically presented as the prevailing ones⁹⁴.

2.4 Digital vs Traditional Elites

It is important at this point to take again a step back and juxtapose the criticism towards social media as news environments with the quality of legacy media.

As discussed in this Chapter, according to deliberative theory, deliberative processes generate democratic legitimacy and political consensus is generated through discursive processes, where ideally all relevant opinions and information are included, adequately and properly discussed and debated, leading to well-grounded and clear positions that reflect social issues and priorities. Such processing of ideas and opinions is possible in democracies due to the mediating role of the press, that filters the wild flows of messages in society. In the digital sphere, this filtering function is performed by platform algorithms, that are designed by their owners with opaque criteria and with the purpose of maximising user engagement. As such, the dissemination of online information happens in distinct discursive enclaves, the echo-chambers, while the content that reaches users is neither of uniform concern nor vetted for its validity.

In analysing the impact of social media in democratic processes, it is easy to paint a picture where legacy media are portrayed as ostensibly virtuous and objective, shielded and indifferent to financial and political interests. As pointed out throughout this thesis, this is far from true. Scholars, particularly of the deliberative schools, and researchers have consistently been wary of the actual impact of media in democratic politics, from partisanship to outright information manipulation. As there's no algorithmic view from nowhere, the same principle applies for journalistic and editorial content. Even more, the ideological character of an outlet or outright affiliation with a political party or centre of interests is not a rare phenomenon. Nor is the publication of biased, untrue or misinforming content. As Chambers puts it "lies, rumours, and misinformation have always been a staple of any public sphere where strategic actors vie for power and influence"⁹⁵. The difference is that, even when doing so, legacy media largely perceive

⁹⁴ Ibid 992-994.

⁹⁵ Simone Chambers, 'Truth, Deliberative Democracy, and the Virtues of Accuracy: Is Fake News Destroying the Public Sphere?' (2021) 69 Political Studies, 150.

these practises as part of their political mediating role and have been designed to serve as transmitters of important political news and facts. In contrast, social media were destined to be “a fun way for people to socialise” and are not structured to serve a mediating purpose⁹⁶.

Looking at the picture we have framed so far, it feels then necessary to define the practical value of deliberative democracy as a theoretical framework for examining the effectiveness of regulating online political advertising in the EU. Deliberative democracy has been an influential normative framework in western democracies of the 21st century⁹⁷ and a “health indicator” for democracies according to the Council of Europe⁹⁸. Deliberative democracy principles should be understood as golden standards of discursive processes that seek to be perceived as legitimate, rather than minimum requirements for democratic legitimacy, used to identify specific causes for existing lacunas of legitimacy. As James Bohman puts it, Habermas views ‘public deliberation as a normative ideal and as a test for democratic legitimacy’⁹⁹, heralding as such the revival of radical democracy and rejecting morally void utilitarian and individualistic understandings of social behaviour¹⁰⁰.

Deliberative theorists are aware that the deliberative model maintains a high standard for civil society, the political system and the gatekeepers of communication. Looking into the European project and its shortcomings, Habermas points to the mismanagement of the aftermath of the 2008 financial crisis and the constrained role of the only democratically elected body in the EU, the European Parliament, to explain falling levels of EU legitimacy amongst its citizens¹⁰¹. This distrust continues to this day, with only half of EU citizens trusting the Union in 2025, the highest level since the financial

⁹⁶ Ibid.

⁹⁷ Simone Chambers, 'Deliberative Democratic Theory' (2003) 6 Annual Review of Political Science 307.

⁹⁸ Council of Europe Congress of Local and Regional Authorities, 'Beyond Elections: The Use of Deliberative Methods in European Municipalities and Regions' Report CG(2022)42-12final (23 March 2022)[https://search.coe.int/congress#/%22CoEIdentifier%22:\[%220900001680a5b00d%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/congress#/%22CoEIdentifier%22:[%220900001680a5b00d%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}) accessed 2 July 2026.

⁹⁹ James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (MIT Press 1996) 3.

¹⁰⁰ Michele Blanco and Luigia Altieri, 'Deliberative democracy in Habermas' (2025) 9(1) Sociology and Social Work Review 154, 161.

¹⁰¹ Jürgen Habermas, 'Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the Pouvoir Constituant Mixte' (2017) 55(2) JCMS: Journal of Common Market Studies 171

<https://doi-org.ezproxy.its.uu.se/10.1111/jcms.12517> accessed 2 July 2026.

crisis¹⁰². Along with scholars like Piketty, Volpe and Streeck, Habermas considered that the current yet protracted crisis of institutions and trust in the EU can only be overcome if “more democracy” is instilled in the mix, i.e. increased direct participation and deepened solidarity¹⁰³.

In the backdrop of this crisis of institutional legitimacy and trust and the prevalence of new information sharing technologies, focusing on the ability of citizens to effectively feed hopes, needs, fears and dreams into decision-making structures, becomes a pertinent political desideratum¹⁰⁴.

2.5 Deliberative Europe

Despite criticisms and shortcoming, in the turn of the century deliberative practises maintained a strong momentum for strengthening existing forms of representative democracy. As highlighted by Chambers, deliberative democracy has developed into the working theory of the 21st century¹⁰⁵, while the significance of promoting effective deliberation and civil society engagement for healthy democracies in the digital era has been a common place the agendas of international¹⁰⁶ and European organisations. As such, deliberative democracy offers a valuable theoretical framework for assessing the EU regulation of online political advertising.

The Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2023)6, which called on member states to incorporate deliberative processes in all levels of governance and proposed a set of guiding principles, reaffirming that deliberative participatory practises sit “at the very heart of democracy” and that

¹⁰² European Commission, ‘Standard Eurobarometer 103: Spring 2025 — Europeans and the EU budget’ (DG COMM 2025) QA6 <https://europa.eu/eurobarometer/surveys/detail/3372> accessed 2 July 2026.

¹⁰³ Blanco (n 100) 155.

¹⁰⁴ Steven Blockmans, ‘Democracy as an Ecosystem’ in Steven Blockmans and Sophia Russack (eds), *Deliberative Democracy in the EU: Countering Populism with Participation and Debate* (Rowman & Littlefield International 2020) 13.

¹⁰⁵ Chambers (n 97) 307.

¹⁰⁶ UNHRC, ‘Equal Participation in Political and Public Affairs’ Res 30/9 (12 October 2015) UN Doc A/HRC/RES/30/9 and OECD, *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave* (OECD Publishing 2020) <https://doi.org/10.1787/339306da-en> accessed 31 May 2026.

“dialogue between citizens and decision makers is essential for democracy, as it strengthens trust, the legitimacy of democratic institutions and the effectiveness of their actions”¹⁰⁷.

Particularly in relation to electoral communication, the European Commission for Democracy through Law, the advisory body of CoE known as the Venice Commission, has developed a Code of Good Practice in Electoral Matters, a series of regularly updated guidelines and good practises on regulating and monitoring elections, political participation and campaigning, aimed at improving democratic processes and furthering the common electoral heritage of Europe¹⁰⁸. In 2024, the Venice Commission issued an interpretative declaration of this Code, that aimed to bring its guiding principles in the digital age¹⁰⁹.

In the EU polity, deliberative and participatory principles are foundational elements of the Union, instilled in the TEU. Inter alia, the Treaty enshrines the right of EU citizens “to participate in the democratic life of the Union”¹¹⁰ and the obligation of EU institutions to properly facilitate the exchange of ideas between citizens and civil society in the Union’s affairs¹¹¹, while maintaining “an open, transparent and regular dialogue”¹¹², with a particular emphasis on ensuring coherence and transparency¹¹³.

In a 2017 speech at La Sorbonne, French President Emmanuel Macron, one of the oldest members of the current European Council, addressing the crisis of democratic legitimacy in the Union, emphasised the need to “identify priorities, concerns and ideas for the future of Europe” through “open, free transparent European debate”¹¹⁴, echoing

¹⁰⁷ Council of Europe Committee of Ministers, 'Recommendation CM/Rec(2023)6 on deliberative democracy' (6 September 2023). See also, the right to participate in local affairs [Additional Protocol to the European Charter of Local Self-Government (CETS No.207)].

¹⁰⁸ European Commission for Democracy through Law (Venice Commission), 'Code of Good Practice in Electoral Matters' Study No 190/2001, CDL-AD(2002)023rev2-e (23 May 2003).

¹⁰⁹ European Commission for Democracy through Law (Venice Commission), 'Interpretative Declaration of the Code of Good Practice in Electoral Matters as concerns Digital Technologies and Artificial Intelligence' CDL-AD(2024)044 (7 December 2024).

¹¹⁰ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 10(3).

¹¹¹ Ibid art 11(1).

¹¹² Ibid art 11(2).

¹¹³ Ibid art 11(3).

¹¹⁴ Emmanuel Macron, 'President Macron Gives Speech on New Initiative for Europe' (The Élysée Palace, 26 September 2017) <https://www.elysee.fr/en/emmanuel-macron/2017/09/26/president-macron-gives-speech-on-new-initiative-for-europe> accessed 31 May 2026.

the aforementioned concerns of the German philosopher. On the practical level, the Commission launched in 2021 the Competence Centre on Participatory and Deliberative Democracy, to foster deliberative and participatory capacity and best practises across EU governing structures¹¹⁵. The European Democracy Shield (EDS), EU's latest policy package for fostering democratic resilience in the digital era, focuses on strengthening functions that are essential for effectively participating in democratic life from a deliberative perspective, namely awareness and informational integrity, institutional and media independence and engagement of civil society¹¹⁶. The Digital Services Act and the TTPA Regulation, two of the central legislative pieces of EDS and main topics of the present research, play a fundamental role in that regard, aiming to enhance openness and transparency in the digital public sphere and safeguard electoral integrity and democratic processes¹¹⁷.

2.6 Conclusion

This chapter has fleshed out the communication mechanisms that deliberative democracy theory, considers imperative for political decisions to attain democratic legitimacy. Political discussions need to account for concerns and voices of all citizens and be reflective to public responses, are facilitated by mediating actors that must be fully independent in their function and seek to facilitate proper transmission of information between the citizenry and their interaction with decision makers, while citizens must strive to remain informed and vigilant in their communicative function. These requirements are particularly demanding, and pre-internet societies did not unequivocally meet them, but the structural differences of the faster and more intense communication mechanisms of the digital era further strain the principles of deliberative democracy. Algorithmic dissemination of content skews the deliberative capacity of individuals, as users are entrapped in informational echo-chambers where they only engage with familiar opinions, while the constant flow of content hinders reflection on pressing issues and the validity of the information is hard to assess.

¹¹⁵ European Commission, 'About the Competence Centre on Participatory and Deliberative Democracy' (Knowledge for Policy, 30 June 2022) https://knowledge4policy.ec.europa.eu/participatory-democracy/about_en accessed 31 May 2026.

¹¹⁶ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication: European Democracy Shield: Empowering Strong and Resilient Democracies' JOIN(2025) 791 final (12 November 2025) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025JC0791> accessed 31 May 2026.

¹¹⁷ Ibid.

In Europe, deliberative democratic ideals have been central to the formulation of the post WWII order, while their significance has emphatically reemerged in response to the EU's crisis of democratic legitimacy after the 2008 financial crisis and the subsequent rise of populism across the Union. As part of its efforts to protect democratic integrity in the digital era, the EU has attempted to regulate online political communication through the Digital Services Act and the newly implemented Regulation of Transparency and Targeting of Political Advertising. These two legislative pieces are poised to create tension with ECHR human rights standards in relation to the protection of freedom of expression in online communication under Article 10 as well as the right to free elections under Article 3 of Protocol No.1. According to the Court's multi-quoted interpretation, freedom expression is "the bedrock of democracy" and restrictions imposed on rights holders should be prescribed in law, be proportionate and strictly necessary and answer a pressing social need in a democratic society¹¹⁸.

The following chapters of this thesis will analyse the standards developed under ECHR in relation to political communication and measure the compliance of the EU's regulatory efforts of protecting deliberative integrity in the digital sphere against these standards.

¹¹⁸ *Bowman v United Kingdom* App no 24839/94 (ECtHR, 19 February 1998) para 42.

Chapter 3

Electoral Standards and Digital Suffrage

3.1 Elections and Freedom of expression

As discussed in Chapter 2, deliberative democracy theory stresses that democratic legitimacy of political decisions requires the free, equal and inclusive circulation and discussion of political ideas in the public sphere. When individuals can access all information and opinions around an issue, they can engage with the different viewpoints and form “considered opinions”, understanding all political choices and opting for the one resonating most. In their part, through an uninhibited flow of opinions, politicians can effectively reflect on public perception and reasoning on social issues and political decisions and finetune decision-making to match people’s expectations.

In the ECHR, the conjunction of freedom of political debate and free elections is considered the bedrock of any democratic system¹¹⁹. States have an obligation under Article 3 Protocol No. 1 to hold free elections that “ensure the free expression of the opinion of the people in the choice of the legislature”¹²⁰. As held by the Court in the seminal *Hirst vs. UK* case “the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law”¹²¹. Article 3 Protocol No1 stands out grammatically in the Convention system, as it does not directly prescribe free elections as an individual right – let alone collective- but rather as an obligation for the High Contracting Parties. Through judicial interpretation, this provision has evolved to encompass the right to vote (“active” aspect) and the right to stand for elections (“passive” aspect)¹²². According to the Court, these rights are not absolute but subject to “implied limitations”, meaning that their limitations are not specified in a list of legitimate aims, as is the case with rights under Articles 8 to 11. States are afforded with a wider margin of appreciation when organising national electoral systems and determining the conditions upon which the right to vote and the right to stand for

¹¹⁹ Ibid.

¹²⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) [ECHR] Protocol 1, art 3.

¹²¹ *Hirst v United Kingdom (No 2)* [GC] App no 74025/01, ECHR 2005-IX, para 58.

¹²² *Mathieu-Mohin and Clerfayt v Belgium* (1987) 10 EHRR 1, paras 48–51.

elections are exercised, provided that ECHR standards are upheld¹²³. Due to this wide margin of appreciation, the Court does not examine whether interferences with Article 3 Protocol 1 are proven to be necessary in a democratic society or to meet a pressing social need. Instead, in the context of the constitutional and cultural tradition of each State, the Court assesses whether interferences with the right to vote and the right to stand for elections are arbitrary or disproportionate to the aim pursued, or whether the free expression of the opinion of the people is rendered ineffective¹²⁴.

The Court, developing through its case-law the right to vote and the right to stand for elections as well as its limitations, the role of the press and the corresponding state obligations, has captured the interrelation between freedom of expression and free elections across the European constitutional traditions and formulated an advanced set of standards of electoral law aimed at fostering democratic processes across Europe. Since 2002, the European Commission for Democracy Through Law (“the Venice Commission”), the advisory body of Council of Europe on electoral matters, has compiled the Court’s standards and national practises into a periodically updated Code of Good Practise on Electoral Matters, reflecting a common and evolving European electoral heritage based at universal, equal, free, secret and direct suffrage¹²⁵. Starting from the Court’s jurisprudence, this Chapter analyses the contemporary standing of freedom of expression and the right to free election for the distinct actors of the political debate under ECHR and explores how the good practices put forward by the Venice Commission have evolved across CoE to address electoral issues of the digital age.

As noted in the travaux préparatoires of Article 3 Protocol 1, freedom of expression, the liberty to receive and impart ideas, is an essentially implied condition in the choice of legislature¹²⁶, highlighting how intrinsically inter-related freedom of expression under Article 10 is to the right to free elections under Article 3 Protocol 1, particularly in relation to freedom of political debate¹²⁷. During election periods, all kinds of opinion

¹²³ *Lykourazos v Greece* App no 33554/03, ECHR 2006-VIII 1, paras 51-52.

¹²⁴ *Ždanoka v Latvia* [GC] App no 58278/00, ECHR 2006-IV, paras 103-104 and 115.

¹²⁵ Venice Commission, *Code of Good Practice in Electoral Matters* (CDL-AD(2002)023rev, 2002) section 5.

¹²⁶ *Mathieu-Mohin* (n 122) para 53; Council of Europe, 'Travaux Préparatoires on Article 3 of Protocol No 1 to the European Convention on Human Rights' Cour(86)36 (European Court of Human Rights 1986) <https://www.echr.coe.int/documents/d/echr/echrtravaux-p1-3-cour-86-36-bil1221606> accessed 31 May 2026.

¹²⁷ *Orlovskaya Iskra v Russia* App no 42911/08 (ECtHR, 21 February 2017) para 110.

and information must be permitted to circulate freely, as the Grand Chamber noted in the *Centro Europa 7 S.r.l. and Di Stefano v. Italy* case:

“Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself”.¹²⁸

As such, freedom of expression, the liberty to receive and impart ideas, is considered under ECHR an essential foundation of democratic societies is not limited to ideas that are commonly accepted and well received by the public, but protects especially those ideas that “shock, offend or disturb”¹²⁹, challenging social norms and beliefs, as well as ideas and opinions that call into question the organisation of the state¹³⁰. Such are the demands of pluralism, without which there can be no meaningful democracy. Under ECHR, limitations to freedom of expression must be prescribed by law, pursue legitimate aims, as exhaustively set out in Article 10 para 2, and be necessary in a democratic society. The Court recognises that it is unattainable to require States to formulate rules that would allow citizens to regulate their actions in terms of political speech with absolute certainty. Regardless, restrictions to political speech must be formulated with sufficient precision, enabling people to reasonably foresee the consequences of their expressive conduct¹³¹, while interferences must be context-specific and account for the circumstances of each case¹³². Particularly in relation to debates on questions of public interest, the Court has been adamant that the margin of appreciation for state interference is particularly narrow and any limitations imposed

“must reflect, not thwart, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at determining the will of the people through universal suffrage”¹³³.

¹²⁸ *Centro Europa 7 S.r.l. and Di Stefano v Italy* [GC] App no 38433/09 (ECHR 2012) para 129.

¹²⁹ *Handyside v United Kingdom* App no 5493/72 (ECHR 7 December 1976) Series A no 24, para 49.

¹³⁰ *Centro Europa* (n 128) para 129.

¹³¹ *Perinçek v Switzerland* [GC] App no 27510/08 (ECHR 2015) para 131.

¹³² *Ibid*, para 229.

¹³³ *Georgios Papadopoulos v Cyprus* App no 21454/21 (ECHR 2025) para 66.

Therefore, while States have a wide margin of appreciation under ECHR in organising their electoral systems, they have limited leeway in interfering with the dissemination of political messaging within these systems. As such, the Court examines cautiously state interferences to political advertising, as the latter is considered a form of political speech on matters of public interest. The adherence of State rules and practices on political advertising with the Convention depends heavily on the specific contexts and the societal choices national legislators must make to safeguard democratic processes. The Court places serious significance to the underlying legislative aims, the quality of parliamentary and judicial review of regulations and how compelling the general justifications are¹³⁴. As such, restrictions that aim to protect pluralism, the quality of political debate or the rights of others or to avert rise to sensitivities as to divisiveness or offensiveness are more acceptable, even if imposed blanketly¹³⁵. However, restrictions must not inhibit access to potent means of political messaging, to a point of disadvantaging one or more political parties and reducing pluralism in the political debate¹³⁶.

3.2 Democracy and the Press

In the pluralistic political debate, the Court understands the role of media as gatekeepers and mediators in the same manner as deliberative scholars, attributing special importance to freedom of press and editorial independence and prohibiting state interferences that can have a chilling effect in the press's function¹³⁷. As discussed in Chapter 2, according to deliberative theory political communication in the public sphere, mediated by journalists and editors, functions as a feedback loop mechanism, where voters engage with the various political positions and inform their own opinions, while politicians measure public sentiment towards trending political issues to secure public legitimacy of political decisions.

In the words of the Strasbourg Court:

¹³⁴ *Animal Defenders International v United Kingdom* [GC] App no 48876/08, (ECtHR 2013) para 102.

¹³⁵ *Murphy v Ireland* App no 44179/98 (ECHR 2003) paras 67–68.

¹³⁶ *TV Vest AS and Rogaland Pensjonistparti v Norway* App no 21132/05 (ECHR 2008) paras 70-74.

¹³⁷ *Goodwin v United Kingdom* (1996) 22 EHRR 123, para 39.

“Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society”¹³⁸

Crucially, the Court understands this mediating role of the press in the public debate to be a functional rather than a statutory feature of media. Civil society organisations that serve a similar purpose in promoting discussion on public affairs, for example by organising public debates, perform, like the press, the role of “social watchdogs” and as such their activities, are entitled to similar protection under the Convention.¹³⁹ Recognising the impact of the Internet in the dissemination of information and ideas, the Court has also extended the protection of Article 10 to bloggers and popular social media users, using the same functional criterion¹⁴⁰.

In the digital era, effectively participating in the free political debate inextricably entails a capacity for participating in the digital information society. Although the Strasbourg Court has not recognised a right to internet access per se, internet access is considered an essential condition for realising the free exchange of ideas and opinions and the pursuit of an open public debate¹⁴¹.

As held in the 2015 seminal *Cengiz and Others v. Turkey* case:

“[T]he Internet has now become one of the principal means by which individuals exercise their right to freedom to receive and impart information and ideas, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest. ... User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression [...]”¹⁴²

¹³⁸ *Castells v Spain* App no 11798/85 (ECHR 23 April 1992) Series A no 236, para 43.

¹³⁹ *Magyar Helsinki Bizottság v Hungary* (GC) App no 18030/11 (ECHR 2016), para 166.

¹⁴⁰ *Ibid* 168.

¹⁴¹ *Delfi AS v Estonia* [GC] App no 64569/09, (ECHR 2015), para 133.

¹⁴² *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECHR 2015-VIII) paras 49, 52.

For the citizens the members of CoE that are also members of the EU, the use of Internet has been a prevalent means of information exchange and participation to the public debate as described in the Court's jurisprudence. In 2025, digital means were used for information purposes in the EU on a daily level by the majority of citizens (59%), especially those below the age of 40 (65%), while 40% of EU citizens use social media and search engines to get informed on social and political issues¹⁴³.

The Court, recognising the role of the Internet in fostering citizen journalism and giving voice to political concerns overlooked by legacy media and the fact that information and services are increasingly becoming available exclusively online¹⁴⁴, applies the protective net of Article 10 vis-à-vis to online communication. In its landmark 2012 *Ahmet Yıldırım v Turkey* case, the Court held that unhindered internet access is directly linked to the wording of Article 10, which guarantees the protection of freedom of expression "regardless of frontiers"¹⁴⁵. This interpretative evolution has been monumental, leading to online activities such as the use of video platforms like YouTube¹⁴⁶ the maintenance of Internet archives¹⁴⁷ or a political party's application that allowed voters to anonymously share photos of their invalid ballots in a referendum and comment on their choice¹⁴⁸, being protected as forms of expression. Moreover, online content dissemination is protected under the Convention against rules of objective liability, as such measures could have unforeseen effects in online freedom of speech and a direct or indirect chilling effect¹⁴⁹. As highlighted by the Venice Commission, the right of voters to freely seek, receive and share information online should not be understood simply as a right of accessing and browsing in the digital space but also

¹⁴³ European Parliament, *Social Media Survey 2025* (Flash Eurobarometer FL014EP, European Union 2025) <https://europa.eu/eurobarometer/surveys/detail/3592> accessed 2 July 2026, 3.

¹⁴⁴ *Jankovskis v Lithuania* App no 21575/08 (ECtHR, 17 January 2017) para 49; *Kalda v Estonia* App no 17429/10 (ECtHR, 19 January 2016) para 52.

¹⁴⁵ *Ahmet Yıldırım v Turkey* App no 3111/10, (ECHR 2012-VI 341) para 67.

¹⁴⁶ *Cengiz* (n 142) para 23.

¹⁴⁷ *Times Newspapers Ltd v United Kingdom (nos 1 and 2)* App nos 3002/03 and 23676/03 (ECHR 2009-I 329) para 45.

¹⁴⁸ *Magyar Kétfarkú Kutya Párt v Hungary* [GC] App no 201/17 (ECHR 2020-I 255) para 91.

¹⁴⁹ *Magyar Jeti Zrt v Hungary* App no 11257/16 (ECtHR, 4 December 2018) para 83.

doing so openly, privately and confidentially¹⁵⁰, through the device of choice and without undue interference¹⁵¹.

3.3 The right to form an opinion

From a voter's perspective, the interrelation between the freedom of expression and the right to free elections is consolidated to a *right to form an opinion*. As described by the Strasbourg Court in the 2017 landmark case *Davydov and Others vs. Russia*, the right of voters to freely form an opinion constitutes the “starting” point of the guarantees conferred under Article 3 Protocol 1¹⁵².

As an aspect of free suffrage, the right to form an opinion encompasses the freedom of voters to access and evaluate all kinds of information and opinions before casting their ballot, without undue interference¹⁵³. Crucially, it not only the substance of ideas and opinions that is protected under Article 10 ECHR, but also the form¹⁵⁴ and means¹⁵⁵ by which such information is disseminated, since any restriction would necessarily interfere with the right to receive and impart this information.

In terms of the voters right to freely evaluate information and opinions, or reflect in deliberative terms, the Court, respecting the wide margin of appreciation of States in organising their electorate systems¹⁵⁶, does not impose specific obligations. The Venice Commission has emphasised the importance of silence periods, also known as days of reflection, short time periods before the elections where political advertising, campaigning or the presentation of polls is prohibited, “to allow voters to absorb and digest all the information received during the election campaign and to make a choice without pressure¹⁵⁷. Such periods exist in most CoE members and are widely considered

¹⁵⁰ Venice Commission and Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law (DGI), CDL-AD(2019)016, *Joint Report on Digital Technologies and Elections* para 122.

¹⁵¹ Venice Commission, *Interpretative Declaration of the Code of Good Practice in Electoral Matters as Concerns Digital Technologies and Artificial Intelligence* (5–6 December 2024) CDL-AD(2024)044-e, para 35.

¹⁵² *Davydov and Others v Russia* App no 75947/11 (ECtHR, 30 May 2017) para 285.

¹⁵³ Venice Commission, *Code of Good Practice in Electoral Matters* (n 125) section I.3.1.

¹⁵⁴ *Jersild v Denmark* (1994) 19 EHRR 1, para 31.

¹⁵⁵ *Cengiz* (n 142) para 56.

¹⁵⁶ *TV Vest AS* (n 136) paras 65-67.

¹⁵⁷ Venice Commission, *Report on Electoral Law and Electoral Administration in Europe: Synthesis Study on Recurrent Challenges and Problematic Issues* (8–9 October 2020) CDL-AD(2020)023 para 186.

a good practise aimed at protecting the voters' right to freely form their opinion¹⁵⁸. While in principle silence periods apply to digital campaigning as well, in practice they are hardly enforced¹⁵⁹.

3.4 The right to political communication

For political candidates, the conjunction of freedom of expression and free elections formulates the essence of the right to stand for elections, a right “inherent in the concept of a truly democratic regime”¹⁶⁰. In order for voters to effectively exercise their right under Article 3 Protocol 1 to freely express their opinion in the choice of legislature, candidates and political parties must be able to freely and equitably circulate their political messaging and advertise ideas and political programmes, even those that challenge the way a state is organised¹⁶¹ or deliver harsh judgements upon political opponents. While protection of the rights of others, particularly of human dignity and reputation, constitutes a legitimate aim for limiting freedom of speech under Article 10 para 2, this threshold is substantially lower with regards to political figures, that knowingly open themselves to close scrutiny in the public sphere, a process that is integral for the public debate of political issues. Given that, as described, establishing rules that regulate expressive conduct with absolute certainty is unattainable, political speech is strongly protected, provided that is delivered in good faith, in the context of the political arena, and that value judgements are not masked as facts¹⁶². As such, the political arena is expected to tolerate harsh criticism, as long as it does not take the form of wanton denigration or hate speech¹⁶³. Hate speech or wanton denigration are not clearly defined by the Court. Instead, the critical factor is whether the expressive conduct in question is intended to contribute to the public debate in a manner compatible with the Convention and its underlying values. As such, political speech that promotes or justifies violence, discrimination, intolerance or hatred may normally be stripped of the protection of Article 10, as running opposite to the purposes of the Convention and the requirement for tolerance in the public debate¹⁶⁴.

¹⁵⁸ Venice Commission, *Report on Electoral Law and Electoral Administration in Europe* (9–10 June 2006) CDL-AD(2006)018, para 186.

¹⁵⁹ Venice Commission and Directorate General of Human Rights and Rule of Law (n 150) para 124.

¹⁶⁰ *Kudeshkina v Russia* App no 29492/05 (ECtHR, 26 February 2009) para 87.

¹⁶¹ *Centro Europa* (n 128) para 129.

¹⁶² *Lingens v Austria* (1986) 8 EHRR 407 para 42.

¹⁶³ *Atamanchuk v Russia* App no 4493/11 (ECtHR, 11 February 2020) paras 47–52.

¹⁶⁴ *Perinçek* (n 131) para 230; *Zemmour v France* App no 63539/19 (ECtHR, 20 December 2022) para 49.

Compared to the limited room for state intervention in political speech and the right of voters to access and evaluate information, states maintain a broader margin of appreciation in respect of the organisational aspect the right to stand for elections under Article 3 Protocol 1, that is incumbent upon varying political, social and constitutional European traditions¹⁶⁵. Within this margin of appreciation however, the principle of equality of opportunity requires states, as the ultimate guarantors of the free and pluralistic debate¹⁶⁶, to ensure that the rules of the game, i.e. electoral law, establish a level playing field for competing candidates and political parties, affording equitable access to resources, advertisement¹⁶⁷ and electoral remedies¹⁶⁸. As such, when state financial support or free electoral media coverage are made available under domestic electoral laws, political contestants should be able to receive their equitable share to enhance their political messaging¹⁶⁹.

The ECHR does not confer any in concreto right to political contestants to receive state financial support, free airtime coverage or other forms of backing to disseminate their political messaging, such as the use of public facilities. However, the Venice Commission, reflecting Habermas's concern on the impact of financial dependence of actors for the public debate, stressed the significance of public funding and free airtime for campaigning and advertising during elections, as a fundamental measure in effectively realising free political debate, strengthening political independence from financial centres and addressing corruption at a root level, without however leading to a state overreliance¹⁷⁰. Most members of the Council of Europe provide some sort of public funding, depending on parliamentary power or previous election results¹⁷¹, while equal free airtime to public-owned media is observed throughout CoE, Free or equitable access to private held media is observed in a lesser extent, with most jurisdictions limited to the prohibition of discrimination in relation to advertising practises in private media, a practise also followed under EU law. A significant parameter highlighted by

¹⁶⁵ *Etxeberria and Others v Spain* App nos 35579/03, 35613/03, 35626/03 and 35634/03 (ECtHR, 30 June 2009) para 50; Davydov (n 152) para 286.

¹⁶⁶ *Animal Defenders* (n 134) para 112.

¹⁶⁷ *Bowman* (n 118) paras 31-34.

¹⁶⁸ *Davydov* (n 152) para 274.

¹⁶⁹ Venice Commission, *Code of Good Practice in Electoral Matters* (n 125) Section I.2.3.

¹⁷⁰ Venice Commission, *Report on Electoral Law* (n 158) para 166-169

¹⁷¹ Venice Commission, *Code of Good Practice in Electoral Matters: Explanatory Report* (18–19 October 2002) CDL-AD(2002)023, para 111.

the Venice Commission relates to substantial equality in relation to timing and location of advertising space within the medium, for example by maintaining access to prime-time advertising slots to all contestants. Building on the good practises for enhancing equality of opportunity in the political arena, the Venice Commission has stressed the need for access to private media to be legally guaranteed in all CoE members¹⁷², which in the digital era translates to equal opportunities for contestants to access and use digital technologies functions and services of internet intermediaries and, crucially, to content dissemination¹⁷³.

3.5 Campaign limitations

While States enjoy a wide margin of appreciation in designing the rules of political campaigning, the principle of equality of opportunity must always be adhered to. Equality of opportunity relates not only to the right of candidates and parties to receive support or be able to operate without interference but to limitations on campaigning activities and spending, especially on advertising, and transparency obligations, that aim to ensure political competitiveness and shield the electoral arena from undue interference¹⁷⁴.

Most states in the Council of Europe and the EU impose spending caps on candidates and parties advertising, however the rules of paid political advertising vary startlingly. Several countries such as Austria, Belgium or France, prohibit political advertising on TV and less often radio, allowing only press advertisements in defined pre-electoral periods. On the contrary, countries such as Poland, Sweden or Greece, make no such distinction¹⁷⁵.

Reflecting the general principle under ECHR for legal certainty, Venice Commission has highlighted the need for such limits to be designed clearly and precisely, not leaving room for ambiguity, emphasising that, where such advertising is permitted, providers must offer consistent and equitable rates, as well as clear labelling of the candidate or

¹⁷² Venice Commission, *Code of Good Practice in Electoral Matters* (n 125) section I. 2.3c.

¹⁷³ Venice Commission, *Interpretative Declaration* (n 151) sections 2.9, 2.10.

¹⁷⁴ *Animal Defenders* (n 134) para 112.

¹⁷⁵ Elena Fiore, Antonella Seddone and Daniela R Piccio, 'Securing Democracy: Online Political Advertising Regulations and Practices in the EU and its Member States' (2025) *Global Policy* 1, 12 <https://doi.org/10.1111/1758-5899.70080>, 3-5

party behind the content¹⁷⁶, disclosing not only the identity of the sponsor but also the means and techniques of dissemination¹⁷⁷. The advisory body has stressed the need for imposing spending constraints and transparency obligations on digital advertising as well, primarily labelling electoral advertising as such and disclosing not only the identity of the sponsor but also the means and techniques of dissemination¹⁷⁸. However, as discussed, the regulation of online political advertising across Europe remains a deeply diverged field. As it will be thoroughly discussed in the following Chapter, the EU's Regulation on Transparency and Targeting of Political Advertising constitutes a pioneering and ambitious effort in regulating online political advertising across the Bloc, whose members constitute the majority of the Council of Europe.

Sharing the position of deliberative theory that democracy is not confined in the ballot box, the Strasbourg Court understands the democratic process as “a continuing one to be nurtured at all times by a free and pluralistic debate”¹⁷⁹. As such, the circulation of political messaging is protected not only during an electoral period, which is of course of heightened importance, but throughout the electoral cycle. As it will be discussed in the following chapter, EU rules on political advertising follow a similar approach, being applicable throughout the electoral cycle but becoming stricter in the last three months leading up to electoral events, prohibiting political advertising by non-EU-nationals and imposing heightened obligations to providers of advertising services, especially online platforms.

3.6 Media obligations

As discussed in the beginning of this Chapter, the Strasbourg Court places particular emphasis on the role of media as gatekeepers and mediators of the pluralistic political debate, in the same manner as deliberative theorists.

In fulfilling their essential role in democratic societies, the press has a heightened duty and responsibility to impart information and ideas on all matters of public interest, while respecting bounds, in relation to reputation and rights of others or national

¹⁷⁶ Venice Commission, *Report on Electoral Law* (n 158) para 170.

¹⁷⁷ Venice Commission, *Interpretative Declaration* (n 151) section 2.11.

¹⁷⁸ Ibid.

¹⁷⁹ Animal Defenders (n 134) para 111.

interests.¹⁸⁰ Crucially, as analysed earlier, the public has a right to receive these ideas and information and political actors have a right to have their voices heard. As such, in mediating the pluralistic debate, the press serves a dual role, functioning as a medium of political communication, especially political advertising, but also as public “watchdog”, performing an independent exercise of freedom of press, by bringing pressing issues to light and subjecting them to journalistic investigation, i.e. reporting and commenting, on the basis of free editorial choice¹⁸¹. The same role and protection are afforded *mutatis mutandis* to human rights defenders¹⁸², academic researchers¹⁸³ and literature authors on matters of public interest¹⁸⁴, as they all serve a “watchdogging” role in the public sphere, informing other members of the public debate on matters of importance. Under this functional criterion and recognising the Internet’s significance in enhancing public’s access to information and stimulating exchange of ideas, the Court has also granted the same level of protection of Article 10 to bloggers and popular social media users¹⁸⁵.

As highlighted by the Court, under ECHR, the duty of journalists and media professionals to mediate the political debate entails a requirement to act in good faith and maintain impartiality and objectivity in the manner information is presented, as well as an obligation to provide accurate and reliable information, in accordance with the ethics of journalism and consideration of the rights of others and national interests¹⁸⁶. Given the narrow margin of state appreciation for imposing restrictions on freedom of expression related to political debate¹⁸⁷, codes of ethics are of prime importance as soft-law instruments of self-regulation, setting practise standards and cultivating a business culture and, as discussed in the next chapter, have become of great importance in the digital era and the mediation of political communication by online platforms. The free exchange of ideas however cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. As such, according to the Court, states have a positive obligation

¹⁸⁰ *Axel Springer AG v Germany* (2012) 55 EHRR 6, para 79.

¹⁸¹ *Orlovskaya Iskra v Russia* (n 127) para 130.

¹⁸² *Taner Kiliç v Turkey (no 2)* App no 20842/18 (ECtHR, 31 May 2022).

¹⁸³ *Gillberg v Sweden* (2012) 55 EHRR 32.

¹⁸⁴ *Chauvy and Others v France* (2004) XI ECHR 229.

¹⁸⁵ *Magyar Helsinki* (n 143) para 168.

¹⁸⁶ *Orlovskaya* (n 127) para 131.

¹⁸⁷ *Lopes Gomes da Silva v Portugal* (2000) X ECHR 51, para 33

to maintain a pluralistic media environment through legislative and administrative measures that allow effective market entry and ensure the public has access to reliable impartial information and a diversity of opinions and content, that reflect as far as possible the range of views that engage in the public debate¹⁸⁸. Indeed, states across CoE have in place varying regulations that, as discussed earlier, oblige media outlets to allocate advertising airtime to political contestants in a fair way.

Under ECHR therefore, the principle of pluralism must be manifested not only externally, in the existence of a plethora of differently owned media, but also internally, that is the obligation of broadcasters to present political opinions in a balanced manner and refrain from favouritism¹⁸⁹. As discussed in Chapter 2, the importance of this distinction is also central in deliberative theory and, as Habermas stressed with the Berlusconi example, is put to the test by financial dependencies and the convergence of interests of media owners and political actors. As highlighted by the Strasbourg Court in the aforementioned 2012 *Centro Europa 7 S.R.L. and Di Stefano v. Italy* case, adjudicating on the prevention of a TV station to use its allocated frequency in Italy, in favour of MediaSet, the Berlusconi family owned TV station, the dominance of “powerful economic or political groups” over audiovisual media poses a grave danger for editorial independence and freedom of expression in media¹⁹⁰.

As such, the Court attributes special significance to freedom of media and editorial independence, which in the digital era it extended to Internet access, albeit drawing a questionable distinction between the impact of traditional broadcast and online media when it comes to political advertising.

Despite the significance the Strasbourg Court has attributed to the Internet and social media for the exchange of political ideas and the function of the press in contemporary democracies, the impact of digital media in political advertising is yet to be addressed. In April 2013, in the famous *Animal Defenders International vs the UK* case¹⁹¹, the Court had declared that social media may be a powerful communication tool for

¹⁸⁸ *Centro Europa* (n 128) para 185.

¹⁸⁹ *NIT SRL v the Republic of Moldova* App no 28470/12 (ECtHR, 5 April 2022) para 189.

¹⁹⁰ *Centro Europa* (n 128) para 185.

¹⁹¹ *Animal Defenders International v United Kingdom* [GC] App no 48876/08, (ECtHR 2013)

promoting political objectives, but could not be considered as prevalent vis-à-vis broadcast media, the impact of which is reinforced by “a continuous function as familiar sources of entertainment in the intimacy of the home”, while

“the choices inherent in the use of the internet and social media mean that the information emerging therefrom does not have the same synchronicity or impact as broadcasted information”¹⁹².

Thirteen years after the *Animal Defenders* judgement and despite the array of occurring political events heavily influence by social media and online political advertising, the Court has not revisited its position, an asynchronicity that has been met with some criticism by Dissenting Judges. In the 2022 *NIT SRL vs Moldova* judgement¹⁹³, concerning the withdrawal of a broadcasting licence of a TV channel due to breaches of a statutory duty for political pluralism that was able to continue broadcasting online, the Court reaffirmed that states have a positive obligation to effectively guarantee pluralism in audiovisual media, but emphasised only the importance of television in that regard¹⁹⁴. As noted by three dissenting judges, the Court “as if it were oblivious to the epochal changes that have occurred in the past twenty years” failed to capture how the changing role of broadcasting in the digital era and the diversity of information available online “may (or may not) have affected the traditional rationales for stricter regulation of broadcasting”¹⁹⁵. Similar scepticism concerning the Court’s assessment of the impact of the internet and social media compared to traditional broadcasters was also expressed in a concurring opinion by the Austrian Judge in the 2025 *Bradshaw and Others vs UK* case, the latest ECHR case dealing with Article 10 and Article 3 Protocol 1 and State obligations with regards to foreign interference in democratic processes. Although the Court acknowledged the issue of electoral interference via digital disinformation campaigns in liberal democracies, it did not use the opportunity to revisit its stance on the increased impact of traditional broadcasting media in the formation of public opinion¹⁹⁶. Instead, the Court highlighted that States must exhibit caution when

¹⁹² Ibid para 119.

¹⁹³ *NIT SRL v the Republic of Moldova* App no 28470/12 (ECtHR, 5 April 2022).

¹⁹⁴ Ibid para 193.

¹⁹⁵ Ibid (Joint Dissenting Opinion) para 7.

¹⁹⁶ *Bradshaw and Others v the United Kingdom* App no 15653/22 (ECtHR, 22 July 2025) paras 158-162.

interfering with the circulation of information in the digital sphere, especially in an electoral context, taking into account the risk that States themselves might abuse such interfering measures in order to influence their own electoral outcomes¹⁹⁷.

3.7 State Obligations

As discussed throughout this Chapter, the principle of free circulation of political ideas entails positive and negative obligations for state authorities, specifically to abstain from any undue interference and facilitate freedom of expression and political campaigning in an equal manner, by maintaining fair access to funding and advertising resources.

However, when contestants engage in negative campaigning and political speech is utilised to denigrate political opponents, states are required to uphold their obligations under human rights law to take legal measures against hate speech and discrimination, in balance with the increased protection afforded to political speech. As highlighted in the Court's jurisprudence, it is not only freedom of expression that pluralistic democracy is founded upon, but also "tolerance and respect for the equal dignity of all human beings", the protection which sometimes requires states to prevent or sanction "forms of expression that spread, incite, promote or justify hatred based on intolerance"¹⁹⁸. In that light, the Court has noted the importance of monitoring and regulating media outlets in relation to electoral affairs by adequately equipped independent authorities¹⁹⁹, a practise that the Venice Commission has also emphasises in relation to digital campaigning, highlighting the need for such authorities to be equipped with the capacity to handle complaints and order content removal²⁰⁰. As noted by the advisory body, such measures should be applied cautiously and reluctantly and be grounded in the principles of legal certainty, proportionality and necessity, while ensuring access to effective – judicial- remedies. Instead, the Venice Commission emphasises less punitive approaches, such as focusing on administrative, political and educational measures and the positive obligation of states to ensure that the electorate

¹⁹⁷ Ibid para 161.

¹⁹⁸ *Erbakan v Turkey* App no 59405/00 (ECtHR, 6 July 2006) para 56.

¹⁹⁹ *Centro Europa* (n 128) para 120.

²⁰⁰ Venice Commission, *Principles for a Fundamental Rights-Compliant Use of Digital Technologies in Electoral Processes* (11–12 December 2020) CDL-AD(2020)037, para 54.

has effective access to information about contestants and electoral procedures²⁰¹. Importantly, the advisory body highlights that positive state obligations in the digital era requires authorities to provide information and support to citizenry in order to enhance resilience and public understanding on contemporary electoral challenges²⁰². Given the interdisciplinary and transitional nature of these challenges, such actions should not be developed and pursued in silos but through cooperative mechanisms between the different state and non-state actors²⁰³, i.e. public authorities, international institutions, internet intermediaries (as online platforms and search engines) and other private actors, as well as academic and civil society and election observation missions²⁰⁴.

However, positive obligations of states also entail a duty of taking effective measures to prevent and punish tampering with the right of citizenry to form an educated opinion²⁰⁵. From a deliberative perspective, this obligation has significant importance in relation to political communication in the digital public sphere. As discussed in the previous chapter, opaque AI-powered dissemination systems, organised disinformation campaigns and other cyberthreats challenge deliberative integrity in the online sphere, skewing reality, segregating publics and shattering trust and the capacity to evaluate information.

While adjusting political messages to local audiences is neither new nor exclusive to online campaigning, the Venice Commission has stressed the vulnerability of the right of voters to form an opinion due to the non-consensual use of ranking mechanisms in search engines, the monitoring of online activity and the exploitation of behavioural patterns through targeted messaging and micro-targeting in the digital sphere²⁰⁶. The advisory body understands these violations to be the result of misuses of personal data²⁰⁷ and as such emphasises the need to uphold personal data protection standards as an indispensable aspect of protecting/materialising the right to freely form an

²⁰¹ Venice Commission, *Report on Electoral Law* (n 158) paras 157-159.

²⁰² Venice Commission, *Joint Report on Digital Technologies* (n 150) paras 149 and 152.

²⁰³ Venice Commission, *Interpretative Declaration* (n 151) section 3.18-19.

²⁰⁴ Venice Commission, *Principles for a Fundamental Rights-Compliant Use of Digital Technologies* (n 201) paras 87-88.

²⁰⁵ Venice Commission, *Interpretative Declaration* (n 151) section 12.

²⁰⁶ Venice Commission, *Joint Report on Digital Technologies* (n 150) paras 43, 122, and 127.

²⁰⁷ *Ibid* 37.

opinion²⁰⁸. Particularly, it stresses the need for prohibition of restrictions of lawful content and other forms of interferences that are based exclusively on automated data processing, including for content moderation purposes backed by artificial intelligence²⁰⁹ and calls for the disclosure of AI use towards voters and the prohibition and the sanctioning of deep fake political content²¹⁰. Considering that algorithmic design inescapably incorporates views and preferences of its creators, Venice Commission emphasises the need to ensure non-discrimination by design and the deployment of digital technologies in line with rule of law standards, particularly, the principles of accountability, transparency and responsibility throughout the decision-making cycle.²¹¹

3.8 Conclusion

As it has been analysed throughout this Chapter, under ECHR standards the regulation of political communication serves a core purpose in the realisation of the pluralistic political debate, where ideas are freely circulated and discussed in an equitable and transparent manner, allowing all voices to be heard and evaluated.

The ability of citizens to form an opinion is a fundamental element of meaningful democracies and is inextricably linked to free elections and the liberty to seek and impart ideas and opinions without undue interference. As such the right of voters to form an opinion is protected under the European Convention of Human Rights as the starting point of the right to free elections, which, along with freedom of expression, form the bedrock of any democratic system. For effectively realising these rights, it is imperative that political communication circulates freely and equitably but also within constraints guarantying that information is conveyed truthfully, objectively and transparently and no voice is dominating the public sphere due to resources asymmetry. These constraints allow political contestants to effectively disseminate their message and exercise their right to stand for elections. State authorities and private actors are obliged to abstain from unduly interfering and effectively protect the circulation and access to such information, by maintaining a level-playing field for all contestants,

²⁰⁸ Venice Commission, *Interpretative Declaration* (n 151) section 1.6.

²⁰⁹ Ibid.

²¹⁰ Ibid 1.88.

²¹¹ Ibid 5.64.

cooperating with the different actors and punishing any effort to distort informational integrity.

The press has a significant duty in advancing equitable participation to the political debate, enabling the public to discover political ideas and attitudes and form an opinion and politicians to reflect and comment on public needs and preoccupations. The use of Internet is recognised by the Court of Strasbourg as one of the principal means by which citizens receive and impart ideas and information on political affairs and raise to the public debate issues of concern that are not captured by the media.

However, the Court has yet to revisit its position that traditional audiovisual media, television and radio, are more impactful in conveying political messaging than the Internet, stressing instead that the free exchange of ideas and information, particularly in an electoral context, must be equally protected in the digital era, from foreign as well as domestic interference. While this position rightfully takes a favor libertatis approach, prioritising fundamental freedoms over securitisation, it also leads to a jurisprudential lacuna, as it falls short of modernising the ECHR standards on political advertising in the digital era. On the contrary, the Venice Commission has transposed these standards to regulatory guidelines on political communication, setting the groundwork for the Court to develop its case-law. Additionally, most members of the Council of Europe, in their capacity as member states of the European Union, have enacted a new legislative tool that specifically regulates online political advertising, Regulation (EU) 2024/900 on the transparency and targeting of political advertising. This Regulation adds itself to a long series of EU legislative measures that aim to enhance democratic resilience and protect fundamental rights in the digital era, imposing transparency and due diligence obligations to various actors, primarily the social media platforms that have a near-total control of the online environment, and consequently concentrate different roles and – as such – regulatory obligations.

Although ECHR is not an instrument developed in the EU legal sphere, the Convention has evolved into a common constitutional tradition for all the EU member states, that, in the words of the Luxembourg Court, carries “special significance” in the EU

ecosystem²¹². It is indeed a truism that it was domestic constitutional standards—specifically under the German Constitution— that gave rise to human rights as a central consideration for EU law, after the 1970 landmark *Internationale Handelsgesellschaft*, and led, thirty years later, into the incorporation of the rights protected under the Convention in the EU Charter of Fundamental Rights and Freedoms, the Union’s Bill of Rights²¹³. In the Lisbon Treaty era, the Charter is now recognised as EU primary law and the Union’s legally binding human rights instrument under Article 6 TEU, the Convention maintained its special significance, while ECHR standards are recognised as “general principles of the Union’s law”²¹⁴ and the Union has formally committed through Article 6 para 2 TEU to accede to the Convention.

The extent that general principles of EU law are legally binding in the EU’s legal order remains a muddy legal terrain. Scholars like De Witte consider that CJEU has implicitly denied so with regards to the ECHR, pointing to the judgment on the C-543/14 case, where CJEU stipulated that the referred question of the Belgian Constitutional Court on the compatibility of Directive 2006/112 with effective judicial protection and equality of arms must be examined “solely” with regards to the Charter²¹⁵. A decade later from this judgement, the ECJ said, albeit laconically, that EU legal principles, this time under Article 2 TEU, have a stand-alone binding force as well as justiciability, in the much-expected judgement on the C-769/22 *Commission vs. Hungary* case²¹⁶. As far as EU law design is concerned however, ECHR expressly plays a role. Specifically, tool No.29 of the Better Regulation toolbox explicitly refers to ECtHR case law as a “consulting” tool for assessing the impact of EU legislation to fundamental rights, while Article 52(3) of the Charter explicitly links “the meaning and scope” of rights guaranteed in the EU instrument with the corresponding rights under the ECHR. As such, given that all EU member states are parties to the Convention and the Union is bound to accede, any developments in the ECtHR’s jurisprudence directly impact the implementation of EU law in relation to the interpretation of fundamental rights and ,

²¹² Case C-479/04 *Laserdisken ApS v Kulturministeriet* [2006] ECR I-8089, para 61.

²¹³ Allan Rosas, 'The European Union and Fundamental Rights/Human Rights' in Catarina Krause and Martin Scheinin (eds), *International Protection of Human Rights: A Textbook* (Åbo Akademi University 2009) 457.

²¹⁴ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 6(3).

²¹⁵ Bruno De Witte, 'The role of the ECHR in the evolution of EU law' [2025] 32(2) *Maastricht Journal of European and Comparative Law* 111.

²¹⁶ *Commission v Hungary* (C-769/22) ECLI:EU:C:2026:326, paras 507-543.

as Piet Eechout notes in relation to the Klimasenioren case, not only State but also EU legal obligations²¹⁷.

In short, the two systems remain careful not to overstep into each other's realm, however they are inescapably entangled. ECHR is not yet a legally binding instrument for the EU as an international organisation, however EU member states are obliged to uphold ECHR standards domestically, even when applying EU directives or regulations. In March 2023, following CJEU Opinion 2/13 and a thorough evaluation of the first accession efforts, the conclusion of a provisional accession agreement, brought the convergence of the two European systems one step closer. Even if the EU has not yet formally bound itself to the ECHR, the Convention's standards are shaping EU law throughout its lifecycle and enriching democracy, human rights and rule of law in the Union. As such, the attempt of the present thesis to scrutinize EU law provisions under the ECHR does not only have a normative value, but also practical importance in terms of the obligations stemming from the Convention for the EU Member States.

The EU has a long tradition in pioneering regulation in the digital space. The new regulation on transparency and targeting of political advertising (TTPA) aimed to take a place next to the Digital Services Act and enhance democratic resilience and fundamental rights in the online era, imposing transparency and due diligence obligations to various actors, primarily the social media platforms that have a near-total control of the online environment, and consequently concentrate different roles and – as such – regulatory obligations. However, as it will be discussed in the following Chapter while the Digital Services Act has been positively impactful in the protection of democracy in the digital spaces, the overarching scope of the provisions of TTPA and the fragmentation of supervision have largely led to results opposite than the one intended, undermining deliberative capacity and online political communication.

²¹⁷ Giacomo Gattinara and Luca Prete, 'From Strasbourg to Luxembourg? The KlimaSeniorinnen Judgment and EU Remedies' (*Verfassungsblog*, 22 April 2024) <https://verfassungsblog.de/from-strasbourg-to-luxembourg/> accessed 31 May 2026.

Chapter 4

Digital Pins in EU law

4.1 Behind the EU digital acquis

As analysed in Chapter 2, deliberative theorists have sounded the alarm on the impact of online platforms to political communication and the capacity of citizens to reach common understandings, form considered opinions and afford democratic legitimacy to political decisions through public debate. Structural choices in platform design regarding algorithmic dissemination of content undermine trust and information integrity due to easily spread misinformation that renders citizens suspicious of truth, segregate publics in echo chambers, where individuals only engage with like-minded opinions, and minimises reflective capacity, as users are constantly exposed to endless and conflated content in a deliberatively unstructured way.

The uninhibited circulation of political messages is inherent in democratic societies. The ability of citizens to form an opinion is a fundamental element of meaningful democracies and is inextricably linked to free elections and the liberty to seek and impart ideas and opinions without undue interference, constituting under ECHR the starting point of free elections. Media professionals and other actors in the public sphere that monitor and filter political affairs perform an essential function as “public watchdogs” of the public debate, ensuring equitable participation, enabling the public to discover and assess political ideas and attitudes and form an opinion and politicians to reflect and comment on public needs and preoccupations. The Internet is recognised by the Court of Strasbourg as one of the principal means by which citizens receive and impart ideas and as such freedom of expression online is protected vis-à-vis the physical world. However, political messaging that is advertised via online means is not yet considered by the Court of Strasbourg to be as impactful as traditional broadcasting, with the Court emphasising instead the pertinence of upholding the right to freely exchange ideas in the digital era and warning against measures that can lead to interferences with the right to form an opinion by the States themselves.

In contrast, in the EU legal sphere the enfeeblement of information integrity, trust in the truth and the freedom to form an opinion in the digital age, are considered a key challenge for European democracies.²¹⁸ Amongst EU citizens, there is a shared consensus of the significance of ensuring fairness in online electoral campaigning. In a 2025 Eurobarometer survey on Protecting and Promoting Democracy, about 85 percent of the respondents stated that it is “(very) important” to ensure transparency of the origin and source of political messages, such as paid political advertising or the role of influencers in political campaigns²¹⁹. As such, efforts to regulate the dissemination of political communication in the digital sphere and protect fundamental rights have been at the forefront of the Bloque’s agenda.

Already in 2016, the General Data Protection Regulation (GDPR)²²⁰ brought the right to privacy in the digital era and set a global standard to data protection, by imposing rules on the handling of personal information and empowering data subjects with novel rights that have enhanced protection of citizens’ participation in the digital public sphere. In 2022, the enactment of the Digital Services Act (Regulation 2022/2065)²²¹, known as the DSA, marked a pivotal moment for the digital acquis, establishing for the first time, in conjunction with the Digital Markets Act, a streamlined framework of standards and transparency obligations for online platforms that, from a deliberative perspective, aspires to enhance the capacity of users to engage in online communication with greater autonomy and protect democratic integrity and fundamental rights in the digital sphere. In 2024, the European Parliament passed the AI Act, the first-ever legal framework that lays down harmonised rules aimed at curtailing the impact of artificial intelligence to informed participation, through a risk-based classification that requires labelling deepfake and AI content as such. This pioneering legislation however has been

²¹⁸ Ursula von der Leyen, ‘2025 State of the Union Address’ (Speech at the European Parliament, Strasbourg, 10 September 2025), European Commission Press Corner SPEECH_25_2053, pp 8–9, para 21 <https://ec.europa.eu/commission/presscorner/> accessed 26 June 2026

²¹⁹ European Commission, ‘Protecting and Promoting Democracy’ (*Special Eurobarometer*, November 2025), Report, pp 30–34, question QC9 <https://europa.eu/eurobarometer/surveys/detail/3383> accessed 26 June 2026.

²²⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, GDPR) [2016] OJ L 119/1.

²²¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act, DSA) [2022] OJ L277/1.

met with severe criticism from the industry, member states including Germany as well as the US administration, and has since been substantially rolled-back, with its enforcement postponed for mid-2027²²².

In October 2025, Regulation (EU) 2024/900 on the transparency and targeting of political advertising, or TTPA, the latest addition to the digital acquis, became fully effective. The new regulation aims to streamline rules on the provision and dissemination of political advertising services across the EU internal market to enhance competition and freedom of movement in advertising services and ultimately democratic resilience²²³, while respecting the fundamental principles relating to freedom of expression and information that result from constitutional traditions of Member States²²⁴. The new Regulation was met with strong criticism and reactions from online platforms; In September 2025, Meta and Google announced that are suspending the provision of political advertising services, citing concerns over the feasibility of implementation of TTPA.

In the following sections of this chapter, this thesis takes a deep dive into the mechanisms of the digital acquis that aspire to regulate political speech in online platforms in the form of political advertising, measuring them against ECHR standards for the protection of freedom of speech and free elections.

4.2 Platforms of Digital Deliberation

As discussed in Chapter 2, online platforms pose a challenge for informed public deliberation, as citizens largely receive and impart ideas in digital spaces, where the mediation of ideas is performed by algorithms, that filter and evaluate political messages to provide each user with content that matches their personal interests and

²²² Pieter Haeck, 'EU clinches deal to roll back AI restrictions' *Politico* (7 May 2026) <https://www.politico.eu/article/eu-clinches-deal-to-roll-back-ai-restrictions/> accessed 2 July 2026; European Data Protection Board and European Data Protection Supervisor, *Joint Opinion 1/2026 on the Proposal for a Regulation as regards the simplification of the implementation of harmonised rules on artificial intelligence (Digital Omnibus on AI)* (20 January 2026).

²²³ The newly enacted TTPA Regulation is applicable to political advertising activities both in the physical and digital world (Article 4) and at a Union, national, regional and local level (Article 3), a spatial distinction that is omitted in the current research for coherence purposes. The regulator's focus is on online political advertising and that is also the area of investigation of the present research.

²²⁴ Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising [2024] OJ L110/1 (TTPA) recitals 5-14.

beliefs. In doing so, platform algorithms functionally substitute journalists and media from a deliberative perspective, as political discussion in the digital sphere is not focused on topics curated by media professionals in public and commonly accessible places, but in distinct echo-chambers, where the content projected is tailored to match the profile of each user.

In contrast to media professionals however, online platforms do not have editorial responsibility for the content circulated by the platform algorithms in any legal order, on the grounds that platforms do not develop the disseminated content, nor do decide (in principle) which messages are going to be circulated or not. Online platforms merely provide the digital infrastructure for communication and disseminate all hosted content automatically, according to the interests of the users. As such, online platforms are characterised under EU law as intermediary services, i.e. services that are necessary for online communication, namely the transmission of information in a communication network (the platform), the provision of access to such a network or storage services (content hosting)²²⁵. While all providers of intermediary services are subject to regulatory requirements, EU law maintains heightened transparency, due diligence and content moderation obligations for “very big online platforms” (VLOPs) and “very big search engines” (VLOSEs) i.e. platforms and search engines with at least 45 million average monthly Union users. Under EU law, VLOPs and VLOSEs (herein “online platforms”) are obliged to identify, analyse and assess systemic risks of their services, i.e. negative effects on civic discourse, electoral processes and fundamental rights, including their algorithmic systems and targeting and ad-delivery techniques²²⁶, and put in place reasonable, proportionate and effective mitigation measures²²⁷.

A fundamental principle of EU digital law is that online platforms, as intermediary services of online communication with no editorial responsibility over circulated content, do not carry a general obligation to monitor the data disseminated in the platform environment and search for illegal content.²²⁸ Instead, platform responsibility is focused on maintaining accessible and transparent mechanisms to timely and

²²⁵ DSA (n 221) art 3.

²²⁶ DSA (n 221) art 19.

²²⁷ *ibid* art 34 and 35.

²²⁸ *Ibid* art 8.

adequately address misuse of platform services by restricting or removing content and suspending users, a process known as content moderation²²⁹. Following the ECHR principles of legal certainty, necessity and proportionality in interfering with freedom of speech, EU law dictates that such platform disciplinary decisions must always be communicated to users in comprehensible writing and contain clear and specific reasoning²³⁰. Disciplinary actions must always be preceded by warnings, apply for a reasonable amount of time and be based on predefined and clearly detailed criteria that are included in the contract between the user and the platform, the terms and conditions²³¹. In fulfilling their obligations under EU law, online platforms must make their communication accessible in plain language, maintain information in machine readable forms to enhance transparency and research²³² and avoid patterns of content dissemination or consent seeking mechanisms that lead users to make choices they didn't intend to, the so-called dark patterns²³³.

As it will be thoroughly analysed in the following sections of this chapter, TTPA, the new Regulation on political advertising, has expanded platform obligations relating to moderation of political advertising, building on the provisions of the Digital Services Act and the GDPR. Under the new framework, political advertising services and products must be recorded and catalogued in accessible repositories as such, while vetted researchers must be afforded access to platform data to analyse and monitor systemic risk to EU democratic integrity, fulfilling their watchdog role. To address the impact of online political advertising in the formulation of public opinion, recipients of advertising services, the platform users, must be made aware that they engage with such content and receive information on its origin and techniques of dissemination, as well as have available means of reporting content that infringes their rights or the rights of others. Despite the ambitious aim of the new Regulation, the vagueness of many provisions, the overlap with existing mechanisms and the fragmentation of supervision have achieved mixed results and casted wide uncertainty, largely failing to effectively uphold ECHR standards and protect deliberative democracy in the digital sphere.

²²⁹ DSA (n 221) art 3(t) and Chapter II 'Liability of Providers of Intermediary Services'.

²³⁰ DSA (n 221) art 17.

²³¹ DSA (n 221) art 23.

²³² DSA (n 221) recital 49, art 14(1) and 24(5).

²³³ DSA (n 221) recital 67 and art 25.

4.3 Political Advertising in EU law

As mentioned in the beginning of this Chapter, to protect deliberative democracy in the digital sphere and enhance the right of voters to form their own opinion, the EU has adopted Regulation (EU) 2024/900 on the transparency and targeting of political advertising, which extends the transparency obligations of online platforms in relation to their political advertising services.

Under the new EU TTPA Regulation, political advertising is defined as:

the preparation, placement, promotion, publication, delivery or dissemination, by any means, of a message, normally provided for remuneration or through in-house activities or a part of an advertising campaign,

by, for or on behalf of a political actor,

or

Be liable and designed to influencing the outcome of an election or referendum, voting behaviour, legislative or regulatory process”²³⁴.

As such, political communication of political parties and candidates, the political actors, is distinguished from official communiques, political opinions and other political content expressed in a personal capacity and subject to editorial responsibility, which fall outside the regulation’s scope²³⁵. However, political figures are still able to post content in online platforms organically, which is then disseminated across the network according to algorithmic decisions, effectively acting as political advertising.

TTPA obliges platforms to make their advertising services available indiscriminately, unless these services are provided in the last three months leading to an electoral event. During this period, advertisement sponsors, the individuals or entities seeking the

²³⁴ TTPA (n 224) art 3(2).

²³⁵ Ibid.

placement of a political advertisement, must be Union citizens or entities, or have equivalent voting rights, i.e. be entitled to vote in the specific electoral event²³⁶.

Despite broadly and exhaustively defining the circumstances when a political message constitutes a political advertisement, the new Regulation does not define what should be considered as a political *message*, creating uncertainty over the scope of the new Regulation. For example, the role of pins, small, rounded broods carrying the colours, the name or the logo of a political contestant or party has been one of the most used means of political advertising in western history²³⁷. In the Commission guidelines however, it is mentioned that the logo or name of a political actor on promotional merchandise is not regarded as political advertisement under the new Regulation, if it is not “further accompanied by any political message”²³⁸. Given that, expression materialises in many different forms, which, as the Strasbourg Court has highlighted in the *Jersild v. Denmark* case, are subject to protection under Article 10 ECHR, the lack of definition of the notion of message under TTPA can raise ambiguity in the implementation of the regulation and undermine its effectiveness.

The remunerative element is key in defining an act as political advertising, including not only monetary payments but also benefits in kind, such as discounts, travel arrangements or access to exclusive events, while activities that are normally unremunerated, such as volunteering in electoral campaigns, are exempted²³⁹. This broad understanding of remuneration follows a long-held EU notion of the definition of “considerations’ for the provision of a service²⁴⁰ and in the present instance aims to tackle particularly covert political advertising from online media personas like influencers. The role of influencers, covert political advertising and the non-disclosure of promotion of political content is highlighted by the Venice Commission as a concerning practise with regards to information transparency²⁴¹ and has been identified

²³⁶ DSA (n 221) art 5(1).

²³⁷ Jackson Gibson, ‘Pinning Down the Historical Significance of Button Collecting’ [2020] 10 *Scientia et Humanitas: A Journal of Student Research* 121.

²³⁸ European Commission, *Guidelines on the Implementation of the TTPA* C(2025) 6829 final, 13.

²³⁹ *Ibid* 6.

²⁴⁰ See, for example, judgment of 27 September 1988, *Humbel*, C-263/86, EU:C:1988:451, paragraph 17 and recently judgment of 19 October 2023, *QB v Commission*, C-88/22 P, EU:C:2023:792, paragraph 30.

²⁴¹ Venice Commission, ‘Interpretative Declaration (n 151) para 36.

as a key issue in the implementation of TTPA²⁴². While influencers are mentioned twice in Recital 1 of the new Regulation, as well as the Regulation Guidelines, the scope of applicable provisions remains uncertain, especially in relation to micro, small, or medium-sized undertakings²⁴³.

According to the last feature of the definition, a message is defined as political advertisement if that message is liable and designed to influence an electoral event, voting behaviour or legislative or regulatory process. To identify such a liability and design, the persons that seek the placement of the advertisement, must assess according to the new Regulation all the features of the message, including content, language, means of dissemination, sponsor, context, targeted audience and “objective”²⁴⁴, while, per the clarifications of the Commission, both instances, i.e. liability and design, need to be met when an advertisement is placed²⁴⁵.

Such a broad and vague definition falls far from satisfying the principles of legal certainty, proportionality and necessity that ECHR standards require when regulating political speech in the physical or digital world. Not only is the process of identifying ex ante whether a message is “liable” and “designed” to exert a specific influence vaguely specified. More importantly, including in the definition the influence of “voting behaviour” and regulatory or legislative processes in general, stretches the notion of political advertising so far that practically encompasses in the Regulation’s scope issue-based advertising related to every decision-making process and aspect of public life. Characteristically, the decision of Google to withdraw political advertising services in the EU – and along the corresponding content moderation and transparency mechanisms that these platforms had in place – specifically mentions the broadness of definitions under TTPA and the resulting uncertainty²⁴⁶.

²⁴² Edoardo Bressanelli and Samuele Bernardi, *Research for EUDS Committee: Challenges of implementation of the regulation on political advertising* (Briefing, European Parliament 2026) PE 787.212, p 16 <[https://www.europarl.europa.eu/thinktank/en/document/IUST_BRI\(2026\)787212](https://www.europarl.europa.eu/thinktank/en/document/IUST_BRI(2026)787212)> accessed 1 June 2026.

²⁴³ Ibid.

²⁴⁴ TTPA (n 224) art 8.

²⁴⁵ European Commission, *Guidelines* (n 238), 20.

²⁴⁶ Annette Kroeber-Riel, *An update on political advertising in the European Union* (Google The Keyword, 14 November 2024) <<https://blog.google/company-news/inside-google/around-the-globe/google-europe/political-advertising-in-eu/>> accessed 1 June 2026.

It is worth noting that, before the self-imposed ban, Google's definition of political advertising, as well as Meta's, was only partly aligned with the TTPA definition. As such Google has limited exclusively EU election advertising, while still maintaining issue-based and other political advertising²⁴⁷. However, the legal uncertainty caused by the broadness of the TTPA definition of political advertising has already had a wider impact on the freedom of speech in online environments and has been flagged as a key issue by the first report on the implementation challenges of the new Regulation²⁴⁸. In a survey of 170 civil society organisations over 12 EU member states published in April 2026, the vast majority reported a noticeable impact on digital advertising campaigns, outreach, supporter growth and online fundraising performance. After the decision of major platforms to suspend political advertising services, content moderation filters have been flagging issue-based advertising as political advertising, limiting their capacity to act as NGOs in the digital public sphere and disseminate their work and ideals²⁴⁹. In a lesser extent, it has been highlighted that the risk-averse approach of major platforms in moderating content that could be considered political advertising under the TTPA could also undermine the promotion of social causes through corporate-social responsibility schemes by issue-based commercial advertising²⁵⁰. As such, the Regulation so far has had quite negative impact to the online political debate and exchange of ideas and has created wide uncertainty in the digital public sphere, affecting the dissemination of political messaging across different categories of users and undermining civic participation.

4.4 Content Moderation

Content Moderation, the systematic reviewing of user-generated content to ensure compliance with platform rules and legal requirements, is one of the biggest challenges

²⁴⁷ European Commission/European Digital Media Observatory, 'A Cross-Country Analysis of Electoral Advertising on Meta and Google during the EU 2024 Elections: Compliance, Transparency, and Targeting' (September 2025) pp 7–8 <https://edmo.eu/wp-content/uploads/2025/09/EDMO-Analysis-of-Electoral-Advertising.pdf> accessed 26 June 2026.

²⁴⁸ Edoardo Bressanelli and Samuele Bernardi, *Research for EUDS Committee: Challenges of implementation of the regulation on political advertising* (Briefing, European Parliament 2026) PE 787.212, p 1 <[https://www.europarl.europa.eu/thinktank/en/document/IUST_BRI\(2026\)787212](https://www.europarl.europa.eu/thinktank/en/document/IUST_BRI(2026)787212)> accessed 1 June 2026.

²⁴⁹ European Civic Forum and Civil Liberties Union for Europe, "*WHEN MISSION MESSAGES ARE BLOCKED, CAUSES LOSE REACH, VOICE AND INCOME*": Report from the EU Survey On TTPA Impacts On Digital Advertising By Non-Governmental Organizations (European Funding Alliance 2026) https://efa-net.eu/wp-content/uploads/2026/04/EFA_EU_Survey_TTPA_Impacts_Report.pdf> accessed 1 June 2026.

²⁵⁰ Bressanelli (n 248), p 8.

in moderating digital communication, requiring important resources and a delicate balancing between freedom of expression and the protection of other fundamental rights²⁵¹. Consequently, as exhibited further on this Chapter, online advertisements and other content of political nature constitute a substantial workload of content moderation activities, as well a point of controversy. Content moderation mechanisms deploy algorithmic as well as human decision making, however AI systems remain substantially inadequate in performing context-specific assessments, and as such content moderation still relies heavily on human assessment. These assessments have a severe impact to the mental – and sometimes physical- health of content moderation workers, who are usually given minimal and standardised training and are obliged to perform such balancing acts daily over sheer amounts of content and across cultural lines, in times as low as between 10 and 60 seconds ²⁵².

From September 2023, when content moderation decisions of major platforms started being recorded under EU law in the DSA Transparency Database²⁵³, a total of almost 40 billion decisions that led to removal or restriction of content have been issued, with 99% of the cases enacted on contractual rather than legal grounds (incompatibility with terms and conditions) and at the platforms' own initiative. Approximately 92.5% of the cases have been detected with automated means, while almost 57% of these content moderation decisions has also been taken by automated means, rather than humans. Despite the legal obligation of major platforms to clearly and specifically declare the reasons that lead to content removal or restriction, in 87.5% of the reported cases the reason listed in the Database relates to the “the scope of the service” or “other violation of terms and conditions”, whereas illegal or harmful speech constitute only 2.5% and violence less than 1%. What's more, in 85% of the cases, the content removed is marked simply as “product”, without any further specification, whereas texts, images and videos are classified separately and constitute combined less than 10% of the declared cases. While these statistics have only fluctuated slightly since the launch of the

²⁵¹ Maurice Stenzel and Katharina Mosene (eds), *Inside content moderation: Humans, machines and invisible work* (Alexander von Humboldt Institute for Internet and Society 2024).

²⁵² Ruth Spence and Jane DeMarco, ‘Content Moderator Mental Health and Associations with Coping Styles: Replication and Extension of Previous Studies’ [2025] 15(4) *Behavioral Sciences* 48, available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC12024403/#B15-behavsci-15-00487>, accessed 25 June 2026; Paul M Barrett, ‘Who moderates the social media giants? A call to end outsourcing’ (NYU Stern Center for Business and Human Rights 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5494947 accessed 25 June 2026/

²⁵³ DSA (n 221) art 24(5).

Database, the volume of content decisions issued and declared has been decreasing since the first half 2024, when major platforms reported a peak of 12.5 billion content moderation decisions. In the first half of 2025, major platforms reported approximately 9 billion content moderation decisions, and less than 3 billion decisions in the first half of 2026²⁵⁴. This sharp decline coincides with the decision of major platforms to suspend the provision of political advertising services in the EU after the enforcement of TTPA in October 2025.

Major platforms are also required under EU law to maintain an internal complaint system that allows users that had their content removed or restricted to object to content moderation measures restricting their freedom of expression²⁵⁵. Since 2024, internal platform mechanisms have received over 165 million content moderation appeals, which have resulted in a reversed decision in almost a third of the cases²⁵⁶. Notably, under DSA, sponsors of advertisements and platform users have the right to challenge content moderation decisions outside the platform environment, through free of charge or low cost certified out-of-court dispute settlement bodies²⁵⁷. Until May 2026, only nine (9) such bodies have been certified by Member States, covering only three fourths of the official EU languages, as services are not provided in Danish, Estonian, Finnish, Irish, Slovenian and Swedish²⁵⁸. While decisions of out-of-court settlement bodies do not have binding power, in the first half of 2025, Facebook, Instagram and TikTok users resorted to out-of-court settlement bodies in 1800 cases of content moderation, resulting in content and accounts being reinstated in about half of the closed cases²⁵⁹.

The EU law requirements for the regulation of online content in platform environments, including advertised political speech, reflect the ECHR principles of legal certainty,

²⁵⁴ European Commission, 'DSA Transparency Database' (*Shaping Europe's digital future*, 2023) <https://transparency.dsa.ec.europa.eu/> accessed 25 June 2026; data obtained using dashboard date filters tracking total Restrictions by Type, Content Type, Statement of Reasons (SoRs) Decisions, Decision and Detection Automation, Grounds for Restrictions and Information Sources, semi-annually from September 2023 to June 2026 and for the same period in total.

²⁵⁵ DSA (n 221) art 20.

²⁵⁶ European Commission, *The Impact of the Digital Services Act on Digital Platforms* <<https://digital-strategy.ec.europa.eu/en/policies/dsa-impact-platforms>> accessed 1 June 2026, s 'Greater transparency in content moderation and more options to appeal'.

²⁵⁷ DSA (n 221) art 21.

²⁵⁸ European Commission, *Out-of-court dispute settlement bodies under the Digital Services Act (DSA)* <<https://digital-strategy.ec.europa.eu/en/policies/dsa-out-court-dispute-settlement>> accessed 1 June 2026, s 'List of bodies'.

²⁵⁹ European Commission (n 256).

necessity and proportionality in interfering with freedom of speech to protect pluralism, tolerance and respect for human dignity, particularly in matters of public debate, albeit as obligations of privately owned online spaces rather than state controlled spheres. However, as exhibited, the compliance of major platform to these obligations has and continues to be extremely vague, raising questions as to whether these measures also meet the ECHR requirement of being real and effective, rather than theoretical and illusory. Nevertheless, despite this regulatory incompliance, online platforms have taken initiatives on safeguarding the digital sphere. Even before content moderation measures became legally binding under EU law, online platforms had independently developed standards and practises to address content that abuses freedom of speech by spreading misinformation, inciting illegal hatred or extreme violence, compiled in voluntary codes of conduct that major stakeholders agreed to adhere to.

4. 5 Codes of Conduct

Codes of conduct are an essential soft-law tool for in the EU's regulative response to the challenges of political communication in online platform environments, enhancing transparency and platform responsibility and fostering collaboration amongst stakeholders. As mentioned, these codes are in principle voluntary and agreed between stakeholders as a code of practice that they undertake to respect, without being legally obliged to adhere to. However, signatories can request the Commission and the European Board for Digital Services (EBDS) to assess the level and mechanisms of protection agreed in such a code and, if deemed sufficient in relation to DSA requirements, to “endorse” the code provisions as a benchmark for determining the compliance of platforms with DSA obligations²⁶⁰.

Until 2026, two such codes have been agreed upon in the EU amongst stakeholders, which in 2025 were also endorsed as regulatory benchmarks. The Code of Conduct on Countering Illegal Hate Speech Online +, which was adopted in 2016 and is signed by all major platforms²⁶¹ and the Code of Conduct on Disinformation, which was adopted in 2018 and has over 40 signatories, including all major platforms and actors in the

²⁶⁰ DSA (n 221) art 45.

²⁶¹ European Commission, *Code of Conduct on Countering Illegal Hate Speech Online+* (20 January 2025) <https://digital-strategy.ec.europa.eu/en/library/code-conduct-countering-illegal-hate-speech-online> accessed 2 July 2026.

advertising industry, civil society and research²⁶². While the Digital Services Act also encourages the creation of a code of conduct for online advertising, and the new Regulation on transparency and targeting of political advertising (TTPA) calls specifically for voluntary codes in relation to ad labelling requirements²⁶³, no such drafts have been produced by stakeholders until June 2026 or proposed by the Commission. However, the already endorsed Codes of Conduct largely fulfil that role, as these frameworks also address political advertising and labelling. The Code of Conduct on Disinformation in particular, commits signatories to enhance transparency mechanisms, primarily through improved labelling and accessible repositories, “recognizing the importance of political advertising in shaping public opinion”²⁶⁴.

4.5 Transparency Repositories

As part of the commitments undertaken through the voluntary codes of conduct, major platforms have also been publicising information on platform advertising activities, in special repositories, called ad libraries. Following the Cambridge Analytica scandal, the adoption of these libraries by major platforms like Google and Meta was focused on transparency to political advertising services, establishing disclosure requirements for sponsors of political advertisements, and was subsequently expanded to all advertising services in the platform environments²⁶⁵. In 2022, the Digital Services Act (DSA) codified this practise into a legal obligation, requiring online platforms to maintain a repository of the advertisements presented in their interface. Under DSA, ad repositories must include, inter alia, information on the content of an advertisement, the person sponsoring it, the period of publication and the total number of recipients reached per Member State²⁶⁶. Apart from these platform-specific repositories provided in DSA, the new Regulation on political advertising (TTPA) also provides for an EU-

²⁶² European Commission, *Signatories of the 2022 Strengthened Code of Practice on Disinformation* <<https://digital-strategy.ec.europa.eu/en/library/signatories-2022-strengthened-code-practice-disinformation>> accessed 1 June 2026.

²⁶³ TTPA (n 224) art 11.

²⁶⁴ European Commission, 'The Code of Conduct on Disinformation' (Policy and Legislation, 13 February 2025) <<https://digital-strategy.ec.europa.eu/en/library/code-conduct-disinformation>> accessed 2 July 2026, 9.

²⁶⁵ Kent Walker, 'Supporting election integrity through greater advertising transparency' (*Google Blog*, 4 May 2018) <https://blog.google/company-news/outreach-and-initiatives/public-policy/supporting-election-integrity-through-greater-advertising-transparency/> accessed 26 June 2026; Satwik Shukla, 'A Better Way to Learn About Ads on Facebook' (*Meta Newsroom*, 28 March 2019) <https://about.fb.com/news/2019/03/a-better-way-to-learn-about-ads/> accessed 26 June 2026.

²⁶⁶ DSA (n 221) art 39.

owned European Repository for Online Political Advertisements. This database, to be operated by the Commission, aims to serve as a public information hub for all online political advertisement published in the Union or directed to Union citizens, enabling unified access to all advertising data retained by platforms, from the moment of publication and for seven years after an ad has been discontinued²⁶⁷.

Despite the importance of such repositories for protecting the right to form an opinion and strengthening the integrity of online political dialogue, the European Repository has not been released as of June 2026, even though the relevant TTPA provisions have been in force since October 2025. However, in the digital age, ad-libraries are essential for the protection of electoral transparency and integrity and the effective function of freedom of press and public watchdogs under Article 10 ECHR. Journalists, researchers and civil society organisations analyse the data contained therein and inform the public debate on practises and behaviour of political actors, allowing the public to form a more considered opinion. The protracted delay in the implementation of the European repository, along with the decision of major platforms to discontinue not only political advertising services but historical archives that included information on political advertisements offered in the EU since 2019, has left a significant gap in electoral transparency gap and a serious setback in platform responsibility²⁶⁸.

What's more, the decision of Meta and Google to suspend political advertising services in the EU has also increased inequality in the electoral playing field, as small parties were deprived of effective and more affordable avenues for reaching political audiences in a transparent manner. In the 2026 Hungarian parliamentary elections, researchers from Political Capital, a Budapest-based independent policy institute, revealed that, despite Meta's ban on political advertisement, candidates of Fidesz, the incumbent party, managed to post on Facebook 162 political ads during January alone, whereas opposition contestants posted none²⁶⁹. This discrepancy reveals that, even if platforms

²⁶⁷ TTPA (n 224) art 13.

²⁶⁸ Fabio Votta, 'What Data Reveals About Meta and Google's Political Ad Ban in the EU' (*TechPolicy.Press*, 11 December 2025) <https://www.techpolicy.press/what-data-reveals-about-meta-and-googles-political-ad-ban-in-the-eu/> accessed 25 June 2026.

²⁶⁹ Márton Zeller, 'Despite Meta's ban, Fidesz candidates successfully posted 162 political ads on Facebook in January' (*Lakmusz*, 10 February 2026) <https://lakmusz.hu/2026/02/10/despite-metas-ban-fidesz-candidates-successfully-posted-162-political-ads-on-facebook-in-january> accessed 25 June 2026.

have indeed adopted a risk averse approach, banning content that could violate TTPA, certain actors manage to bypass these restrictions and advertise their content anyway, receiving an unfair electoral advantage. Such a differentiated outcome could hint at preferential treatment, but researchers mainly point to inefficiencies of the content moderation systems that filter advertising content and the varying level of expertise amongst political actors in utilising and ultimately gaming platform mechanisms²⁷⁰. In any case, since these ads ended being published in the Meta platform, they ought to fulfil the transparency criteria stipulated under the new Regulation, potentially giving rise to a de facto violation of TTPA from Meta.

4.6 Labelling Requirements

As discussed in Chapter 2, the ECHR does not impose specific obligations in the way the Convention members organise their electoral landscapes but requires states to maintain a level playing field, as ultimate guarantors of the pluralistic debate. Developing the various practises of the members of CoE into a uniform code of good practices, the Venice Commission highlights the importance of labelling political advertising as such and disclosing information on the sponsors²⁷¹ as a matter of democratic integrity. Reflecting the Venice Commission recommendation, the EU digital acquis has adopted extensive transparency obligations to empower users of online platforms in forming considered opinions and enhance their deliberative capacity, requiring promoted content to be distinguishable as such, along with the identity of ad sponsors and the advertising means deployed.

Under the Digital Services Act, online platforms are required to ensure transparency in their advertising services by accompanying ads with a label that discloses the nature of the content as an advertisement, provides information on the identity of the person or entity behind the content and, crucially, the main parameters used to determine the recipient of an advertisement and how these parameters can be altered.²⁷² The same obligation is repeated in TTPA with regards specifically to political advertisements.

²⁷⁰ Political Capital, *The Houdini Ads – How political advertisements slip through Google's and Meta's filtering systems* (Policy Research Brief, Hungarian Digital Media Observatory 2025) https://politicalcapital.hu/pc-admin/source/documents/HDMO_PC_TheHoudiniAds_251219.pdf accessed 1 June 2026.

²⁷¹ Venice Commission, *Interpretative Declaration* (n 151) section 2.11.

²⁷² DSA (n 221) art 26.

Labels of political advertisements must also be informing on the electoral event or regulatory process that a specific ad concerns and whether targeting or ad-delivery techniques have been issued. Additionally, each label must provide access to a notice of transparency, i.e. additional information on exhibited advertisement²⁷³. Transparency notices are meant to provide detailed data for each advertisement placed, including inter alia, contact details of the sponsor, the period of the ad publication, the total remuneration for the placement, the origin of the remuneration and the methodology of its calculation, information on complaint mechanisms and whether previous publications or versions of the specific advertisement have been found in violation of TTPA²⁷⁴. While sponsors remain responsible for the content of the ad, online platforms are responsible for the completeness of the information provided in the transparency notice vis-à-vis TTPA requirements, including updating information as well as discontinuing ads that become incomplete or inaccurate²⁷⁵.

The requirement for labelling and transparency disclosure has been at the forefront of the European discussion on transparency and accountability on the online political debate, particularly with the increase in synthetic, AI-generated content²⁷⁶. However major platforms have been insufficiently addressing such content, particularly during elections. As discussed, in the 2026 Hungarian parliamentary elections, political actors were able to game platform advertising services and disseminate political ads despite the self-imposed ban of major platforms on political advertising. Additionally, the ads disseminated during the 2026 Hungarian elections largely featured heavily disinforming or doctored content, exposing furtherly the failure of major platforms to adequately meet their obligations in addressing the systemic risks posed to online political deliberation and electoral integrity by disinforming and AI-generated content. Despite their obligations under EU law, none of the major platforms active in the EU required by May 2026 official political accounts to label AI-generated content and were largely failing to treat such content as a distinct category of electoral risk. Instead, the response of platforms in automatically detecting and labelling AI-generated content has

²⁷³ TTPA (n 224) art 11.

²⁷⁴ Ibid art 12.

²⁷⁵ *ibid.*

²⁷⁶ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Democracy Shield: Empowering Strong and Resilient Democracies* JOIN(2025) 791 final (Brussels, 12 November 2025) 5.

been inconsistent, especially regarding the circumstances that activate detection and labelling and failing to establish clear frameworks for the algorithmic demotion of AI-generated content, while Meta and TikTok also do not provide for penalties to users that do not self-label AI-generated content²⁷⁷.

This failure of online platforms to safeguard electoral fairness in their environments is largely attributed to misidentification and misclassification of content, inconsistent and selective reviewing during content moderation and ultimately inadequate investment in technical and human oversight and enforcement²⁷⁸. Under ECHR however, the ultimate guarantors of fairness in the public debate remain the States and therefore these shortcomings fall short of the ECHR State obligation to maintain a level playing field in the digital political arena, that allows a fair and free exchange of political ideas, as the rules in place have yet to be effectively upheld and imposed.

4.7 Targeting and ad delivery

The techniques used by online platforms for selecting the advertising audiences and delivering the political advertisements are considered under EU law as a significant concern for fundamental freedoms, especially personal data, opinion formation and informational integrity²⁷⁹, a concern largely shared by the Venice Commission as well²⁸⁰.

The EU has set strict requirements for the use of targeting and ad-delivery techniques in online political advertising, especially with regards personal data processing by online platforms and the creation of user profiles for such purposes. As such, platforms cannot use personal data collected from third parties or for other purposes, factors that were key to the Cambridge Analytica scandal. Instead, as providers of advertising services platforms are only allowed to use data collected directly from data subjects

²⁷⁷ Democracy Reporting International, *The Governance Gap: How Online Platforms Are Falling Behind on Addressing AI-Generated Content during Elections* (Policy Brief, DRI 2026),

²⁷⁸ Political Capital, *Social Media Campaigning in the Shadow of Ad Bans* (Policy Paper, 24 April 2026) https://politicalcapital.hu/pc-admin/source/documents/PC_SocialMediaCampaign_PolicyPaper_260424.pdf accessed 1 June 2026.

²⁷⁹ TTPA (n 224) recital 74.

²⁸⁰ Venice Commission, *Joint Report on Digital Technologies and Elections* (n 158) paras 43, 122, and 127. On micro-targeting, see the Judgment of the Court of Justice of the EU (CJEU) in the case of Maximilian Schrems v. Meta Platforms Ireland Ltd, formerly Facebook Ireland Ltd, 4.10.2024, Case C-446/21.

that have explicitly and distinctly consented to the reception of political advertising, while the use of sensitive data for profiling, including data revealing political opinions, is altogether prohibited²⁸¹. What's more, platforms are prohibited from using so-called dark patterns, i.e. interfaces that "deceive or manipulate" users or "materially distort or impair" the ability to make free and informed choices²⁸², and must ensure that users are not repeatedly asked to consent to personal data processing for political advertising purposes²⁸³. Crucially, non-consenting users must be offered an "equivalent alternative" and not be barred from using the platform services²⁸⁴.

Contrary to the belief of EU legislators on the impact of microtargeting in deliberative processes²⁸⁵, research has shown that although microtargeting is a common practise of political parties, the techniques employed are far from the sophisticated mechanisms in the Cambridge Analytica scandal. In a global study conducted by researchers at the University of Amsterdam and the University of Mainz on 2.5 million political ads ran in Meta Platforms between August 2020 and December 2022 by 54k advertisers, most campaigns in Europe were found to use between 1 and 3 targeting factors, mainly location and socio-demographic criteria, while between 26% (Western Europe) and 40% (Eastern Europe) of the total spending budget was being allocated to one criterion, location. In the time of the study, the biggest microtargeting spender in Western Europe was Germany's Green Party, allocating 78% of their budget in more than 18 criteria²⁸⁶. Microtargeting techniques are relatively evenly used across the ideological spectrum, however parties founded before 1950 tend to spend three times more than newer ones, potentially revealing an effective adoption of contemporary campaign technologies by traditional parties, with the caveat of inherent technological savviness of younger contestants.²⁸⁷ In Europe specifically, the spending distribution of campaigns on political advertising in Meta platforms reveals that half or more of those ads are placed

²⁸¹ TTPA (n 224) art 18.

²⁸² DSA (n 221) recital 67 and art 25.

²⁸³ TTPA (n 224) art 18(4).

²⁸⁴ Ibid.

²⁸⁵ TTPA (n 224) recital 6.

²⁸⁶ Fabio Votta and others, 'Who Does(n't) Target You? Mapping the Worldwide Usage of Online Political Microtargeting' (2024) 4 *Journal of Quantitative Description: Digital Media* 1, 22 Fig 3 <https://doi.org/10.51685/jqd.2024.010>

²⁸⁷ Ibid, 29-33, Party-Level Description.

by centred, usually old and mainstream well-funded parties ²⁸⁸. Once again, Hungary is a notable exception; in May 2024, when the study was published, Orbán's Fidesz party outspent every other political party in Europe ahead of the European Elections that year, allocating 240 thousand euros to Google ads alone. For comparison, the second biggest spender on Google ads, Greece's New Democracy party, spent less than half the same amount²⁸⁹.

4.8 Notice-and-action

While labelling and transparency notes aim to foster citizen autonomy in comprehending promoted political messaging in the digital public sphere, under EU law active users have a central role in protecting the online political debate, reflecting Habermas' requirement for an informed and active citizenry and the emphasis of the Strasbourg Court on the public watchdog function of an array of entities in the public sphere, including not only the press but also NGOs, prominent social media users, researchers and academics. As such, the EU digital acquis places particular emphasis in the role of notification systems in platform environments, i.e. mechanisms that effectively allow users to report improper content.

As part of their content moderation structure, online platforms must have in place notification mechanisms that allow users to submit precise and substantiated notifications, flagging political advertisements for law violations, and facilitate follow-up communication. Platforms are required to address such notification without undue delay, which in the month before an electoral event is 48 hours²⁹⁰, and inform the notifiers of their actions²⁹¹. In contrast, sponsors must be notified accordingly without undue delay for any action taken towards their ads as well as the relative means of redress²⁹². Notice-and-action mechanisms already existed under DSA in terms of content violating terms and conditions or the law in general²⁹³, and can be expanded to

²⁸⁸ Fabio Votta, 'What data reveals about Meta and Google's political ad ban in the EU' (*Tech Policy Press*, 18 November 2024) <https://www.techpolicy.press/what-data-reveals-about-meta-and-googles-political-ad-ban-in-the-eu/> accessed 27 June 2026.

²⁸⁹ Clothilde Goujard and Hanne Cokelaere, 'How a massive online ad campaign is dominating Europe's election' (*Politico Europe*, 3 June 2024) <https://www.politico.eu/article/europe-election-political-ads-spend-online-meta-google-fidesz/> accessed 27 June 2026.

²⁹⁰ TTPA (n 224) art 15(7).

²⁹¹ *ibid* 15(1), (5).

²⁹² TTPA (n 224) art 15(9) and DSA (art 233) art 17.

²⁹³ DSA (n 221) art 16.

ensure compliance with TTPA as well. A crucial difference is that, in contrast to the DSA, under TTPA a political advertisement that is flagged as mislabelled is not automatically discontinued but, in a “stepwise approach”, platforms should make “best efforts” to correct or complete missing information, through sensible means and actions, “acting in good faith and employing logical steps” on a case-by-case basis²⁹⁴.

While the criticism raised with regards to the broadness of the definition of political advertising under TTPA as opposed to the ECHR requirement for legal certainty in regulating political speech, could also be applied in the vague stepwise evaluating procedure described above, these provisions can be approached from another light as well. These provisions establish a process of assessment of compatibility of advertised political content with the legal and contractual constraints imposed on political advertising under EU law and platform terms and conditions. However, political advertisement is a form of political speech that is highly protected under ECHR and can only be restricted under Article 10 para 2 ECHR for exceptional reasons relating, inter alia, to public safety and the rights of others. As the Strasbourg Court notes, such assessments are highly contextual and must consider all the different factors surrounding the expressive conduct in question²⁹⁵. Therefore, these provisions rightfully dictate that online platforms, while conducting these balancing exercises between freedom of political speech and rightful grounds for restriction, should assess each case on its own context and refrain from restricting content unless there’s no other way to uphold the legal and contractual standards for online political expression in the form of advertising.

4.9 Trusted Flaggers and Vetted Researchers

A key novelty of the EU digital acquis in utilising notice-and-action mechanisms to promote quick and reliable protection of fundamental rights and deliberative integrity in the digital sphere, is the establishment of trusted flaggers²⁹⁶. Trusted flaggers are expert entities vetted by national authorities that have prioritised access to notice mechanisms of online platforms regarding their designated field of expertise. Such entities may be public in nature, non-governmental, private, semi-public or

²⁹⁴ TTPA (n 224) art 12(2) and Guidelines (n 250), 40.

²⁹⁵ *Perinçek v Switzerland* [GC] App no 27510/08 (ECHR 2015) para 229.

²⁹⁶ DSA (n 221) art 22.

representative industry associations²⁹⁷. Along with trusted flaggers, EU law also introduced the concept of vetted researchers, non-commercial entities certified by national authorities, that conduct research on systemic risks to online political deliberation in the EU and have the right to receive access to platform data related to the dissemination of content in the platform environments, within a month from filing a request²⁹⁸. Under TTPA, major platforms are required to retain detailed records for each advertisement provided for a period of seven years, ranging from the political affiliation of the service provided to information on the origin of the remuneration or other benefits received for their services, i.e. whether of a private or public nature or originating from inside or outside the Union²⁹⁹.

In a landmark ruling in February 2026, the Berlin Court of Appeals (Kammergericht) implemented for the first time the right of vetted researchers to access platform data, obliging X (former Twitter), to grant access to Democracy Reporting International³⁰⁰, a prominent organisation researching threats to democratic integrity, to data related to the 2026 Hungarian elections, following the refusal of the platform to facilitate the request of the organisation in November 2025. The fact that the German appellate court accepted that the matter fell under its jurisdiction and admitted the lawsuit is of equal significance to the outcome of the case, substantially lowering the cost of researchers for pursuing and enforcing their claims against platforms in their local jurisdictions and not in the jurisdiction of the Member State where the platform is established in the EU, i.e. usually the courts of Ireland.

What is evident from this example is also that, despite its shortcomings, EU law accounts for and facilitates in practise the function of different social actors in the online political debate and the protection of deliberative integrity in the same manner as deliberative theory, affording these actors with special privileges that allow them to fulfil their role as public watchdogs under ECHR. As noted in Recital 69 of the TTPA “civil society organisations, human rights and watchdog organisations, journalists and

²⁹⁷ DSA (n 221) recital 61.

²⁹⁸ DSA (n 221) art 40(8).

²⁹⁹ TTPA (n 224) art 9.

³⁰⁰ Gesellschaft für Freiheitsrechte, ‘Success against X: Platform required to provide research data’ (GFF, February 2026) <https://freiheitsrechte.org/en/themen/freiheit-im-digitalen-zeitalter/x> accessed 25 June 2026.

other interested entities have a crucial role to play” in effectively regulating online political advertising. As it will be discussed in the following section, in fulfilling their role as public watchdogs, these actors rely heavily on information that online platforms make publicly available in special data repositories, called ad libraries.

4. 10 Supervision

Until the enactment of TTPA, the monitoring of online platforms compliance and imposition of penalties under EU law was raised to a European level and entrusted to the Commission, as a matter of common concern amongst Member States. The supervisory framework of TTPA largely conflicts with this model, as supervision is split between three axes and multiple authorities, primarily on a national level.

While the compliance of ad sponsors is supervised at the Member State of residence, in respect of the political autonomy of Member States, the supervision of online platform is not performed at the Member State where the ad recipients or sponsors are located or at the Member State of the electoral or legislative event that an ad concerns, but at the Member State that the online platform has its main establishment in the EU³⁰¹. As such, violations in one Member State must be communicated from the national supervision authorities to the competent Member State supervisory authority.

This domestic supervision of online platforms with political advertising legislation is distributed amongst three different types of national authorities, the Digital Services Coordinators, Data Protection Authorities and other domestic agencies. The Digital Services Coordinators, the supervisory authorities for the Digital Services Act, are tasked with ensuring overall coordination of the monitoring of online platforms with TTPA. However, the monitoring and enforcement of obligations related specifically to targeting and ad-delivery techniques ,which involve the processing of personal data, is entrusted to Data Protection Authorities³⁰². For all remaining matters, Member States are to appoint a third domestic authority, which can be the same or different from those mentioned above, including for example authorities responsible for audiovisual media, electoral or judicial authorities³⁰³. Additionally, TTPA established the network of

³⁰¹TTPA (n 224) art 23.

³⁰²ibid art 22.

³⁰³ibid recital 92.

national contact points, domestic agencies which will support and facilitate effective cross-border cooperation³⁰⁴.

Similarly, the disciplinary aspect of the Regulation is also placed at a domestic level. Sanctions and other applicable measures for violation of TTPA by sponsors and providers of advertising services are to be determined and enforced by the Member States themselves, an obligation that had to be fulfilled until January 10, 2026³⁰⁵. The new Regulation only establishes a ceiling for financial penalties, capped at 6% of the annual income or budget of the sponsor or of the provider of political advertising services (whichever is the highest) or 6% of the annual worldwide turnover in the preceding year. Despite recommendations by the European Board of Media Services to the Commission to introduce minimum standards as well³⁰⁶, such measure has not been included in the TTPA Guidelines.

The Commission's supervisory function of TTPA is limited to the compliance of platforms with obligations relating to the European repository of online political ads, which, until June 2026, has not been launched. TTPA also provides for an auxiliary committee to assist the Commission in adopting the implementing acts³⁰⁷, i.e. rules that clarify technical, operational, or procedural details in the implementation of the new Regulation. Though, the standing composition of this committee has been heavily criticised for its lack of inclusiveness, as it is comprised exclusively of members affiliated with advertising providers³⁰⁸.

With all foreign major platforms maintaining European Headquarters in Ireland, the supervisory burden of TTPA will mostly fall on Irish authorities, namely the Irish Data Protection Commission and Coimisiún na Meán. However, the Irish economy is heavily dependent on these platforms, raising questions as to the extent that Irish national authorities can effectively implement the new Regulation without interference, a

³⁰⁴ *ibid* art 22(9).

³⁰⁵ *Ibid* art 25.

³⁰⁶ European Board for Media Services, Input into the call for evidence, *cit.*, p. 3.

³⁰⁷ TTPA (n 224) art 29.

³⁰⁸ Civil Liberties Union for Europe, 'Feedback on the draft Commission Implementing Regulation on the European repository for online political advertisements' (23 January 2026) https://www.liberties.eu/f/_9mf4h accessed 25 June 2026, para 3

scepticism that is also cast upon Ireland's upcoming EU Presidency³⁰⁹. Characteristically, in 2024 almost 40% all national company tax was paid by just two of these companies³¹⁰, while Ireland is home to a tech sector of 170,000 people, that is currently experiencing significant volatility, with 10.7% decrease in ICT employment between March 2025 and 2026³¹¹.

The legislative choice of entrusting TTPA supervision, compliance and penalties to multiple domestic authorities, comes in stark contrast with the goal of the new Regulation to harmonise transparency obligations of political advertising in the Bloque³¹² and the EU supervisory approach over online platforms so far under the DSA framework, that had established an exclusive supervisory and enforcement competence of the Commission. As highlighted in the first briefing on the implementation of TTPA, this supervisory fragmentation raises further uncertainty over the implementation of the new Regulation³¹³, adds to a compact institutional nexus and raises the risk of “forum-shopping” from providers of advertising services. As such, instead of harmonisation, this fragmentation can further result in differentiated practises amongst Member states, institutional imbalances and dissuasive or disproportionate sanctions, that fall short of the ECHR requirement under Article 3 Protocol 1 for effective supervision of the electoral landscape by adequately equipped authorities.

4. 11 Conclusion

As the Strasbourg Court highlighted in the seminal *Perinçek* case, regulating political speech is a delicate balancing act requiring solid rules that allow right-bearers to reasonably foresee the consequences of their expressive conduct³¹⁴, while any interferences must be context-specific and account for the different circumstances of

³⁰⁹ Liz Carolan, ‘Ireland’s Upcoming EU Presidency Puts its Big Tech Dependence in Spotlight’ (*TechPolicy.Press*, 10 April 2026) <https://www.techpolicy.press/irelands-upcoming-eu-presidency-puts-its-big-tech-dependence-in-spotlight/> accessed 25 June 2026.

³¹⁰ Brian Cronin, ‘More concentration, more risk: three firms account for almost half of Ireland's corporation tax revenues’ (Irish Fiscal Advisory Council, 19 February 2026) <https://www.fiscalcouncil.ie/more-concentration-more-risk-three-firms-account-for-almost-half-of-irelands-corporation-tax-revenues/> accessed 25 June 2026.

³¹¹ Ronan Smyth, ‘Employment in the tech sector falls by over 20,000’ *The Irish Examiner* (21 May 2026) <https://www.irishexaminer.com/> accessed 25 June 2026.

³¹² TTPA (n 224) art 4.

³¹³ Bressanelli (248), 14.

³¹⁴ *Perinçek v Switzerland* [GC] App no 27510/08 (ECHR 2015), para 131.

expression³¹⁵. As such, upholding freedom of expression, whether online or offline, cannot entail black-or-white rules but inescapably requires the individual assessment of each case. Such assessments however must be grounded on clear legitimate rules and definitions and be made with restraint, i.e. must follow the principles of legitimacy, legal certainty and be necessary in a democratic society.

The EU approach on regulating political speech in the form of digital advertisements is focused on setting transparency and due diligence standards to the self-moderation of online platforms. These standards are often the product of shared consensus between the drafters and the subjects of regulation, taking the form of co-regulated Codes of Conduct, and are implemented autonomously by the platforms through content moderation and distribution mechanisms. However, the algorithmic core of these mechanisms remains an obscure proprietary possession that is shielded from public scrutiny. In the digital sphere, the assessment of the conformity of freedom of speech of digital citizens with democratic principles and the rights of others is performed in under a minute by platform-controlled content moderators, who are usually given minimal and standardised training and are obliged to perform myriads such balancing acts around on the clock, severely hurting their mental – and sometimes- physical health.

In a pragmatic approach, EU law has focused on strengthening the standards for content moderation mechanisms and enhancing the role of civil society, researchers and academics as important public watchdogs in the digital era, to allow citizens to form educated opinions and take the active role that Habermas envisioned as a necessary condition for strong deliberative democracies. The guarantees for privileged access of trusted flaggers and vetted researchers to the content moderation mechanisms, a measure that as discussed has already yielded positive results. In doing so, EU law encapsulates the functional understanding of freedom of press under the ECHR and of the mediating actors of political communication in deliberative theory. Under the EU digital acquis, online platforms are required to record, publicly catalogue and label political advertisements as such and provide users with adequate information on the origin, sponsor and purpose of each ad, as well as means of reporting content that

³¹⁵ Ibid para 229.

infringes their rights and seeking redress for content moderation decisions. Moreover, the EU has taken a hard stance on the use of personal data for targeting and delivery of political advertisements online, seeking to strengthen consent and user autonomy. These mechanisms allow citizens to form educated opinions and take the active role that Habermas envisioned as a necessary condition for strong deliberative democracies.

The new Regulation on the transparency and targeting of political advertising (TPPA) ambitiously aimed to harmonise political advertising services in the EU and protect deliberative integrity. However, the vagueness of many provisions, starting with the definition of political advertising, the overlap with existing mechanisms, the fragmentation of supervision and the delay in providing Regulation Guidelines and launching key transparency mechanisms, namely the European Repository for Political Advertisements, have so far achieved the opposite results and casted wide uncertainty, largely failing to meet ECHR standards and protect deliberative democracy in the digital era. The suspension of political advertising services by major platforms upon the enactment of TPPA has negatively affected freedom of speech in the digital sphere and the right of EU citizens to form an opinion, creating a more uneven field in the political arena and exposing the power of foreign and privately owned platforms over the means of political communication in Europe. Small parties and candidates in the EU have lost access to a technology that allows effective and affordable dissemination of political messages, which has undermined deliberative transparency in the public debate, since political advertisements that – against the rules- are twisted through the cracks are harder to be detected.

The reason for the emphasis on self-implementation and co-regulation of online platform does not reflect the narrow margin of appreciation under ECHR when it comes to state interference with freedom of expression, particularly on matters of public debate or regulation of media; after all online platforms are not considered media outlets but facilitators of communication, despite the mediating function of platform algorithms. The reason for this emphasis stems from the fact that the EU and the Member States lack the political means to effectively impose rules and obligations to online platforms, while infrastructurally dependent on these foreign and privately owned economic giants that own the digital squares of Europe. In essence, the EU legal framework acknowledges that, in the contemporary digital sphere, the primary responsibility – or

authority- to regulate freedom of expression does not lie with the authorities of the EU or of the Member States, but with the online platforms themselves. This power shift is conflicting with traditional constitutional theories of regulating authority over critical social functions, that is focused on limiting the power of State, from abusing the rights of individuals. In the contemporary constitutional milieu, the power over fundamental rights is also held by private corporations that fully control essential parts of societies and regulate, assess and penalise behaviours and expressive conducts in their domains through their own procedures and imitative, performing core State functions in what has been described as digital constitutionalism.

Chapter 5

Informed Futures

5.1 Digital Democracies and Online Campaigns

The present thesis, inspired by the revolution that Internet connectivity brought to communication mechanisms in the 21st century, aspired to assess the effectiveness of Eu law in regulating online political advertising to protect democratic deliberation in the digital age while upholding freedom of expression and political participation under the ECHR.

In doing so this research utilised the theory of deliberative democracy, as pioneered by late Jurgen Habermas, to understand the impact of algorithmic dissemination of information to political communication, analysed the case law of the Court of Strasbourg and the recommendations of the Venice Commission with regards to freedom of expression under Article 10 ECHR and the right to free elections under Article 3 Protocol 1 ECHR in the digital era and performed a doctrinal analysis of the Digital Services Act and the Regulation on Transparency and Targeting of Political Advertising, while empirically illustrating the impact of these legislative pieces through examples from the 2026 parliamentary elections in Hungary.

Deliberative democracy understands political dialogue as the mechanism that affords legitimacy to political decisions, provided that all social actors participate actively and equitably in structured discussions which are mediated by the media and reflect their needs, fears, hopes and dreams. This reflective quality of democratic deliberation is contingent upon the level of independence of mediators of communication, the media, from financial and political interests, as well as the active involvement of informed citizens, putting forward issues and voicing priorities and assessments of the different political messages. In the digital sphere, the mediative role has been undertaken by platform algorithms, mechanisms which have not been designed to serve as mediators of collective communication in deliberative terms but as maximisers of individual engagement in the platform environment. As such algorithmic dissemination of content skews the deliberative capacity of individuals, as users are entrapped in informational echo-chambers where they only engage with familiar opinions, while the constant flow

of content hinders reflection on pressing issues and the validity of the information becomes harder to assess.

Under the ECHR, the ability of citizens to form an opinion is a fundamental element of meaningful democracies, inextricably linked to the right to free elections and to the exchange of ideas without undue interference. For effectively realising these rights, states must maintain a level-playing field where political communication circulates freely and equitably but also within constraints guarantying that information is conveyed truthfully, objectively and transparently and no voice is dominating the public sphere due to resources asymmetry. Similarly to deliberative theory, under the ECHR the press has a significant duty in advancing equitable participation to the political debate, enabling the circulation of political messages and the reflection on public needs and preoccupations, a mediating function that the Court has attributed to the Internet, even though it maintains that structured communication through traditional media remains more impactful in conveying political messaging to this day. However, the Court highlights that freedom of expression and the right to free elections must be equally protected in the digital era from undue state interferences, both foreign and domestic, as these rights are susceptible to restraints only to the extent necessary in a democratic society, with clear rules and legitimate objectives. In that direction, the Venice Commission has compiled the ECHR standards developed by the Court in a series of recommendations towards the Contracting Parties, transposing ECHR norms in the digital age.

In the EU legal sphere, where the Convention standards bind all EU Member States on a domestic level under their capacity as ECHR signatories, two legislative pieces, the Digital Services Act (DSA) and the Regulation on Transparency and Targeting of Political Advertising (TTPA), have aspired to set transparency and due diligence rules on the internal market of online political communication, seeking to protect competition and freedom of movement in the common market and enhance democratic integrity in the digital sphere. The EU digital acquis focuses on setting standards for the self-moderation of online platforms and restricting the use of personal data for advertising purposes, aiming to protect individual autonomy and the capacity for informed participation. By imposing increased disclosure obligations to content moderation activities, EU law enhances the role of civil actors as public watchdogs in

the digital era, encapsulating the functional role of the press under ECHR and deliberative theory. Under the Digital Services Act, online platforms are required to record, publicly catalogue and label advertising content as such and provide users with means of reporting content and seeking redress for content moderation decisions. These measures have already achieved positive results, successfully providing researchers access to platform data and exhibiting the importance of the active role of citizens that Habermas envisioned as a necessary condition for strong deliberative democracies, albeit stopping short of allowing public scrutiny to the content moderation algorithms themselves. Unfortunately, the intellectual output of academics, writers and the press itself, the journalists and media professionals that bring the fears, needs, hopes and dreams of the people to the forefront of the political debate – or hold them out – receives little protection. Online platform algorithms freely disseminate editorial content in platform environments to monetise user attention, while AI models train and generate content based on sources scrapped through the internet without consent or remuneration of the authors.

The new Regulation on the transparency and targeting of political advertising (TTPA) ambitiously aimed to harmonise political advertising services in the EU and protect deliberative integrity. However, by vaguely defining political advertising and other key elements, creating overlapping mechanisms and obligations, shifting platform supervision from a Union to a domestic level and delaying the implementation of key mechanisms, TTPA has so far achieved the opposite results. As such, the implementation of the new Regulation has casted wide uncertainty across the digital sphere, largely failing to meet ECHR standards of legal certainty and democratic necessity in protecting deliberative democracy in the digital era. The decision of Google and Meta to suspend political advertising services in Europe after the implementation of TTPA has been a serious blow in strengthening freedom of speech in the digital sphere and the capacity of EU citizens to form an opinion, creating a more uneven field in the political arena and exposing the power of foreign and privately owned platforms over the means of political communication in Europe.

5.2 Regulatory Limits and Structural Challenges

If the dominant position of MediaSet in the Italian broadcasting landscape led Habermas to warn against the market colonisation of the media and the Strasbourg

Court to convict Italy for violating the obligation to maintain media pluralism as an essential component of democratic societies, it is worth wondering how the private oligopoly over digital spheres fares with ECHR requirements for both external and internal pluralism in freedom of expression. Through meticulous acquisitions in the global market, major platforms have created digital megastructures that, concentrate the majority of internet social and economic activity; Meta did not develop Instagram or WhatsApp but acquired these apps when they gained popularity that challenged its products³¹⁶. Similarly, in 2006 Google purchased YouTube, the dominating platform for self-education, while its own video sharing platform, Google Videos was failing to amass attention³¹⁷. Due to the extent of this concertation, citizens and businesses are obliged to participate in these platforms in order to remain connected with social and economic life both in the digital and the physical sphere. To enter the platform environment however, users are obliged to accept the corresponding terms and conditions without any negotiating power. This power imbalance and mass concentration of resources and means in liberal democracies has been characterised as technofeudalism, as platforms themselves receive a substantial economic rent for allowing access in their environment, in the form of data, monthly subscription or percentage on a sale³¹⁸. Furthermore, as Francis Fukuyama notes, legitimacy of democratic dialogue is particularly sensitive to such power imbalances, as mass concertation of power allows few interest groups to dominate politics through lobbying and campaign contributions³¹⁹. From a rule of law perspective, the privatisation of the public sphere, the concentration of oligopolistic power and the governing autonomy of online platforms has led to a profound constitutional distress and a -deeply asymmetric - digital social contract and a new legal order that has been described as digital constitutionalism³²⁰.

³¹⁶ Niall Ferguson, *The Square and the Tower: Networks and Power, from the Freemasons to Facebook* (Allen Lane 2017) 357

³¹⁷ 'YouTube' (*Encyclopædia Britannica*, 2026) <https://www.britannica.com/topic/YouTube> accessed 5 July 2026.

³¹⁸ Almeida, F., & Borba de Almeida, B. (2026). Fascism, Technofeudalism, or Market Socialism? An Institutional Perspective on the Possible Future of Capitalism. *Journal of Economic Issues*, 60(2), 515–523. <https://doi-org.ezproxy.its.uu.se/10.1080/00213624.2026.2657231> accessed 5 July 2026.

³¹⁹ Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (Farrar, Straus and Giroux 2014) 208.

³²⁰ Giovanni De Gregorio, *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society* (Cambridge University Press 2022) 114–119.

The EU digital acquis – as well as the Council of Europe- largely accept this power shift as a reality and adopt a pragmatic regulatory approach, emphasising working closely with the private actors concerned in the regulatory processes and opt for guiding principles rather than concrete rules, to increase the likelihood that online platforms will adopt measures that will afford better protection to fundamental rights. After all, as the suspension of online political advertising services illustrated, when major platforms disagree with the scope of regulation of specific aspect of the digital sphere, they might have the capacity to keep Europe out. As such, the common denominator in the EU digital acquis discussed in the present thesis is the establishment of a system where the emphasis is placed on co-regulation through Codes of Conduct and self-implementation of norms by online platforms via content moderation mechanisms. This choice does not reflect the narrow margin of appreciation under ECHR when it comes to state interference with freedom of expression or free press, particularly on matters of public debate or regulation of media; after all, despite the mediating function of platform algorithms, online platforms are not considered media outlets but facilitators of communication. The reason for the emphasis on self-implementation and co-regulation of online platforms reflects the fact that the EU and its Member States lack the political means to effectively impose rules and obligation to online platforms, while infrastructurally dependent on foreign and privately owned economic giants that own the digital squares of EU citizens. However, if the goal is to protect democracy, free competition and freedom of movement in the common market, then the existence of such mass oligopolies in the common market should by nature be incompatible with the EU architecture.

The lack of sovereignty over digital infrastructure though is a common problem across the board of digital middle powers, being caught between Chinese and American services. As such, while digital constitutionalism becomes a reality, so does a framework of cooperation amongst the affected legal orders to mitigate the impact of dependency to democracies across the globe. The development of common norms, starting with shared vocabularies, and mechanisms of regulation of online platforms and the digital world that can be translated to regional or national frameworks, becomes crucial in securing an effective response.

5.3 Deliberative Futures

The impact of online disinformation, sensationalism and foreign interference in contemporary democracies should not be underestimated, neither should the claims that platform designs exhibit addictive characteristics³²¹. However, neither should be underestimated the timelessness of propaganda and emotionalism in political campaigning, or the capacity of citizens to develop their cognitive reflexes. While echo-chambers and partisanship are undeniably a contemporary challenge, Chambers notes that a series of studies suggested already from 2018 that citizens have started to be more vigilant towards their biases and the assessment of news content³²². To counteract this influence, Habermas placed particular emphasis on the need for an educated citizenry for deliberative democracy to work and claimed that individuals have a social and moral duty as democratic citizens to actively engage in political discussions. Amongst all its recommendations for fair, clear and parsimonious rules on electoral regulations, the Venice Commission singles out the obligation of states to take effective measures in educating electorates to comprehend modern challenges and providing citizens the means to be able to form their own opinions³²³. As discussed in Chapter 3, an informed citizenry is the starting point of free and fair democratic processes under the ECHR. The EU's efforts in addressing challenges in democratic integrity in the digital era unfortunately pay little attention to such goals, which are timely, costly and unpredictable. Instead, the Bloc attempts to moderate a fluid and context-specific aspect of life like expression through concrete rules, by casting a wide regulatory and supervisory net. A net that is now trying to downsize, without compromising the protection of fundamental rights, a procedure that not only proves more difficult than expected but also reveals a dangerous internal distrust in the Union's capacity to act as a global player.

The challenges that democratic integrity faces in the digital era cannot only be an issue of the vulnerability of citizens in forming their opinions in the digital sphere and the

³²¹ DSA Observatory, 'How Have Platforms Addressed Addictive Design Under DSA' (*DSA Observatory*, 9 March 2026) <https://dsa-observatory.eu/2026/03/09/how-have-platforms-addressed-addictive-design-under-dsa/> accessed 5 July 2026.

³²² Simone Chambers, 'Truth, Deliberative Democracy, and the Virtues of Accuracy: Is Fake News Destroying the Public Sphere?' (2021) 69 *Political Studies* 156.

³²³ Venice Commission, *Principles for a Fundamental Rights-Compliant Use of Digital Technologies in Electoral Processes* (11–12 December 2020) CDL-AD(2020)037, paras 92 and 93.

undue interference of malicious actors. Afterall, even if EU citizens increasingly use online platforms as sources of information on social and political issues, legacy media, particularly TV, are still considered more important source of information across all age groups above 25³²⁴, justifying in that regard the stance of the Strasbourg Court in relation to the impact of online political advertising and the importance of protecting the Internet as a space of uninhibited exchange of information and ideas. Above any medium or platform though, the source that EU citizens in most Member States trust is family and friends³²⁵.

On his 2018 book on networks and power, the historian Niall Ferguson, looking across the Atlantic and in the 2016 US elections, highlights that the social groups that were more likely to support populism, were also the groups less likely to be on social media, i.e. elderly and country-dwellers. As such:

“Populist campaigns would not have been successful if the memes they disseminated had not been spread further in the non-electronic forums where ordinary people meet, and where friendships are real rather than (as on Facebook) fake: pubs and bars. And this, in turn, would not have happened if those memes had not resonated.”³²⁶

On the contrary, the outcome of the 2026 Hungarian elections illustrated the limit that any information campaign can have in the hearts and minds of an electorate. When citizens are not satisfied with their living conditions and a new political message appeals to them, despite any amount of propaganda people will make informed opinions according to their interests and lived experiences. The protection of deliberative democracy in the online sphere is not an issue of exhaustive legislative obligations, let alone obligations only weakly enforced. Rather, it is mainly a matter of constitutionally reimagining mechanisms of communication, enhancing citizen education in view of modern challenges and reinventing a political message that accounts for and resonates with the needs, fears, hopes and dream of the people.

³²⁴ European Parliament, *Social Media Survey 2025* (Flash Eurobarometer FL014EP, European Union 2025) <https://europa.eu/eurobarometer/surveys/detail/3592> accessed 2 July 2026, 9, 15.

³²⁵ *ibid* 94.

³²⁶ Niall Ferguson (n 316) 388.

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