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CONSTITUTIONALIZING TERMS OF SERVICES? ARTICLE 14 (4) DSA AND THE BLURRING OF PUBLIC AND PRIVATE LAW IN THE EUROPEAN UNION

ABSTRACT

This contribution examines Article 14(4) of the Digital Services Act (DSA), which obliges online platform providers to apply and enforce their terms and conditions with "due regard" to the fundamental rights of all parties involved. The paper argues that this provision creates a novel framework in which private contractual autonomy coexists with values traditionally rooted in the public law domain. Even though the introduction of fundamental rights considerations into private platform governance can be seen as a step in the right direction, the absence of concrete criteria for resolving conflicts between the two results in legal uncertainty. By subjecting Article 14(4) DSA to a textual and systematic analysis, the contribution identifies three core ambiguities: the temporal scope of the due-regard obligation, its application to both illegal and lawful content, and the lack of a substantive balancing framework. The paper further argues that the principle of proportionality, while offering a doctrinal reference point, cannot be straightforwardly transposed into private platform governance. This tension is particularly acute in the context of AI-driven content moderation, where fully automated systems are structurally ill-suited to conduct the rights-sensitive, contextual balancing required by Article 14(4) DSA. The paper concludes that the EU legislator should have established clear substantive conditions limiting the use of fully automated moderation in cases where a genuine proportionality assessment is required and suggests that ex-ante human oversight combined with region-specific moderation frameworks developed in cooperation with public authorities, civil society, and local experts should be given prevalence. Employing doctrinal legal research complemented by normative and interdisciplinary analysis, the contribution seeks to clarify what this emerging regulatory model means for the future protection of fundamental rights in the digital public sphere.

Keywords: *Digital Services Act, Content Moderation, Fundamental Rights, Proportionality, AI-Driven Content Moderation*

1. INTRODUCTION

The governance of online content and communication has become one of the most pressing legal and societal questions of the digital age. Nowadays major platforms such as TikTok, Facebook and YouTube function as global intermediaries of speech and thus exercise a key role in the global information environment by deciding what kind of content their users can view online and how they are able to communicate.¹ The heated discourse surrounding the "censorship" by private operators, especially social media platforms, through their content moderation has developed to a major concern in the last years.² Private actors have the power to decide what information can be shared online, if it should be contextualized or even removed.³ Keeping in mind that freedom of expression constitutes one of the founding values within a democratic society⁴ it has been argued by numerous voices that the task of determining which content should be disseminated within online spaces should not be left to social media platform providers without harmonized rules and safeguards.⁵ It is particularly important to consider that content moderation decisions are often taken through automated systems⁶ or depend highly on internal moderation guidelines thus raising fundamental questions about accountability, fairness, and the protection of fundamental rights online. Especially with regards to the individual rights of users as well as the influence on democratic discourse, the issue becomes a significant one.⁷

¹ Botero Arcila, B.; Griffin R., Social media platforms and challenges for democracy, rule of law, and fundamental rights, Study requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, April 2023, p. 14, [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743400/IPOL_STU\(2023\)743400_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743400/IPOL_STU(2023)743400_EN.pdf), 19 December, 2025.

² Țucă, M., Digital Services Act: Is Article 14(4) Protecting Free Speech or Just Window Dressing?, January 2025, <https://www.conformia-hub.eu/blog/dsa-art14-free-speech>, 15 January, 2026.

³ Al-Zaman, S. Md., *Patterns and Trends of Global Social Media Censorship: Insights from 76 Countries*, Sage Journals, volume 87, 10/2024, p. 2f.

⁴ Council of Europe, *Freedom of Expression*, The European Convention on Human Rights, <https://www.coe.int/en/web/human-rights-convention/expression>, 26 November, 2025.

⁵ Jodanović, A., *The Digital Services Act Package: Protection of the Fundamental Rights of Digital Service Users in the European Union*, Regional Law Review, volume 5, 11/24, p. 52; Forsio, G., Geiger, C., *Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime*, European Law Journal, volume 29, 11/2023, p. 31f.

⁶ Griffin, R., Algorithmic Content Moderation Brings New Opportunities and Risks, October 2023, <https://www.cigionline.org/articles/algorithmic-content-moderation-brings-new-opportunities-and-risks/>, 04 November, 2025.

⁷ Quintais, P. J.; Appelman, N.; Ó Fathaigh, R., *Using Terms and Conditions to Apply Fundamental Rights to Content Moderation*, German Law Journal, volume 24, 11/2023, p. 884.

The so called "digital revolution"⁸ has exerted pressure on the European legislator to modernize the existing regulatory approaches and to build upon the e-Commerce Directive, especially regarding its liability privilege for platform operators that play "an intermediary role on the Internet."⁹ The proposed legal framework should enhance the responsibility of platform providers and improve the protection of users' rights. However, striking a balance to mitigate online harm, whilst ensuring fundamental rights like, the freedom of expression and information as well as the freedom to conduct a business is not an easy task.¹⁰

In response to these growing concerns the European Union adopted the Digital Services Act (DSA)¹¹ in October 2022, which entered into force in February 2024 for all platforms.¹² The DSA is a landmark framework within the EUs digital regulation seeking to recalibrate the relationship between users, platform providers, and society at large. To achieve its goals the DSA forms "a single set of rules" by imposing harmonized obligations on online intermediaries and platforms. Among its objectives are establishing "a safer digital space in which the fundamental rights of all users of digital services are protected", whilst also creating "a level playing field that fosters innovation, growth and competitiveness, both in the European Single Market and globally."¹³ Hence the key goals of this ambitious rulebook are to improve transparency, balance competing fundamental rights and create different mechanisms to protect users against illegal content, and disinformation.¹⁴

Among its most innovative features is Article 14 DSA, particularly its paragraph 4, which obliges online platforms to apply and enforce their terms of service with "due regard" to users' fundamental rights.¹⁵ This requirement marks a significant shift in EU law: contractual relationships between platforms and users are no longer governed solely by private autonomy but are explicitly infused with values

⁸Jodanović, *op. cit.* note 5, p. 49.

⁹ Wimmers, J., *The Out-of-Court Dispute Settlement Mechanism in the Digital Services Act: A Disservice to Its Own Goals*, Journal of Intellectual Property, Information Technology and E-Commerce Law, volume 12, 02/2022, p. 385.

¹⁰ Golunova, V.; Tas, S., *Guardians of Digital Rights: Exploring Strategic Litigation on Data Protection and Content Moderation in the EU*, Nordic Journal of European Law, volume 7, 01/2025, p. 57.

¹¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277 of 27 October 2022 (hereinafter: DSA).

¹² The Digital Services Act, Shaping Europe's digital future, October 2022, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act>, 28 October, 2025.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 894.

traditionally rooted in public law.¹⁶ Article 14 (4) DSA thus operates at the very point where public and private law intersect, raising foundational questions about the horizontal effect of fundamental rights,¹⁷ the impacts on private contractual autonomy, and the scope of the EU's competence to introduce fundamental right duties that apply to horizontal relationships through secondary legislation.¹⁸

This contribution argues that Article 14 (4) DSA creates a framework in which private contractual autonomy coexists with public-law values¹⁹, but without clear guidance as to how conflicts between the two should be resolved. The absence of concrete criteria on how platform providers should operationalize the balancing of competing fundamental rights in practice risks turning this assessment into a superficial "box-ticking" exercise by private actors²⁰ - thereby undermining the broader rights-protective ambitions of the DSA.²¹ While public-law principles such as proportionality may offer an initial doctrinal reference point, their transplantation into private platform governance,²² now increasingly shaped by AI-driven content moderation raises unresolved conceptual and institutional challenges.²³ By analyzing the doctrinal, institutional, and practical implications of Article 14 (4) DSA, the contribution seeks to illustrate how this provision challenges traditional boundaries between public and private law and explores what this emerging model of "hybrid speech governance"²⁴ may mean for the future protection of fundamental rights in the digital public sphere.

While earlier contributions in this field have primarily focused on the preliminary question of whether public-law values can be introduced into private-law relationships²⁵, and on how the horizontal effect of fundamental rights may exert

¹⁶ Mast, T.; Ollig, C., *The Lazy Legislature: Incorporating and Horizontalising the Charter of Fundamental Rights through Secondary Union Law*, European Constitutional Law Review, volume 19, 09/2023, p. 470.

¹⁷ Husovec, M., *Principles of the Digital Services Act*, 2024, p. 254.

¹⁸ Palumbo, A., *Disentangling the horizontalisation of fundamental rights in the Digital Services Act: What obligations for online intermediaries?*, Rivista di diritto dei media, volume 2, 10/2024, p. 104; Mast, Ollig, *op. cit.* note 16, p. 476.

¹⁹ Palumbo, *op. cit.* note 18, p. 102f.

²⁰ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 910.

²¹ Art. 1(1) DSA.

²² Wilman, F.; Kalèda, L. S.; Loewenthal, P., *The EU Digital Services Act*, Oxford University Press, 2024, p. 123; Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 910.

²³ Hakami, A.; Tazel, R., *The Ethics of AI in Content Moderation: Balancing Privacy, Free Speech, and Algorithmic Control*, ResearchGate, 10/2024, p. 3.

²⁴ Schulz, W.; Ollig, C., *Hybrid Speech Governance: New Approaches to Govern Social Media Platforms under the European Digital Services Act?*, Journal of Intellectual Property, Information Technology and E-Commerce Law, volume 14, 02/2024, p. 561.

²⁵ Mast, Ollig, *op. cit.* note 16; Schulz, Ollig, *op. cit.* note 24; Palumbo, A.; Ducuing, C., *The Blurring of the Public-Private Dichotomy in Risk-Based EU Digital Regulation: Challenges for the Rule of Law*, SSRN Electronic Journal, 08/2025.

binding force on private actors²⁶, this contribution shifts the focus to the concrete balancing exercise that platform providers must undertake when confronted with competing interests. Particular attention is given to the role of the principle of proportionality in guiding this assessment. Against this background, the paper examines the extent to which reliance on fully AI-driven content moderation can be regarded as compatible with Article 14(4) DSA, which requires a contextual and rights-sensitive balancing of interests.

To achieve this objective, the paper employs doctrinal legal research (DLR) as its primary methodological approach, analyzing the relevant provisions of EU law, in particular the DSA and the Charter of Fundamental Rights of the European Union (CFR), together with the case law of the Court of Justice of the European Union (CJEU). To move beyond a purely descriptive account and to assess the normative adequacy of the current regulatory framework, the doctrinal analysis is complemented by a normative legal method, drawing on fundamental-rights principles developed in constitutional and human-rights jurisprudence. In addition, the analysis incorporates interdisciplinary research on artificial intelligence and automated decision-making in order to contextualize the legal assessment within the broader technological and socio-technical environment in which content moderation systems operate.

The contribution is grounded in the current state of academic research and draws on scientific literature in the fields of platform regulation, digital constitutionalism, and content moderation. Relevant academic literature was identified through established legal and interdisciplinary databases, including JIPITEC, Verfassungsblog, ResearchGate, Westlaw, Beck-Online, SSRN, Tech Policy Press and Google Scholar. Technical and interdisciplinary research on artificial intelligence and automated decision-making was additionally consulted through databases such as IEEE Xplore and the ACM Digital Library. EU legislation was accessed via the official EUR-Lex database, while judgments of the Court of Justice of the European Union were consulted through the Court's official website (curia.europa.eu).

2. THE NEED TO INTEGRATE PUBLIC-LAW VALUES INTO PRIVATE RELATIONSHIPS

To contextualize the issue outlined above, it should be noted that platform providers are still private actors and that the relationship between platforms and

²⁶ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7.

users is of contractual nature, with the terms and conditions forming the basis. In principle, fundamental rights instruments, such as the Charter of Fundamental Rights (CFR) traditionally only apply to relationships between individuals and states and do not govern vertical relationships between private parties.²⁷ Rights, like the freedom of expression and information, do not oblige private entities to tolerate all types of information in their digital spaces. Within the scope of contractual autonomy, platform providers can implement rules that are more restrictive than those imposed by state bodies.²⁸ However, caution is advised when it comes to large social media platforms such as TikTok, Instagram and YouTube. These private providers occupy a dominant position in contemporary digital society.²⁹ This phenomenon can be explained by the significant power imbalance between large platform providers and their users. While providers of online platforms can largely determine their internal rules unilaterally, users usually have no choice but to accept these requirements. The platform's policies thus ultimately shape the conditions under which online users can participate in the online discourse.³⁰ They hold a monopoly within the digital communication sphere, as it is almost impossible for users to switch to another platform offering analogous communication services without experiencing personal downsides, if they are unwilling to agree to the terms and conditions.³¹ For this reason, major platform operators are often referred to as "intermediaries", and in my opinion, rightly so. They occupy an intermediate position between the state and society because they have the power to control and influence digital infrastructure.³² Importantly, they not only have the ability to influence the structure and functioning of the informational environment itself, but also how their users are able to communicate within it. Consequently, the restrictions imposed by platform providers in their terms and conditions can have a significant impact on users' fundamental rights, including freedom of expression and freedom of information, as well as the rights to privacy and data protection. At the same time, providers are required to moderate content distributed on their platform, which may lead to the removal, restriction, or filtering of vast amounts of allegedly unlawful online material. Such

²⁷ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7. 882; Senfleben, M., Human Rights Outsourcing and Reliance on User Activism in the DSA, February 2024, <https://verfassungsblog.de/human-rights-outsourcing-and-reliance-on-user-activism-in-the-dsa/>, 31 December, 2025.

²⁸ Pöschl, M., *Neuvermessung der Meinungsfreiheit*, in: H. Koziol (ed.), *Tatsachenmitteilungen und Werturteile: Freiheit und Verantwortung*, Jan Sramek Verlag, Vienna 2018, p. 57; Schulz, Ollig, *op. cit.* note 24, p. 562f.

²⁹ Palumbo, *op. cit.* note 18, p. 103.

³⁰ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 883.

³¹ Pöschl, *op. cit.* note 28, p. 57.

³² *Ibid.*, p. 59.

measures directly affect the rights of those users that created the content.³³ Considering that the online environment has become a primary channel for exercising the right to freedom of expression and information,³⁴ it is unsurprising that the protection of these rights constitutes a central element within the DSA's framework.³⁵

From a broader constitutional perspective, the regulatory intervention of the EU legislator in the contractual relationship between platform providers and users can also be understood in light of a well-established concept in democratic welfare states: the justification of setting limits to the freedom of contract³⁶ to ensure that the factually weaker contractual party can "fully enjoy their freedom of self-determination."³⁷ In areas such as consumer or labor law, contractual autonomy has long been complemented by protective legislative intervention in cases where structural inequalities could possibly undermine contractual autonomy.³⁸ Although traditional welfare-state objectives³⁹ are not directly implicated in the relationship between digital platforms and their users, analogous reasoning nonetheless supports the argument that stronger regulatory intervention at EU level is needed in this context.

The asymmetry of economic power and communicative control exercised by large platforms affects not only the private interests of individual users but also their ability to effectively exercise their freedom of expression,⁴⁰ which presents a cornerstone of democratic society.⁴¹ Consequently, legislative intervention that limit platform autonomy and discretion may be justified not merely as market

³³ Geiger, C.; Frosio, G., Izyumenko, E., *Intermediary Liability and Fundamental Rights*, SSRN Electronic Journal, 06/2029, p. 3; Wilman, Kalèda, Loewenthal, *op. cit.* note 22, p. 122.

³⁴ *Sanchez v. France* (GC), App. no. 45581/15, ECtHR, 15 May 2023, para. 184.

³⁵ Mast, Ollig, *op. cit.* note 16, p. 468f.

³⁶ Hesselink, M. W., *The Values Underlying the Draft Common Frame of Reference: What Role for Fairness and "Social Justice"?*, Study No. PE 408.312, European Parliament, Directorate General Internal Policies of the Union, 2008, p. 12f.

³⁷ Mak, C., *Fundamental Rights in European Contract Law: A Comparison of the Impact of Fundamental Rights on Contractual Relationships in Germany, the Netherlands, Italy and England*, Kluwer Law International, Alphen aan den Rijn 2007, p. 33.

³⁸ Mak, V., *Redefining Equality in European Contract Law: Protecting Consumer Interests in a Post-Consumer Society*, European Law Open, 2024, p. 564; Tedoradze, I., *The Principle of Freedom of Contract, Pre-Contractual Obligations* *Legal Review English, EU and US Law*, European Scientific Journal, volume 13, 02/2017, p. 63.

³⁹ See for overview: Güler, M. A., *The Concept of the Welfare State and Typologies of Welfare Regimes: A Review*, *Problemy Polityki Społecznej*, volume 47, 4/2019, p. 115ff.

⁴⁰ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 882f.

⁴¹ Council of Europe, *Freedom of Expression*, ECHR Toolkit, <https://www.coe.int/en/web/echr-toolkit/la-liberte-dexpression>, 16 February, 2026.

regulation but as a means of safeguarding fundamental rights and protecting the democratic public sphere. Against this background, Article 14(4) DSA can be seen as an expression of this broader constitutional logic. This logic translates the protection of the weaker contracting party and the preservation of democratic discourse into obligations for the private regulation of online communication.

3. ARTICLE 14(4) DSA: THE "DUE REGARD" OBLIGATION

3.1. Overview of Article 14 DSA

Article 14 DSA constitutes a novel regulatory intervention in the governance of intermediary services by introducing binding rules on how internal platform policies, namely the terms and conditions ought to be applied and enforced.⁴² Within the meaning of the DSA, the terms and conditions as a concept encompass "all clauses, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service."⁴³ While the Regulation continues to recognize the principle of freedom of contract⁴⁴, Article 14 DSA reflects a clear legislative intent to rebalance the structural power asymmetry inherent in the relationship between platform providers and their users.⁴⁵ It does so by imposing a set of obligations aimed at enhancing transparency, strengthening the protection of users' rights, and mitigating the risk of "unfair or arbitrary outcomes"⁴⁶ in the application and enforcement of platform rules.

Article 14 DSA is structured into distinct normative components that impose different types of obligations on platform providers.⁴⁷ Two sets of obligations within Article 14 DSA can be distinguished: procedural and substantive safeguards.⁴⁸ The procedural obligations are set out in paragraphs 1 to 3 and 5 to 6. They establish primarily transparency-oriented duties, requiring platforms to draft, communicate, and update their terms and conditions in a clear, accessible,

⁴² Husovec, *op. cit.* note 17, p. 254.

⁴³ Art. 3 (u) DSA.

⁴⁴ Recital 45 DSA.

⁴⁵ Mast, Ollig, *op. cit.* note 16, p. 470.

⁴⁶ Recital 45 DSA.

⁴⁷ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 892.

⁴⁸ Palumbo, *op. cit.* note 18, p. 102.

and comprehensible manner.⁴⁹ The aim of this component is to safeguard users against arbitrary, inconsistent, and non-transparent content moderation practices.⁵⁰ By contrast, Article 14(4) DSA introduces substantive obligations by addressing how online intermediaries should apply and enforce their terms and conditions, thus this component governs how internal platform rules are to be implemented in practice⁵¹ and obliges platform providers to give due consideration to users' fundamental rights in the exercise of their activities.⁵²

The following section provides a textual interpretation of Article 14(4) DSA, read in conjunction with the relevant recitals. Given that the objective of this chapter is to examine the role and effectiveness of Article 14(4) DSA to protect fundamental rights online effectively, the analysis will focus specifically on this provision. The other paragraphs of Article 14 DSA will be considered insofar as they inform and complement the interpretation of paragraph 4. However, their autonomous interpretation falls outside the scope of this contribution.

3.2. Textual and Systematic Analysis of Article 14 (4) DSA

When looking at Article 14 DSA from the perspective of fundamental rights, the normative core of the provision is contained in its paragraph 4. It requires platform providers to "act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved."⁵³ Article 14(4) DSA thus establishes an explicit obligation for platform providers to take fundamental rights and legitimate interests into account when applying and enforcing their terms and conditions, marking a significant departure from a purely contractual conception of platform governance.⁵⁴

Despite its apparent influence of the provision on content moderation practices, the precise scope of Article 14(4) DSA remains contested in academic literature. First, it is unclear whether the obligation to take fundamental rights into account applies solely at the stage of applying and enforcing existing terms and conditions,

⁴⁹ Fasel, M.; Weerts, S., *Can Facebook's Community Standards Keep up with Legal Certainty? Content Moderation Governance under the Pressure of the Digital Services Act*, Policy & Internet, volume 16, 05/2024, p. 589.

⁵⁰ Palumbo, *op. cit.* note 18, p. 102.

⁵¹ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 893f.

⁵² Palumbo, *op. cit.* note 18, p. 102.

⁵³ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 894.

⁵⁴ Ruschmeier, H.; Quintais, J. P., *Fundamental Rights in Out-of-Court Dispute Settlement under the Digital Services Act*, SSRN Electronic Journal, 12/2025, p. 11.

or whether it also extends to the drafting and design of those terms.⁵⁵ When adopting a strictly textual interpretation of Article 14(4) DSA it could be argued that platform providers are not required to take fundamental rights into account during the drafting phase of their platform policies, as the provision explicitly refers only to the application and enforcement of the terms and conditions. On this reading, the content and design of those rules would fall entirely within the platform's discretion, and fundamental rights would only become relevant once the rules are implemented in practice, that is, when they are applied and enforced vis-à-vis users. Such a limited interpretation would significantly narrow the scope of the due-regard obligation, confining it to the content moderation activity as such and excluding previous normative decisions taken by the platform providers, enshrined in their internal rules.⁵⁶ Second, the provision does not clarify whether its obligations are limited to content moderation decisions taken on the basis of violations of the platform's terms and conditions, or whether they also apply to decisions characterizing certain information as illegal content.⁵⁷ While the recitals remain silent on this point, the dominant position in the literature, which with I would agree, holds that Article 14 DSA extends to both illegal and lawful content.⁵⁸ This view is supported by the DSA's structure and regulatory objectives, which justify applying the fundamental-rights obligation in Article 14(4) to decisions concerning illegal content.⁵⁹ Third, and possibly the most crucial aspect to consider given the variety of different interest at stake, Article 14(4) DSA misses the opportunity to introduce concrete criteria, that guide platform providers how they should balance competing fundamental rights in practice.⁶⁰ Art 14 (4) does not set out any guidelines that could help, when determining the substantive scope of the obligation. By relying on the notion of "due regard," the provision fails to specify the intensity of the fundamental rights assessment required of platform providers within their content moderation practices.⁶¹ It is debated whether Article 14(4) imposes a primarily a duty of general nature to include procedural and systemic safeguards into their internal policies and enforcement framework or whether it mandates a case-by-case balancing of competing rights and interests in individual moderation decisions.⁶²

⁵⁵ Ruschemeier, Quintais, *op. cit.* note 54, p. 11; Husovec, *op. cit.* note 17, p. 254.

⁵⁶ Schulz, Ollig, *op. cit.* note 24, p. 575.

⁵⁷ Ruschemeier, Quintais, *op. cit.* note 54, p. 24.

⁵⁸ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 892; Mast, T.; Kettemann, M. C.; Schulz, W., DSA Art. 14 Allgemeine Geschäftsbedingungen, in: Mast, T.; Kettemann, M. C.; Dreyer, S.; Schulz, W. (eds.), *Digital Services Act, Digital Markets Act, 2024*, para. 53ff. cited in: Ruschemeier, Quintais, *op. cit.* note 54, p. 24.

⁵⁹ Ruschemeier, Quintais, *op. cit.* note 54, p. 24.

⁶⁰ Quintais, Appelman, Ó Fathaigh, *op. cit.* note 7, p. 910.

⁶¹ Schulz, Ollig, *op. cit.* note 24, p. 576.

⁶² Ruschemeier, Quintais, *op. cit.* note 54, p. 22; Husovec, *op. cit.* note 17, p. 255.

A closer reading of Recital 47 provides important, but also incomplete, guidance on some of these questions. Unlike the wording of Article 14(4), the recital explicitly refers not only to the application and enforcement of restrictions, but also to their "designing" suggesting a broader temporal scope that may encompass the process of drafting the terms and conditions.⁶³ This interpretation is in my opinion clearly in line with the DSA's general architecture and objectives.⁶⁴ Particularly when one keeps in mind that platform providers might introduce stricter restrictions on the information that users can share in their terms and conditions. They can deny content that is not classified as illegal by law, which in turn could lead "suppression of lawful content"⁶⁵ if the fundamental rights of the users are not considered during the drafting phase of the terms and conditions. Moreover, Recital 47 DSA refers only to the "rights and legitimate interests of the recipients of the service" whereas Article 14(4) DSA requires intermediary services to pay due regard to "the rights and legitimate interests of all parties involved". This divergence raises the question of whether Article 14(4) DSA is intended to protect a wider range of interests, such as those of the platform providers themselves, content creators, or other affected third parties beyond the direct user of the platform.⁶⁶ However, in this context, reference should be made to the established case law of the Court of Justice of the European Union, according to which recitals in the preamble of EU secondary legislation have "no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner clearly contrary to their wording."⁶⁷ It can therefore be assumed that, through the recital, the EU legislator intended to place particular emphasis on the protection of the "recipients of the service," whose rights are likely to be most directly affected by many content-moderation decisions. Nevertheless, the explicit reference to "all parties involved" in the provision indicates that the EU legislator recognizes that platform operators themselves enjoy fundamental rights in the context of content moderation.⁶⁸ This, in turn, raises the complex question of how platform providers are to balance these potentially competing fundamental rights

⁶³ Husovec, *op. cit.* note 17, p. 254; Wilman, Kalèda, Loewenthal, *op. cit.* note 22, p. 122.

⁶⁴ Art. 1 (1) DSA states "[...] setting out harmonised rules for a safe, predictable and trusted online environment [...] in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected." Art. 1(1) DSA. The protection would in my opinion not be effective if the requirement to take fundamental rights into account does not apply to the drafting phase, as providers would retain full discretion to set rules restricting content in a manner incompatible with fundamental rights.

⁶⁵ Quintais, Appelmann, Ó Fathaigh, *op. cit.* note 7, p. 884f.

⁶⁶ Schulz, Ollig, *op. cit.* note 24, p. 575f.

⁶⁷ Case C-136/04, *Deutsches Milch-Kontor GmbH v. Germany*, ECR I-10095, 6 October 2005, para. 32, with reference to Case C-162/97, *Nilsson and Others*, ECR I-7477, 19 November 1998, para. 54; Case C-308/97, *Manfredi*, ECR I-7685, 25 June 1998, para. 30.

⁶⁸ Schulz, Ollig, *op. cit.* note 24, p. 575.

in practice. Additionally, Recital 47 extends the behavioral standard imposed on platforms by requiring them to act not only in "a diligent, objective and proportionate", but also in "a non-arbitrary and non-discriminatory manner". In doing so, the DSA, even if only through a recital, effectively incorporates not only the principle of proportionality, but also obligation of equal treatment, both traditionally only imposed on state actors as a manifestation of the rule of law, into the private governance exercised by platform operators. How these public-law principles are to be operationalized in the context of modern private content-moderation practices remains unclear.⁶⁹

The purpose of the following sections is therefore to examine how platform providers operationalize the balancing of competing fundamental rights and to assess whether the current approach is adequate, particularly in light of the principle of proportionality.

4. THE BALANCING ACT: FUNDAMENTAL RIGHTS IN PRIVATE HANDS

Although the precise conditions under which EU fundamental rights may apply in relationships between private parties, and thus produce horizontal effect, remain the subject of debate⁷⁰, the case law of the CJEU has clarified that the Charter itself, particularly Article 51(1) CFR does not, as a general rule, preclude "such a possibility."⁷¹ It would go beyond the scope of this contribution to argue comprehensively for or against the horizontal effect of EU fundamental rights. Moreover, in the specific context of Article 14(4) DSA, this debate is, in my opinion, of limited practical relevance, since the EU legislator has expressly embedded at least some form of fundamental rights effect, whether understood as a substantive obligation or as a "declaratory acknowledgment"⁷² of the nature of fundamental rights, applicable to private entities within the DSA's normative framework.⁷³ What seems more relevant to discuss in this context is the extent to which the EU legislator must pre-determine a "substantive framework" governing

⁶⁹ *Ibid.*, p. 574.

⁷⁰ Wendel, M., *Taking or Escaping Legislative Responsibility? EU Fundamental Rights and Content Regulation under the DSA*, in: Ungern-Sternberg, A. et al. (eds.), *Content Regulation in the European Union: The Digital Services Act*, Institut für Recht und Digitalisierung, Trier 2023, p. 66.

⁷¹ Joined Cases C-569/16 and C-570/16, *Stadt Wuppertal v. Bauer and Willmeroth v. Broßonn*, EU:C:2018:871, 6 November 2018, para. 87.

⁷² Wendel, *op. cit.* note 70, p. 78.

⁷³ Husovec, *op. cit.* note 17, p. 254.

how the balancing of competing fundamental rights is to be operationalized by such private actors.⁷⁴

As discussed above, Article 14(4) DSA explicitly mandates online intermediaries to integrate fundamental rights considerations into their terms and conditions and moderation activities.⁷⁵ The inherent power imbalance between platform providers and users can in principle also be seen as good reason for the EU legislator to incorporate concepts, traditionally rooted in public law into this horizontal relationship.⁷⁶ As discussed earlier in this paper, platform providers can unilaterally impose major restrictions on the way individuals are able to communicate within their services. As a result, their capacity to affect fundamental rights is comparable to that of state authorities.⁷⁷ In the EU legal order, conflicts between fundamental rights must be resolved in accordance with the principle of proportionality, which requires a careful balancing of competing rights and interests.⁷⁸ In its original conception, proportionality is a principle developed for state action. It is designed to mitigate the power asymmetry between the state and its citizens by limiting the state's ability to interfere with fundamental rights.⁷⁹ However, it can and has been argued that the obligation to conduct a proportionality test originally developed to bind state actors, can be applied to online intermediaries, given they obtain a similar dominant power position.⁸⁰ This approach is further reinforced by the fact that Article 14(4) DSA itself explicitly requires platform providers "to act in a [...] proportionate manner" when moderating content.⁸¹ However, it is unclear to what extent platform operators can effectively be required to respect users' fundamental rights, given that they are themselves beneficiaries of fundamental rights protection.⁸² Since private actors have traditionally only been able to invoke their fundamental rights against state actors, the binding effect of fundamental rights in the private sphere cannot be fully equated with those of state actors. This distinction is also expressly reflected in the DSA framework, as Article 14(4) refers to the fundamental rights of "all parties involved," thereby encompassing the fundamental rights of platform

⁷⁴ Wendel, *op. cit.* note 70, p. 70.

⁷⁵ Palumbo, *op. cit.* note 18, p. 104.

⁷⁶ Teubner, G.; Golia, A. Jr., *Societal Constitutionalism in the Digital World: An Introduction*, MPIL Research Paper Series No. 2023-11, Max Planck Institute for Comparative Public Law and International Law, 2023, p. 8. <https://www.jura.uni-frankfurt.de/146712046/DigitalConstitutionalismIntroductionENG2023.pdf>, 8 February, 2026; Palumbo, *op. cit.* note 18, p. 108.

⁷⁷ Palumbo, *op. cit.* note 18, p. 108.

⁷⁸ Palumbo, *op. cit.* note 18, p. 109; Wendel, *op. cit.* note 70, p. 65.

⁷⁹ Schulz, Ollig, *op. cit.* note 24, p. 574.

⁸⁰ Palumbo, *op. cit.* note 18, p. 109f.

⁸¹ Schulz, Ollig, *op. cit.* note 24, p. 574.

⁸² *Ibid.*, p. 572.

providers themselves.⁸³ By enabling platform providers to weigh their own economic fundamental rights against those of other private parties,⁸⁴ the EU legislator extends constitutional balancing concepts into private governance. Article 14(4) DSA thus embodies "a new form of hybrid regulation." Through this framework, the EU legislator entrusts platform providers to regulate fundamental rights of other private parties, namely users.⁸⁵

In principle, such an approach may appear sensible to a certain extent, as the legislator leaves service providers some flexibility to meet their own economic needs. Fully regulating the internal functioning of private operators, could interfere with their freedom of contract and their freedom to conduct a business, protected under Article 16 CFR, and any such interference itself would have to comply with the requirements of Article 52 (1) CFR.⁸⁶ However, it can be argued that the EU legislator should nonetheless have established a more clearly defined "substantive framework" governing how the balancing of competing fundamental rights is to be carried out in practice. By doing so, the legislator could have meaningfully constrained the interpretative discretion currently enjoyed by online intermediaries, while still respecting their economic freedoms.⁸⁷ However, the EU legislator refrained from providing a clear normative framework or standardized methodology on how platforms should balance competing rights, offering instead limited guidance for the application of Article 14(4) DSA.⁸⁸ This results in a broad margin of discretion for platform providers to determine which restrictions they introduce in their terms and conditions and how they enforce them. Given that platforms are empowered not only to prohibit illegal content but also to restrict expression that is lawful yet considered undesirable the EU legislator should, at a minimum, have established clearer standards concerning the normative requirements and substantive boundaries of such restrictions.⁸⁹ Particularly in light of the increasing reliance on AI-driven content moderation⁹⁰, the absence of a coherent regulatory framework that governs how platform providers must balance different interests becomes apparent. The question of how an effective, transparent, and fair balancing of competing fundamental rights can be achieved in content moderation systems that rely heavily and, in some cases, fully on

⁸³ *Ibid.*, p. 574f.

⁸⁴ *Ibid.*, p. 575.

⁸⁵ Mast, Ollig, *op. cit.* note 16, p. 470.

⁸⁶ Wendel, *op. cit.* note 70, p. 79f.

⁸⁷ *Ibid.*, p. 81.

⁸⁸ Mast, Ollig, *op. cit.* note 16, p. 470.

⁸⁹ Wendel, *op. cit.* note 70, p. 81.

⁹⁰ Vargas Penagos, E., *Platforms on the Hook? EU and Human Rights Requirements for Human Involvement in Content Moderation*, Cambridge Forum on AI: Law and Governance, volume 1, 2025, e23, p. 7.

automated, algorithmic decision-making remains largely unresolved. At the core of the problem lies a structural tension. AI-driven content moderation can significantly enhance the efficient detection and mitigation of misinformation, hate speech, and other forms of unlawful or harmful content that may infringe the fundamental rights of affected individuals.⁹¹ Furthermore, reliance on fully automated moderation may reduce the need for human moderators, whose work routinely entails prolonged exposure to disturbing content, significant psychological strain, and employment conditions marked by low pay and limited labor protection.⁹² At the same time, however, the use of fully or largely autonomous moderation systems carries a considerable risk of removing or restricting lawful and legitimate expression, thereby potentially infringing the fundamental rights of other users.⁹³ This dynamic substantially complicates the balancing exercise that platform operators must conduct under Article 14 (4) DSA. It therefore raises the question whether it is proportionate to rely on algorithmic content moderation as a means of protecting the fundamental rights of certain individuals while simultaneously accepting the risk that such systems may unduly interfere with the rights and interests of others. In my view, this is precisely the point at which the EU legislator should have intervened by establishing a legal framework that differentiates between the various contexts and risk levels in which automated content moderation is employed.

In the following chapter, this contribution seeks to outline a set of criteria aimed at clarifying the circumstances in which reliance on automated content moderation may be regarded as proportionate from a human-rights perspective, as well as those in which it may not. For the sake of clarity, the term "automated content moderation" is used here to refer to its most recent development namely, the proactive monitoring of content through the use of artificial intelligence (AI) tools, in particular large language models (LLMs).⁹⁴

5. ASSESSING THE PROPORTIONALITY OF ALGORITHMIC CONTENT MODERATION

AI-driven content moderation can indeed be a highly useful tool in certain contexts - emphasis here is deliberately placed on certain. In particular, automated systems can be effective in tasks of detection, such as identifying images containing clearly illegal or offensive symbols, which can often be reliably recognized through

⁹¹ Hakami, Tazel, *op. cit.* note 23.

⁹² Griffin, *op. cit.* note 6.

⁹³ Hakami, Tazel, *op. cit.* note 23.

⁹⁴ Griffin, *op. cit.* note 6.

pattern-matching techniques. In such cases, algorithmic moderation may contribute to the efficient enforcement of platform rules and legal obligations.⁹⁵ However, when moderation decisions move beyond detection and towards determining what constitutes acceptable speech on a platform, the nature of the task fundamentally changes.⁹⁶ Especially in cases involving speech that is not unlawful but nevertheless considered harmful or undesirable⁹⁷, moderation necessarily involves normative value judgments. These decisions reflect choices about platform values and about where the boundaries of acceptable expression are to be drawn within a privately governed communication space.⁹⁸ As explained above, the principle of proportionality and with it the careful balancing of competing rights forms a central pillar of the due diligence obligation imposed on platform providers by Art 14 (4) DSA.⁹⁹ It requires that any encroachment on the fundamental rights of users imposed in the terms and conditions must be appropriate and necessary to achieve the underlying objectives.¹⁰⁰ Accordingly, where the proportionality of a moderation measure is in doubt, a substantive value judgment becomes a prerequisite for determining whether or not this restriction (e.g. removal of certain content or account blocking) should be imposed on a user. Algorithms, however, are not capable of making value judgments in this sense; rather, they generate statistical predictions based on patterns in training data.¹⁰¹ Consequently, AI tools are often unable to capture linguistic nuance or account for diverse cultural contexts.¹⁰² For this reason, such systems alone are not yet sophisticated enough to conduct the kind of balancing exercise required under Article 14(4) DSA. Delegating the constitutional balancing exercise and normative decision-making not only to private operators but indirectly to automated systems enhances the risk of obscuring the underlying value choices and undermining the careful balancing of fundamental rights that proportionality requires.

In this context, it is important to emphasize that the DSA does not prohibit fully automated content moderation at any stage. Instead, the DSA introduces certain

⁹⁵ Hendrix, J., *AI Snake Oil: Separating Hype from Reality*, Tech Policy Press, 29 September 2024, <https://www.techpolicy.press/ai-snake-oil-separating-hype-from-reality/>, 30 January, 2026.

⁹⁶ *Ibid.*

⁹⁷ Wendel, *op. cit.* note 70, p. 83.

⁹⁸ Hendrix, *op. cit.* note 95.

⁹⁹ Schulz, Ollig, *op. cit.* note 24, p. 574.

¹⁰⁰ Penagos, *op. cit.* note 90, p. 19.

¹⁰¹ Nishant, R.; Schneckenberg, D.; Ravishankar, M. N., *The Formal Rationality of Artificial Intelligence-Based Algorithms and the Problem of Bias*, Journal of Information Technology, volume 39, 1/2024, p. 21.

¹⁰² Gavi, K., *Ethical Challenges in AI-Powered Hate Speech Detection: Balancing Automated Moderation and Dataset Creation*, ResearchGate, January 2025, p. 1.

safeguards, such as transparency requirements concerning the use of algorithmic systems (Articles 14(1), 15(1), 16(6), and 17(3)(c) DSA).¹⁰³ It has even been assumed that, with the adoption of the DSA, the European Union has further incentivized platforms to deploy increasing levels of automated moderation.¹⁰⁴ However, in situations where the balancing of competing rights is required, fully automated moderation appears to stand in fundamental tension with the objective that Article 14(4) DSA seeks to achieve, namely careful balancing of competing fundamental rights. In my view, the mere introduction of safeguards is insufficient, as it leaves the underlying decision of whether to rely on fully automated content moderation entirely to the discretion of platform providers. This is highly problematic, as platform operators, being private entities, are not primarily oriented towards the protection of fundamental rights but rather toward the generation of income and revenue. If the underlying decision to rely on fully automated content moderation systems is left entirely to private providers, the decisive factors are likely to be considerations of efficiency and cost, rather than the effective protection of fundamental rights.¹⁰⁵ Since automated content moderation is in most scenarios very attractive from an economic point of view due to the possibility of speeding up large-scale processes¹⁰⁶, platform providers will most likely tend to favor content moderation systems that are less costly rather than less intrusive.¹⁰⁷ Moreover, algorithmic tools used to determine what information can and cannot be shared on a platform are likely to prioritize the platform's commercial interests over broader public interests.¹⁰⁸ However, particularly in this context, such practices may risk endangering not only the rights of individuals but also those of society at large. The task of moderating online content as such raises distinct democratic challenges not only due to the chilling effects it can have on fundamental rights, but also due to its capacity to influence public discourse and democratic processes.¹⁰⁹ The decision how and to what extent this process should be automated through the use of AI should therefore not be left solely to the discretion and commercial interests of platform providers, but instead must be designed and deployed in a transparent manner and in full consideration of human rights.¹¹⁰ Article 14(4) DSA implicitly requires moderation grounded in the principle of proportionality. However, the absence of

¹⁰³ *Ibid.*, p. 12.

¹⁰⁴ Kayyali, D., *An Advocate's Guide to Automated Content Moderation*, Tech Policy Press, 12 February 2025, <https://www.techpolicy.press/an-advocates-guide-to-automated-content-moderation/>, 10 February 2026.

¹⁰⁵ Senfleben, *op. cit.* note 27, p. 2.

¹⁰⁶ Penagos, *op. cit.* note 90, p. 22.

¹⁰⁷ Senfleben, *op. cit.* note 27, p. 3; Griffin, *op. cit.* note 6.

¹⁰⁸ Griffin, *op. cit.* note 6.

¹⁰⁹ Penagos, *op. cit.* note 90.

¹¹⁰ Kayyali, *op. cit.* note 104.

substantive legislative criteria combined with the growing reliance on AI-driven content moderation creates a structural gap that risks undermining effective protection of fundamental rights and raises broader societal challenges. At this juncture, the EU legislator should have intervened by establishing clear substantive conditions limiting the use of fully automated moderation in situations where a normative value judgment is required and the proportionality of a restriction is at stake.

6. CONCLUSION

This contribution does not suggest that the EU legislator should exclude the use of AI in content moderation altogether. Such an approach would hardly be feasible given the vast volume of content generated on online platforms every second. Rather, what is required is a clear normative framework that differentiates between the various use cases in which automated moderation is deployed. As discussed above, AI-driven moderation can be highly effective in situations where no further contextualization or value judgment is required. However, where a genuine proportionality assessment is necessary to determine the legitimacy of certain content, AI-driven moderation should be combined with meaningful expert oversight and supported by an adequate number of human moderators.¹¹¹

In my view, the DSA does not explicitly endorse such an approach. Instead, it appears to follow an ex-post model for constraining AI-driven moderation. Human oversight becomes mandatory only at a later procedural stage, notably through the internal complaint-handling mechanisms under Article 20 DSA¹¹² and the external dispute-settlement procedures provided for in Article 21 DSA¹¹³. Particularly in the context of fully automated moderation, this structure is problematic. It effectively places the burden on users to challenge moderation decisions in order to obtain access to human review. By contrast, Article 14(4) DSA can be understood as implicitly requiring human oversight in the moderation process at an earlier stage, namely, prior to the adoption of the moderation decision whenever

¹¹¹ European Center for Not-for-Profit Law (ECNL), *Algorithmic Gatekeepers: The Human Rights Impacts of LLM Content Moderation — Executive Summary*, 2025, https://ecnl.org/sites/default/files/2025-04/ECNL_LLM_CM_Executive%20Summary_2025.pdf, 4 February, 2026.

¹¹² Article 20(6) DSA explicitly provides that decisions adopted by platform providers within the internal complaint-handling mechanism must be “taken under the supervision of appropriately qualified staff, and not solely on the basis of automated means.” This provision indicates that fully automated decision-making in the context of internal complaints is prohibited and that human oversight is expressly required.

contextual balancing is necessary. In such cases, the EU legislator should therefore have adopted an ex-ante model of human oversight for AI-driven content moderation. The argument that moderation work is inherently too psychologically demanding for human moderators is likewise unconvincing to promote full reliance on AI tools. Rather, it is primarily the inadequate working conditions, such as excessive working hours and low wages, that render this work inhumane. The appropriate response should therefore be to improve the working conditions of human moderators, including reasonable limits on working time and fair remuneration, and to support them through collaboration with appropriately trained experts who can provide meaningful guidance. In this way, human moderators could become a valuable and sustainable resource for platform providers, rather than being replaced by AI-driven systems.

One of the central challenges associated with automated moderation tools lies in their frequent inability to capture contextual and linguistic nuance. Yet the balancing of competing fundamental rights often requires careful consideration of cultural context, linguistic particularities, and broader societal sensitivities. A globally uniform approach to content moderation is therefore unlikely to achieve a fair and proportionate balance of interests. Thus, it appears necessary to introduce provisions requiring platform providers to adopt region-specific moderation frameworks. Such frameworks should be developed in close cooperation with public authorities, civil society organizations, and local experts in order to ensure that moderation practices genuinely reflect the cultural and contextual diversity inherent in the exercise of freedom of expression across different societies.¹¹⁴ Researchers around the world are already exploring various approaches to adapting AI tools to specific contexts and to accounting for linguistic and cultural diversity. Examples include techniques such as transfer learning and the development of multilingual models.¹¹⁵ Integrating such solutions would not only contribute to a safer and more equitable online environment that strengthens the protection of human rights but could also prove beneficial for platform providers themselves. By improving their capacity to manage online speech through tools capable of capturing contextual nuance and that are combined with well-trained human moderators, platforms can foster more informed moderation decisions that balance the competing fundamental rights effectively.¹¹⁶

¹¹⁴ Politics and Rights Review, *Localized Content Moderation: A Human Rights Approach*, 25 October 2024, <https://politicsrights.com/content-moderation-a-human-rights-approach/>, 28 January 2026.

¹¹⁵ Gavi, *op. cit.* note 102.

¹¹⁶ *Localized Content Moderation: A Human Rights Approach*, *op. cit.* note 114.

If content moderation were designed primarily to protect the rights of users rather than to advance the economic interests of platform providers, a greater reliance on AI-driven moderation might eventually become both feasible and proportionate. Until such conditions are met, however, it remains essential for the EU legislator to establish clearer substantive rules governing the use of these tools, particularly in situations where a balancing of competing fundamental rights is required.

More important than ever, in my view, is that the EU legislator clearly determines the values it seeks to uphold. Rather than yielding to shifting political pressures, it should continue to promote and safeguard its foundational commitments: a Union in which freedom of expression can coexist with other fundamental rights, and in which any restriction of those rights must be necessary, appropriate, and above all proportionate.

REFERENCES

BOOKS AND ARTICLES

1. Al-Zaman, S. M., *Patterns and Trends of Global Social Media Censorship: Insights from 76 Countries*, Sage Journals, volume 87, 10/2024, pp. 1 - 26.
2. Botero Arcila, B.; Griffin, R., *Social Media Platforms and Challenges for Democracy, Rule of Law, and Fundamental Rights*, Study requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, April 2023.
3. Fasel, M.; Weerts, S., *Can Facebook's Community Standards Keep up with Legal Certainty? Content Moderation Governance under the Pressure of the Digital Services Act*, Policy & Internet, volume 16, 2024, pp. 588 - 603.
4. Frosio, G.; Geiger, C., *Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime*, European Law Journal, volume 29, 11/2023, pp. 31 - 77.
5. Gavi, K., *Ethical Challenges in AI-Powered Hate Speech Detection: Balancing Automated Moderation and Dataset Creation*, January 2025.
6. Geiger, C.; Frosio, G.; Izyumenko, E., *Intermediary Liability and Fundamental Rights*, SSRN Electronic Journal, 06/2019.
7. Golunova, V.; Tas, S., *Guardians of Digital Rights: Exploring Strategic Litigation on Data Protection and Content Moderation in the EU*, Nordic Journal of European Law, volume 7, 01/2025, pp. 49 - 66.
8. Güler, M. A., *The Concept of the Welfare State and Typologies of Welfare Regimes: A Review*, Problemy Polityki Społecznej, volume 47, 4/2019, pp. 113 - 130.

9. Hakami, A.; Tazel, R., *The Ethics of AI in Content Moderation: Balancing Privacy, Free Speech, and Algorithmic Control*, ResearchGate, 10/2024.
10. Hesselink, M. W., *The Values Underlying the Draft Common Frame of Reference: What Role for Fairness and "Social Justice"?*, Study No. PE 408.312, European Parliament, Directorate General Internal Policies of the Union, 2008.
11. Husovec, M., *Principles of the Digital Services Act*, Oxford University Press, Oxford 2024.
12. Jodanović, A., *The Digital Services Act Package: Protection of the Fundamental Rights of Digital Service Users in the European Union*, Regional Law Review, volume 5, 11/2024, pp. 43 - 61.
13. Mak, C., *Fundamental Rights in European Contract Law: A Comparison of the Impact of Fundamental Rights on Contractual Relationships in Germany, the Netherlands, Italy and England*, Kluwer Law International, Alphen aan den Rijn 2007.
14. Mak, V., *Redefining Equality in European Contract Law: Protecting Consumer Interests in a Post-Consumer Society*, European Law Open, 2024, pp. 561 - 586.
15. Mast, T.; Ollig, C., *The Lazy Legislature: Incorporating and Horizontalising the Charter of Fundamental Rights through Secondary Union Law*, European Constitutional Law Review, volume 19, 09/2023, pp. 462 - 486.
16. Nishant, R.; Schneckenberg, D.; Ravishankar, M. N., *The Formal Rationality of Artificial Intelligence-Based Algorithms and the Problem of Bias*, Journal of Information Technology, volume 39, 1/2024, pp. 19 - 40.
17. Palumbo, A., *Disentangling the Horizontalisation of Fundamental Rights in the Digital Services Act: What Obligations for Online Intermediaries?*, Rivista di diritto dei media, volume 2, 10/2024, pp. 100 - 121.
18. Palumbo, A.; Ducuing, C., *The Blurring of the Public-Private Dichotomy in Risk-Based EU Digital Regulation: Challenges for the Rule of Law*, SSRN Electronic Journal, 08/2025.
19. Pöschl, M., *Neuvermessung der Meinungsfreiheit*, in: H. Koziol (ed.), *Tatsachenmitteilungen und Werturteile: Freiheit und Verantwortung*, Jan Sramek Verlag, Vienna 2018, pp. 31 - 58.
20. Quintais, P. J.; Appelman, N.; Ó Fathaigh, R., *Using Terms and Conditions to Apply Fundamental Rights to Content Moderation*, German Law Journal, volume 24, 11/2023, pp. 881 - 911.
21. Ruschemeier, H.; Quintais, J. P., *Fundamental Rights in Out-of-Court Dispute Settlement under the Digital Services Act*, 2025.
22. Schulz, W.; Ollig, C., *Hybrid Speech Governance: New Approaches to Govern Social Media Platforms under the European Digital Services Act?*,

- Journal of Intellectual Property, Information Technology and E-Commerce Law, volume 14, 02/2024, pp. 560 - 579.
23. Tedoradze, I., *The Principle of Freedom of Contract, Pre-Contractual Obligations Legal Review English, EU and US Law*, European Scientific Journal, volume 13, 02/2017, pp. 62 - 71.
 24. Teubner, G.; Golia, A. Jr., *Societal Constitutionalism in the Digital World: An Introduction*, MPIL Research Paper Series No. 2023-11, 2023.
 25. Vargas Penagos, E., *Platforms on the Hook? EU and Human Rights Requirements for Human Involvement in Content Moderation*, Cambridge Forum on AI: Law and Governance, volume 1, 2025, e23, pp. 1 - 27.
 26. Wendel, M., *Taking or Escaping Legislative Responsibility? EU Fundamental Rights and Content Regulation under the DSA*, in: Ungern-Sternberg, A. et al. (eds.), *Content Regulation in the European Union: The Digital Services Act*, Institut für Recht und Digitalisierung, Trier 2023, pp. 59 - 84.
 27. Wilman, F.; Kalèda, L. S.; Loewenthal, P., *The EU Digital Services Act*, Oxford University Press, Oxford 2024.
 28. Wimmers, J., *The Out-of-Court Dispute Settlement Mechanism in the Digital Services Act: A Disservice to Its Own Goals*, Journal of Intellectual Property, Information Technology and E-Commerce Law, volume 12, 02/2022, pp. 381 - 401.

LEGAL RULES

1. Charter of Fundamental Rights of the European Union, OJ C 326, 26 October 2012.
2. Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Rome, 4 November 1950.
3. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27 October 2022.

COURT PRACTICE

1. Case C-136/04, *Deutsches Milch-Kontor GmbH v. Germany*, ECR I-10095, 6 October 2005.
2. Case C-162/97, *Nilsson and Others*, ECR I-7477, 19 November 1998.
3. Case C-308/97, *Manfredi*, ECR I-7685, 25 June 1998.

4. Joined Cases C-569/16 and C-570/16, *Stadt Wuppertal v. Bauer and Willmeroth v. Broßonn*, EU:C:2018:871, 6 November 2018.
5. *Sanchez v. France* (GC), App. no. 45581/15, ECtHR, 15 May 2023.

NETWORK RESOURCES

1. Council of Europe, *Freedom of Expression*, The European Convention on Human Rights, <https://www.coe.int/en/web/human-rights-convention/expression>, accessed 26 November 2025.
2. Council of Europe, *Freedom of Expression*, ECHR Toolkit, <https://www.coe.int/en/web/echr-toolkit/la-liberte-dexpression>, accessed 16 February 2026.
3. European Center for Not-for-Profit Law (ECNL), *Algorithmic Gatekeepers: The Human Rights Impacts of LLM Content Moderation - Executive Summary*, 2025, https://ecn1.org/sites/default/files/2025-04/ECNL_LLM_CM_Executive%20Summary_2025.pdf, accessed 4 February 2026.
4. European Commission, *The Digital Services Act, Shaping Europe's Digital Future*, October 2022, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act>, 28 October 2025.
5. Griffin, R., *Algorithmic Content Moderation Brings New Opportunities and Risks*, October 2023, <https://www.cigionline.org/articles/algorithmic-content-moderation-brings-new-opportunities-and-risks/>, accessed 04 November 2025.
6. Hendrix, J., *AI Snake Oil: Separating Hype from Reality*, Tech Policy Press, 29 September 2024, <https://www.techpolicy.press/ai-snake-oil-separating-hype-from-reality/>, accessed 30 January 2026.
7. Kayyali, D., *An Advocate's Guide to Automated Content Moderation*, Tech Policy Press, 12 February 2025, <https://techpolicy.press/an-advocates-guide-to-automated-content-moderation/>, accessed 10 February 2026.
8. Politics and Rights Review, *Localized Content Moderation: A Human Rights Approach*, 25 October 2024, <https://politicsrights.com/content-moderation-a-human-rights-approach/>, accessed 28 January 2026.
9. Senfleben, M., *Human Rights Outsourcing and Reliance on User Activism in the DSA*, February 2024, <https://verfassungsblog.de/human-rights-outsourcing-and-reliance-on-user-activism-in-the-dsa/>, accessed 31 December 2025.
10. Țucă, M., *Digital Services Act: Is Article 14(4) Protecting Free Speech or Just Window Dressing?*, January 2025, <https://www.conformia-hub.eu/blog/dsa-art14-free-speech>, accessed 15 January 2026.