

Climate Disinformation and the New European Regulations

Opportunities for leveraging the forthcoming European law

The European Union has moved more quickly than the United States to adopt laws and regulations impacting digital platforms. Some of these moves, notably the near-final adoption of the Digital Services Act, create opportunities to push for climate disinformation specific disclosures and improved platform practices in Europe. There is significant potential for improved practices in the U.S. as a result of this EU law--as we have seen in the context of privacy, where the EU's General Data Protection Regulation (GDPR) unquestionably had global impact. Though the rules are not yet final, what is clear already is that the EU--and its commissioners including Margrethe Vestager and Thierry Breton--are making a deep, significant and historic move to regulate big tech.

This memo lays out the breadth of EU government actions on digital platform regulation and identifies points of intersection with the climate disinformation agenda, and also describes modularity as an emerging theory and narrative to facilitate the importation into the US of norms and practices shaped by EU law.

1. Digital Services Act (DSA): The [DSA](#) includes a large number of provisions relevant to the spread of disinformation and harm online and improving digital platform responsibility and accountability. **The DSA text is not yet final, and even after completion, will be subject to rulemaking and similar procedures to develop and publish more detailed expectations.** Characterizations/quotes are based on the newest available information, usually [the Parliament's final text](#).

- The social media platforms that are classified as “very large”, including Facebook, Twitter, Google/YouTube and others (45 million users in Europe, ~10% of population) are obligated to conduct **annual risk assessments** identifying the probability and severity of a number of different “systemic risks”, a list that includes “risks inherent to the intended operation of the service, including the amplification of illegal content, of content that is in breach with their terms and conditions...” (which could include climate or other disinformation) along with language regarding harm to “civic discourse” and “public security.” These risk assessments must include evaluation of the role played by “algorithmic systems [and] recommender systems.” Furthermore, the platforms must **develop and disclose mitigation measures** specific to each risk.
- Very large platforms must make internal data available to “vetted researchers, vetted not-for-profit bodies, organisations or associations” according to the Parliament’s text; this language may vary in the final version, but some level of researcher access is expected, allowing approved researchers focusing on climate disinformation access to some level of relevant internal platform data.

- Platforms have three categories of **transparency/disclosure obligations** with respect to content moderation practices: up-front obligations to disclose moderation practices as part of Terms of Service; moment-in-time notifications to users of moderation actions, including mechanisms to appeal; and periodic transparency reports. While the DSA does not specify disinformation or other causes of moderation, nevertheless, platforms can specify and offer transparency specific to climate disinformation as a cause of action within the DSA's disclosure obligations.
- The final DSA agreement includes a **crisis mechanism** which may, in the final DSA text, include some language specific to disinformation, inspired by the Ukraine/Russia war and Russian efforts at manipulation. Notably, Twitter has released a specific [crisis misinformation policy](#). Depending on the final language, the DSA's crisis mechanism could inspire other companies to follow Twitter's example. These policies would then be useful in certain circumstances to raise the profile of climate disinformation-generating events such as natural disasters, power outages or climate negotiations. In these circumstances, the potential for practical impact might be very high.
- A number of provisions concerning ad and content targeting were discussed through DSA negotiations, and final language includes prohibitions on the use of "dark patterns" (manipulative user interface designs that steer users to certain actions, such as opting into unnecessary tracking) as well as on the use of information concerning minors in targeting. This last language mirrors provisions within the GDPR. Collectively, the ad targeting and user interface language is unlikely to be useful with regards to climate disinformation.

2. Data Act

- The Data Act is a European Commission proposed law (not yet approved by Parliament or Council) with two principal components with potential nexus to climate disinformation. First and most importantly, the law includes provisions for public sector (aka government) agencies to request private data from companies in circumstances of "exceptional data need." Examples of such "exceptional" circumstances include public health emergencies. Although the language is unclear, this obligation appears to apply to all "data holders" under the law; there appears some chance that subsequent EU legislative processes will narrow the scope of this obligation to only certain types of services and data.
- In the broadest interpretation, it would seem scientists and advocates, and the Paris accord and IPCC process itself could argue that the climate crisis is an exceptional source of need, and that a European government agency is entitled under the Data Act to seek data regarding the recommendation of climate disinformation by platforms.
- Second, the law sets out to facilitate mandatory data access provisions in other laws, notably the General Data Protection Regulation. For example, the GDPR includes mandatory data portability, but the nature of the obligation has made it hard to exercise in practice; the Data Act sets additional expectations around the GDPR's data access rights, including data portability as well as the rights of users to request data about themselves from service providers.
- While this second provision could facilitate some amount of research on climate information under certain circumstances, it is somewhat limited in that it is oriented toward individual user-related data access, not the level of collective data gathering that typically powers systemic research activity.

3. Democracy Action Plan

- The Commission's [Democracy Action Plan](#) is not a regulatory framework in itself, but rather a collection of efforts to improve elections and media freedom and combat disinformation. The plan's disinformation work is centered on the [Code of Practice on Disinformation](#), a coregulatory exercise initiated in 2018 meant to drive improved transparency, access, and mitigation provisions by social media companies in how they respond to the spread of disinformation.
- In 2021, the Commission [launched a new process to strengthen the Code of Practice on Disinformation](#), and added [26 new signatories](#) in November. A decision [was expected in March 2022](#), but is not yet available.
- If the process ultimately results in regulations or further changes to social media policies and practices, it could produce further improvements, but its prospects are currently unclear.

4. Digital Markets Act (DMA)

- The [Digital Markets Act](#) defines a new class of “gatekeepers”--large companies that operate in one of eight “Core Platform Services” (CPS) sectors, and sets out new competition-related obligations designed to prevent gatekeepers from abusing their market position to harm competing businesses. The CPS sectors include social media companies, search engines, and others that distribute content online at scale, including climate disinformation content.
- Most of the obligations relate specifically to competition-related behavior, such as combining data across services, setting different pricing and access conditions, bundling, and self-preferencing practices. These are unlikely to be useful ways to reduce the spread of climate disinformation, though its regulatory scrutiny carries the possibility of high fines which can increase responsibility and responsiveness from social media and search companies in general.

5. Data Governance Act

- The [Data Governance Act](#), adopted by the EU Parliament in April 2022, is principally intended to promote European development of artificial intelligence. In practice, it functions to make government data available for private sector use by setting up trustworthy marketplaces and organizers of data--think of a digital library system for data generated by EU government agencies, complete with inter-library loan equivalents and different kinds of organizational and sorting mechanisms. The legislation proposes the creation of European “data spaces” on specific topics, and one of the named topics is “environment”.
- While the act will not be useful directly to drive changes in behavior by platform companies to combat climate-related disinformation, environmental data collected by European government agencies and made available could prove useful for climate researchers and advocates developing counter-narratives and underlying evidence.

6. Transnational Governance

- There is some room for transnational collaboration on governance and regulation. For example, modularity is the idea, [as put forward by Susan Ness and Chris Riley](#), that digital platform laws should incorporate “modules” that allow external, multi-stakeholder, and transnational processes to set standards for company practices. European laws, including the DSA, generally set out high-level or normative expectations for compliance, nothing like specific check boxes of sufficient actions. This is helpful for advocates to the extent that technology is always evolving, and a law that can evolve too (without resort to another legislative process) stands a better chance of remaining relevant and effective.
- In the context of climate disinformation, modularity could allow climate activists to get a seat at the table over the next 12-18 months as some of the European laws’ obligations are translated into implementable guidance. European political figures have shown appreciation for modularity as a concept. Multi-stakeholder, transatlantic module processes would also bring platform representatives and US government leaders to the same table, along with climate and civil society activists, increasing the possibility of voluntary compliance in the United States even with no