

# Not Mutually Exclusive: Innovation and Regulation

Europe can ensure a democratic digital future –  
if decision-makers act

BY CÉDRIC O

**O**n the democratic oversight of Big Tech, content regulation is textbook material. In early January 2021, right after the US Capitol attack, Twitter and, soon after, Facebook decided to suspend the accounts of President Donald Trump on their platforms. Even if this decision could be justified by the emergency situation at the time, it posed fundamental questions as to how a private actor can unilaterally decide how and when to suspend the account of the democratically elected president.

An overwhelming majority of social media content is moderated by online platforms based on their terms of use but not on the legal framework of the country where the user resides. A social network does not even have an obligation to forbid users from posting content that is prohibited in their countries. From a democratic stance, this is unacceptable. Yet, these platforms have become major public spaces of exchange and communications, gathering billions of citizens around the world, with some political campaigns almost exclusively taking place there. A new public oversight must be designed.

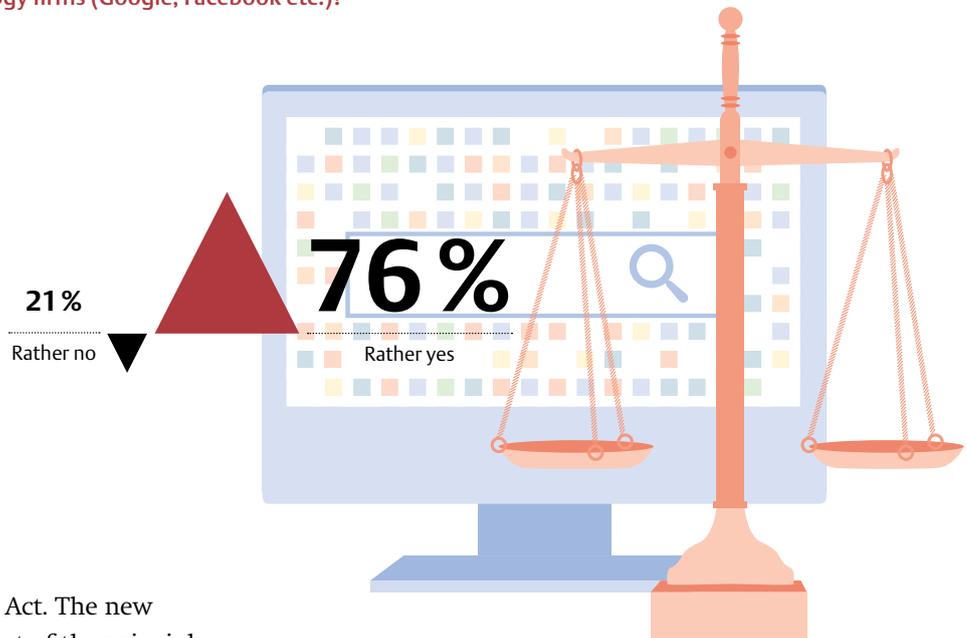
Hateful content existed prior to the development of social media. What is different today is the exceptionally large sounding board the latter represent, enabling this content to go viral. This technology-enabled phenomenon requires

technology-enabled remedies, which is why the automatic detection and removal of some problematic content is more than welcome. However, we not only need social media and platforms to moderate content but also democratic oversight of their moderation policies.

## A task for democracies

Democracies need to act on this. As online services have become an integral part of our life, we cannot let private actors – as benevolent as they may be – single-handedly rule on who has a right to say what online. Especially, when certain topics in our societies, such as hate speech or cyber bullying, are confronted with a high level of tension. While France and Germany are already doing this, the European Union is about to follow with the Digital Services Act. In Germany, the Network Enforcement (Netz DG) Act, implemented in 2017, obliges social networks with over 2 million German users to delete or block illicit content within a week or within 24 hours when it is manifestly illicit. Under this act, these actors are also required to publish a report on their moderation policy twice a year. While France and Germany agree that a stronger democratic regulatory oversight of online content moderation is necessary, France has adopted a different approach, substantially influenced by

Should Germany and the EU do more to limit the power of large technology firms (Google, Facebook etc.)?



2021: don't know 2%, no answer 1%

the proposed EU Digital Services Act. The new French act 'Comforting the respect of the principles of the Republic' has been adopted in parliament and should come into force shortly. It simply provides that platforms, including search engines, should take appropriate measures to assure appropriate and timely processing of notifications. This main provision is supplemented by several obligations on transparency, terms of use, risk evaluation, mitigation and the protection of freedom of expression.

## Intervene before market dominance is reached

But regulation is not just needed for content; there is a general movement towards a stronger democratic oversight in economic regulation. The ability of digital firms to develop new business models and challenge a variety of monopoly rents is beyond dispute, as are the benefits of their practices for consumers, which explain their tremendous popularity. However, the entrenched power of platforms, with their unprecedented size and a presence spanning several markets, has in recent years created a risk of abuse of their dominant positions. This has reached a point where it seems questionable whether other competitors will ever stand a chance of breaking into the market.

In response to this situation, the EU intends to put in place a new *ex ante* regulatory framework: the Digital Markets Act. In contrast to current *ex post* arrangements, regulators will be able to intervene before market dominance is reached. This includes a list of prohibited practices to prevent potential risks to competition or to correct existing deficiencies. This innovative act, currently under negotiation at the EU level, confirms our collective readiness for ambitious action. As European Commissioner for Internal Market Thierry Breton has said, 'the Internet cannot remain a Wild West'.

As decision-makers, we should always bear in mind the need to preserve what gives digital players their edge: innovation. But as far as Big Tech is concerned, regulation and innovation go hand in hand. Our task is daunting, but it is our responsibility to carry it out if we want our democracies to take back control of their future. ✘

**CÉDRIC O**

is minister of state for the digital transition and electronic communication of the Republic of France.