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**Freedom of Thought Challenged by
Hybrid Threats - Europe's Constitutional
Response to Digital Manipulation**

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Introduction

Freedom of expression constitutes one of the fundamental pillars of democratic citizenship and the functioning of the pluralist constitutional state.

However, it is increasingly subject to pressure stemming from the strategic dissemination of disinformation within the digital ecosystem. This paper, adopting a constitutional law perspective, examines the legal responses implemented by the European Union to address this phenomenon.

It explores the normative foundations and constitutional limits of regulatory interventions affecting freedom of expression, underlining that such restrictions may be legitimate when aimed at protecting other fundamental constitutional interests and when they comply with the principle of proportionality. Particular attention is devoted to the role of informational pluralism as a structural value of the democratic state, as well as to the distortions affecting the contemporary public sphere—amplified by algorithmic dynamics and systemic disinformation strategies.

The analysis focuses on the judgment delivered by the General Court of the European Union in Case T-125/22, issued on 27 July 2022, which dismissed the applicant's action against the Council's temporary ban on broadcasting activities. Furthermore, the paper discusses the EU's regulatory response—structured around the Digital Services Act, the European Media Freedom Act, and the Regulation on political advertising—as an attempt to reconstruct a digital public space consistent with constitutional principles of freedom, pluralism, and democratic accountability.



Freedom of Expression: A Cornerstone of Liberal Democracies

- **Essential to democratic legitimacy:** Freedom to express and disseminate opinions in the public sphere is co-essential to the democratic system.
- **Precondition for political participation:** Enables individuals to form informed opinions and exercise their voting rights meaningfully.
- **Foundation for pluralism:** A free, open debate fosters diverse perspectives, mutual understanding, and a shared public space.
- **Safeguard for institutional balance:** Without this freedom, democratic institutions risk malfunctioning or losing legitimacy.



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Digital Ecosystem: Challenges to Freedom of Expression

- **Algorithmic control & private gatekeepers:** A few tech companies shape the visibility and relevance of content through opaque algorithms.
- **Echo chambers & filter bubbles:** Users are often exposed only to homogeneous views, reducing critical dialogue and democratic deliberation.
- **Blurred lines between information and propaganda:** Difficult to distinguish journalism from fake news, weakening trust in media.
- **Bypassing traditional checks:** Direct communication between political leaders and citizens circumvents media accountability, enabling populist strategies.
- **Risk of manipulation:** Mass disinformation exploits emotional triggers, fueling polarization, radicalization, and democratic erosion.



What Is “Disinformation” in EU law?

- Deliberate and coordinated manipulation: Disinformation involves the intentional spread of false or misleading content to deceive or influence public opinion.
- Often politically motivated: Used to destabilize democratic institutions, erode trust in governments, and polarize societies.
- Not just fake news: Disinformation is strategic and persistent — often produced or amplified by state or non-state actors.
- Part of hybrid threats: In today’s geopolitical context, disinformation is a low-cost tool of foreign interference and digital warfare. Targets democratic processes: Elections, public debate, civic trust — all can be disrupted through coordinated information attacks.

Source: [Communication from EU Commission COM/2018/236 final](#)



The EU's Response to Disinformation

- Recognition as a security threat: since 2015, the EU has identified foreign disinformation campaigns as hybrid threats to democracy - [FIMI \(Foreign Information Manipulation and Interference\)](#)
- Institutional action: European External Action Service (EEAS) and StratCom [Task-forces](#).
- Monitoring FIMI: [3rd FIMI Report on March 2025](#) - [Tool kit to identify FIMI](#)
- From *soft law* to *hard law*: new duties for online platforms to mitigate systemic risks - [Regulation \(EU\) 2022/2065 – Digital Services Act \(DSA\)](#)
- Stricter transparency and targeting rules - [Regulation \(EU\) 2024/900 – Transparency and Targeting of Political Advertising](#)
- Strategic goals: increase transparency, resilience, accountability, and democratic integrity across digital environments.

General Court, Case RT France v. Council, [T-125/22](#)

Alleged violations: freedom of expression, freedom to conduct business, non-discrimination.

Key Legal Arguments

- Legal basis upheld: Council acted within powers under Art. 29 TEU & Art. 215 TFEU — measures part of Common Foreign and Security Policy (CFSP).
- Freedom of expression not absolute: may be restricted under Art. 52(1) of the Charter, if lawful, necessary, and proportionate.
- Reference to ECtHR: no protection for media acting without journalistic ethics, or supporting war, violence, xenophobia.

Court's Reasoning:

- Temporariness & reversibility: measures are proportionate due to their limited scope and timeframe;
- Link to state funding - no evidence of editorial independence from State.
- Democratic integrity at stake: propaganda that supports armed aggression is incompatible with EU values

The Digital Services Act (DSA): A New Regulatory Framework

Regulation (EU) 2022/2065. In force since 2022: A cornerstone of EU digital policy. Key Objectives:

- Shift from self-regulation to co-regulation: Platforms must actively mitigate systemic risks, not just react.
- Protect fundamental rights: Safeguards for freedom of expression, media pluralism, non-discrimination, privacy.
- Systemic Risks Addressed: Spread of illegal content (e.g. hate speech), Threats to democratic processes, electoral integrity, Disinformation campaigns, especially during crises, Algorithmic bias and manipulative design (e.g. dark patterns)
- Key Provisions: Article 35: Risk mitigation obligations (content moderation, algorithmic adjustments, etc.); Article 36: Crisis response mechanism (e.g. war, terrorism, pandemics).



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Political Advertising Regulation (2024) A Game-Changer for EU Electoral Law

- Applies to EU, national and local elections
- Legal basis: Art. 114 TFEU (market harmonization) + Art. 16 (data protection)

Key Features:

- Broad definition of political advertising: Includes any paid message aiming to influence votes, legislation, or public opinion.
- Strict rules on micro-targeting: Allowed only with explicit, separate consent by the data subject.
- Sensitive data (e.g., political views, ethnicity) strictly off-limits.
- Transparency obligations: Public EU-wide registry of political ads.
- Disclosure of sponsor identity, funding source, and targeting criteria.
- Foreign influence restrictions: Bans services to third-country sponsors 3 months before elections.
- Binding Regulation: No discretion for Member States — creates a uniform EU framework.

European Media Freedom Act (2024)

Landmark initiative to protect media independence and transparency - based on Art. 114 TFEU (market harmonization). Addresses both state control and private algorithmic censorship.

Main Objectives

- Ensure proper functioning of the EU media market
- Safeguard journalistic freedom from political and economic pressure
- Tackle disinformation and covert interference

Key Measures

- Ban on spyware & coercion: Journalists protected from surveillance (with limited exceptions for serious crimes).
- Transparent funding: Disclosure of media ownership and state funding (including from third countries).
- Fair and non-discriminatory allocation of public advertising.
- Accountability of platforms: Platforms must notify media outlets before removing content (24h window for response). Disputes can be addressed via independent dispute resolution bodies.



Conclusion Remarks. Emerging Trends in EU Law Against Disinformation

- A Shift Toward Assertive, Structural Regulation: From Soft Law to Hard Law → Voluntary codes were replaced or reinforced by binding regulations
- Expansion of EU Competences → Use of Art. 114 TFEU to enter areas traditionally linked to national sovereignty: Electoral integrity, Media regulation, Information ecosystem governance
- Fusion of Security and Democratic Resilience → Disinformation treated as a hybrid threat within CFSP and Crisis Regulation
- New Balance of Rights → Limitations on freedom of expression considered legitimate when: Proportional, Temporary, Aimed at protecting democratic integrity and public order.
- Changing Paradigms Toward a Political Union? → Legal responses indicate a de facto "federal" turn, with growing need for democratic legitimacy, judicial oversight, coherent constitutional rights protection