

◀ HUNGARY BECOMES LATEST EU STATE TO CONSIDER NATIONAL SOCIAL MEDIA REGULATION

Move seen as part of a growing trend to regulate online platforms at national levels

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This spring, Hungary will become the latest European country to introduce regulation around social media content, after Justice Minister Judit Varga [announced](#) in January (fittingly, on her Facebook page) plans to rein in the “tech giants”, including possible sanctions against what she described as their “unfair commercial practices”.

This move is further evidence of a growing trend towards online platform regulation at national levels in Europe, both within and outside the EU. Austria, France, Germany and Poland have all pre-empted EU-wide legislation on the digital landscape, while outside the bloc the UK, Russia and Turkey are at various stages of implementing similar restrictions. Within the EU at least, this trend goes against Brussel’s ambition to regulate the digital landscape at a regional level, via the EU Digital Strategy, tabled by the European Commission in December last year. Below we take a more detailed look at what is driving this national legislation and some of the challenges posed for international digital operators.

THE EUROPEAN DIGITAL STRATEGY

On 15th December last year, the twin policy pillars of the European Digital Strategy (EDS) were unveiled, in the form of the Digital Services Act¹ (DSA) and Digital Markets Act² (DMA). The stated main objectives of the two acts are:

to create a safer digital space in which the fundamental rights of all users of digital services are protected (the main focus of the DSA);

and to establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally (the main focus of the DMA).

¹ Click [here](#) for an overview of the DSA

² Click [here](#) for an overview of the DMA

To these two aims, the acts will bring a range of regulatory requirements for digital operators within the EU, representing the most fundamental update of the rules governing digital services since the e-Commerce Directive of 2000³.

Central to the EDS is an attempt to harmonise the rules governing the provision of digital services across the EU rather than having a fragmented patchwork of potentially national conflicting legislation. Yet this has not stopped a growing number of member states from introducing their own regulations, which critics say will simply make an EU-wide solution virtually impossible, whatever the fate of the EDS.

A NATIONAL APPROACH: CURRENT STATUS OF MEMBER STATES' DIGITAL REGULATIONS

Country & Legislation	Timing	Main Elements	Reception
Austria <i>Communications Platforms Act (KoPI-G)</i> ⁴	Adopted in December 2020, service providers must implement the new obligations by 31 March 2021.	<p>Aimed at protecting users of platforms with >100,000 users or annual revenue above €500,000 from falling victim to online hate speech.</p> <p>Wikipedia, online news forums & marketplaces exempt.</p> <p>Modelled on the German Enforcement Act (NetzDG, 2017).</p> <p>Part of a larger package targeting online hate, amending the Austrian civil and penal codes — as well as media law — well beyond the introduction of the Communication Platforms Act itself.</p>	<p>The Internet Service Providers Austria (ISPA) criticised the Act for undermining EU efforts to develop a common framework under the DSA.</p> <p>Critics fear the impact on SMEs (for whom compliance may be difficult) and say the Gov. wants to make platforms more accountable.</p> <p>Austrian political parties' responses have been relatively welcoming, except for the far-right Freedom Party, which surmises that the law aims to censor and/or silence political competitors.</p>
Germany <i>Draft Act⁵ amending NetzDG</i>	Communicated to the EU Commission in January, triggering a standstill period running until 27 April; expected to be implemented shortly thereafter.	<p>Social networks must now not only delete potentially criminal content but also report it to the Federal Criminal Police Office (BKA).</p> <p>Some data will have to be forwarded to the authorities even before a crime is suspected.</p> <p>The substantive amendments were proposed after NetzDG was criticised by civil society organizations as well as the political circuit and was deemed unconstitutional.</p>	<p>It has been criticized for increasingly restricting freedom of opinion and information.</p> <p>Industry associations (eg, eco – Association of the Internet Industry) warned against unilaterally defining further requirements for social network operators at the national level until the interplay between the DSA and the NetzDG has been conclusively regulated.</p>

³ Click [here](#) for more information on the European Digital Strategy

⁴ Click [here](#) for the full version of the Federal Act on Measures to Protect Users on Communication Platforms (Communication Platforms Act - KoPI-G / German)

⁵ Click [here](#) for the full version of the Federal Act amending the Network Enforcement Act (NetzDG / German)

France <i>Bill⁶ on the Respect of the Principles of the Republic</i> introducing content moderation obligations for social networks	To be reviewed by the Senate 30 March. An estimated entry into force in autumn 2021.	The Bill aims to strengthen the French legal framework in order to combat radicalization and separatism It targets providers of social media platforms and online search engines and introduces additional obligations for very large platforms (threshold to be determined by decree).	It has been hotly contested by the public who fear the State is intruding on essential freedoms. Critics also see the proposed law as a political ploy to lure the right wing to Macron's centrist party ahead of next year's presidential election.
Poland <i>Draft bill on the Protection of Freedom of Speech on Social Media Platforms⁷</i>	Published by Ministry of Justice on 01/02/21 To be added to the Governmental Works Register in the coming months.	Users who have had posts removed or their accounts blocked will be able to appeal to a body called the Freedom of Speech Council to have their content reinstated. If social media companies are deemed to have removed posts or blocked accounts that are not illegal and refuse to reinstate them, they could face fines of up to PLN 50m zloty (EUR 11m).	Concern expressed (among others by the Helsinki Foundation of Human Rights and Polish Ombudsman) that it could be used for online censorship and might be used for political purposes. Remains unclear whether the draft has a chance of being adopted. If so, final version will probably be the result of negotiations between the Ministry of Justice and the PM.

POLICY OR POLITICS?

A common thread throughout the national-level regulation summarised above is the clear attempt to control or censor online content when needed (eg when deemed hateful, criminal or an attempt to radicalise readers), something which is also a cornerstone of the EU DSA. However, governments have clearly decided they are unable or unwilling to wait for the adoption of the EU-wide regulation and have acted unilaterally; mostly, they claim, to protect consumers from criminal content and online harassment and to maintain freedom of speech.

Others, though, are saying this is an example, at least in some countries, of politics trumping policies. Rather than acting to protect consumers, governments are instead allegedly using the issue as a trojan horse to drive through content-control policies for their own political benefit, given the role online platforms now play in election campaigning and political discourse.

Such criticism has been particularly rife in Poland where some of the measures proposed have been met with strong opposition. Concerns include the fact that the proposed Freedom of Expression Council will be appointed by the ruling coalition, as well as the scale of the penalties that could be imposed on operators and their representatives. Away from the controversial headlines, it remains to be seen whether the Polish Bill will pass in anything like its current form: one theory is that even its originators see it as more political rhetoric, littered with obvious legislative errors, than practical policy.

The criticisms labelled at Poland (and to some extent Austria, France, Germany) are certainly not confined to EU markets. Across the wider region, similar responses have followed in both Turkey and Russia, two countries which increasingly seem to be taking an extremely authoritarian approach to regulating social media platforms.

⁶ Click [here](#) for a full version of the Bill on the Respect of the Principles of the Republic (French)

⁷ Click [here](#) for the full version of the draft bill on the Protection of Freedom of Speech on Social Media Platforms in Poland (Polish)

The Turkish Grand National Assembly adopted the law amending the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts⁸ on 29 July 2020, representing another significant push for greater State oversight of the digital media space by a regime that is notoriously anti-social media.

The most significant new obligation is that social network providers (defined as any entity providing users the ability to create, view and share online content for social interaction) with more than one million daily users in Turkey will be obliged to appoint a local representative to respond to user complaints regarding violation of privacy and personal rights. The amendment also introduced a general obligation to localize the storage of Turkish users' data, although the Information & Communications Authority (ICTA) has yet to clarify this fully, stating only that priority should be given to this and measure to localize must be included in periodic reports to the ICTA.

Russian social media regulation was for a long time based on a multi-level system of content blocking and takedown requirements. However, over the years this proved to be ineffective with global platforms which do not have representative offices in Russia or have a non-significant local presence. The blocking of both LinkedIn in 2016 and Telegram in 2018 simply stimulated the widespread use of VPNs and distracted the public authorities from the blocking option as a means of forcing platforms to comply with local legislation. As a result, stakeholders are now examining more sophisticated ways to regulate social media companies, paying particular attention to the Turkish approach: in particular legislation requiring a compulsory local presence is now being finalized and should be submitted to the Parliament in the next few months.

In December, the Russian Parliament also backed large new fines for platforms that fail to delete banned content and other legislation that would allow them to be restricted if they “discriminate” against Russian media. The Parliament also adopted the Law on Self-moderation of Social Networks⁹, which was initially submitted to the lower house back in 2017 as a direct reference to NetzDG (see above). However, the final wording of this regulation is less impactful; it obliges online platforms to coordinate their content removal policies with Russia's telecommunications regulator (Roskomnadzor), but so far does not provide for any significant sanctions for non-compliance. The Law is to be applied from the second half of 2021, after the necessary subordinate acts are prepared.

On March 9, the Russian authorities [slowed down the speed of Twitter](#) for its alleged failure to remove banned content. Additional tighter internet laws which have been gradually introduced in the country in recent years include the requirement for search engines to delete some search results, messaging services to share encryption keys with the local security services and platforms to store user data on servers in Russia.

Finally, in the UK the Online Harms Bill is expected to undergo pre-legislative scrutiny in Parliament later this year with full implementation in 2022/2023 following the [White Paper](#) published in Dec 15 last year. The Bill covers all platforms hosting user-generated content online accessible in the UK and sets out strict new guidelines governing the definition and removal of illegal content. The Bill has attracted criticism from digital rights groups, saying it will create a regulatory minefield and discriminate in favour of large players with the resources to comply.

These national responses show just how powerful social media platforms have become and the importance (to many) of controlling and moderating their content. At the heart of this battle are two competing narratives: governments claiming it is their duty to ensure criminal and harmful content is removed, and citizens and corporates claiming the real motive is to limit the role these platforms can play within politics and specifically election campaigns.

⁸ Click [here](#) for a full version of the law amending the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (Turkish)

⁹ Click [here](#) for a full version of the Law on Self-moderation of Social Networks (Russian)

WHICH WAY IS HUNGARY LEANING?

Hungary's close political relationship with Poland has led many to speculate that the forthcoming bill could be similar to the Protection of Freedom of Speech legislation tabled earlier this year in Warsaw, which features huge fines for companies failing to regulate content in line with the new regulations. In her announcement signposting the regulation, Justice Minister Varga cited the unfair practices of social media platforms in limiting „the visibility of Christian, conservative, right-wing opinions” as a key justification for the move.

Critics argue, however, that the move is intended to silence the opposition ahead of the 2022 parliamentary elections (which look set to be the closest in Hungary for years due to the decision of the opposition parties to unify against the Fidesz government¹⁰), given the pivotal role social media (and Facebook in particular) played for the opposition in the 2019 municipal elections.

Following the pre-announcement of the regulation, the Hungarian Ministry of Justice convened an extraordinary meeting of the Digital Freedom Committee and the President of the Economic Competition Authority as the first step towards regulation. Minister Varga plans to invite selected technology companies for background discussions and to set up an adjudicating authority, which would issue all future rulings, and a conciliation board. Informal sources suggest that the final legislation is being handled at the highest echelons of the Hungarian Government, an indication of just how important the issue is regarded, and even that one option being considered is a blanket ban on political advertising on social media (although the far greater resources enjoyed by Fidesz when compared to opposition parties suggests this is unlikely). However the final regulation (promised for this spring) looks, the forecast tight election means any operator will have to tread a careful path over the coming months as a hoped-for pandemic recovery gives way what will be an intense and aggressive campaign.

LOOKING AHEAD

Whatever the true motivations in Hungary and elsewhere, the trend towards national regulation of the digital marketplace will have serious repercussions in Brussels especially if (as feared by the Commission) the trend gains additional momentum and grows to other member states. Margrethe Vestager, the European Commission's executive vice-president in charge of digital policy, has urged online platforms to support Brussels' proposed legislation or risk having to grapple with an uneven patchwork of national laws that would be cumbersome and costly to navigate.

While the rationale behind the European Digital Strategy might seem solid in Brussels, it could be argued it is failing to factor in the critical national politics angle, which could well end up being decisive. With some governments convinced their very futures could be decided by online campaigning and political discussion, giving up the regulatory lead to Brussels is an extremely hard sell. It is also becoming increasingly clear that key policy aspects of the EDS require considerable further debate and coordination outside the EU, not least with the US, where most of the 'gatekeepers' (particularly within social media) originate. The only certainty is that collision on seems inevitable, on multiple levels: Brussels to member states and from both levels to the operators themselves.

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¹⁰ Click [here](#) for current voting intentions in Hungary