



TECHFREEDOM
LAW FOR A DYNAMIC FUTURE



CEPOS
Center for Politiske Studier



August 21, 2024

Mr. Thierry Breton

Commissioner for the Internal Market
European Commission

Dear Commissioner Breton,

We, the undersigned civil society organizations and scholars of free expression, write to express our concern regarding your [August 12 letter](#) to Elon Musk.

Your letter reflects an alarming disregard for freedom of expression; it is inconsistent with the design of the Digital Services Act (DSA) and, indeed, with the very spirit of a free and vibrant democratic culture. Your interpretation of the DSA will harm, not enhance, civic discourse, both in the European Union and globally.

Recital 153 explicitly requires that the DSA “be interpreted and applied in accordance with ... the freedom of expression and of information.” This is particularly true for the DSA’s systemic risk obligations. Safeguarding “civic discourse” and “public security” – two notions to which you refer in your letter and included in the DSA – cannot be used as an excuse to censor speech.

Your reference to “harmful content” is especially troubling. As you are well aware, striking a balance between freedom of expression and “content that promotes hatred, disorder, incitement to violence, or certain instances of disinformation” is extremely challenging. Freedom of expression can only be restricted under strict standards, and courts will interpret restrictions narrowly. History tells us that restrictions more frequently backfire than not, and we would urge you to err on the side of liberty when in doubt. There are good reasons why democracies protect “potentially harmful content”, even if it is reprehensible.

Abstract references to ensuring freedom of expression and to the proportionality of any mitigation measures that are adopted to tackle systemic risk are not sufficient to guarantee freedom of expression. Your loose paraphrase of the carefully crafted language of the DSA risks casting a long shadow upon free expression and exceeding the authority given to you.

We are particularly concerned by your attempt to use the DSA to stifle freedom of expression beyond the European Union because of what you call “spillovers.” Warning an online platform that streaming an interview with one of the two key candidates in the United States presidential election may be incompatible with an online safety law is more characteristic of an autocratic nation than a democracy.

Europe can be a guardian of fundamental rights. The European Commission and national authorities should ensure that the DSA is not applied in a way that harms freedom of expression not only in Europe but globally.

Yours sincerely,

The Future of Free Speech

TechFreedom

Institute H21

The Copia Institute

Justitia

Adam Smith Institute

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