

Decision

- Case ID: [REDACTED] -

In the out-of-court dispute settlement process between

[REDACTED]

- Complainant -

and

Instagram

- Online Platform -

because of

the permanent suspension of an account based on Instagram's Policy on Dangerous Organisations and Individuals

the certified out-of-court dispute settlement body User Rights decided through its independent reviewers on **14/05/25**:

User Rights upholds Instagram's decision to permanently suspend the complainant's account. Online platforms are authorised to take such measures in exceptional cases where users repeatedly violate guidelines or in the event of a single serious violation. Such an exceptional case applies in this instance.

I. Summary

The complaint concerns the permanent suspension of the complainant's Instagram account, [REDACTED], due to a violation of the platform's policy on dangerous organisations and individuals. The complainant's bio featured a German phrase in runes explaining that their honour was called loyalty, a motto associated with the Nazi SS, accompanied by a lightning emoji and the number 06. Instagram deemed this a severe violation of its policies and suspended the account.

User Rights upholds Instagram's decision, finding that the content in the bio constitutes a glorification, support or representation of Nazi ideology, violating Instagram's policy. The suspension is justified as a proportionate measure to prevent the dissemination of dangerous far-right content. User Rights concludes that Instagram's action aligns with its fundamental rights obligations under the DSA, prioritising platform safety and user protection over the complainant's freedom of expression.

II. Facts of the case

The complaint concerns the permanent suspension of the account of the complainant.

The complainant was using the permanently blocked Instagram account under the username [REDACTED]. Their Instagram bio displayed a German phrase explaining that their honour was called loyalty. The words were followed by a lightning emoji and the number 06. The above mentioned phrase was written in runes.

In early May, Instagram permanently suspended the account of the complainant. A day after the suspension, the complainant appealed Instagram's decision to User Rights. When filing their complaint to User Rights, the complainant was asked to provide relevant context. The complainant stated that they were unable to access their profile anymore, which primarily consisted of random historical trivia, information about World War I and World War II, current global conflicts, geopolitics, and some economic topics.

On the same day the complaint was submitted, User Rights informed Instagram about the complaint to User Rights and gave it the opportunity to provide a submission. Instagram stated that it would stick with its moderation decision because of a violation of the platform's policy on dangerous organisations and individuals.

III. Admissibility

The complaint is admissible.

User Rights is certified to resolve disputes between platforms and complainants regarding moderation of content posted on a social media platform in German or English. Instagram is a social media platform. The relevant content is in English, thus a language for which User Rights is certified. Instagram permanently suspended the account. The permanent suspension of user accounts constitutes a measure which, in accordance with Art. 20 para. 1 a) and 21 para. 1 DSA, can be appealed to the out-of-court dispute settlement body User Rights.

IV. Merits

The complaint is unfounded.

User Rights upholds the decision to permanently suspend the complainant's account. The conditions for the suspension of the user account are met.

1. Scope of review

In its submission to User Rights the online platform explained that it relied on its Policy on Dangerous Organisations and Individuals to moderate the content.

When moderating the content of a user, Instagram has an obligation to provide a statement of reason satisfying the requirements of Art. 17 DSA. This statement of reason must, among other information, reference the specific contractual ground relied on, Art. 17 (3) e) DSA. The subject of the complaint is thus primarily determined by which regulation the platform bases its action on.

Should Instagram later determine that the invoked policy was not violated but a different policy was, it needs to make a new content moderation decision, provide a

statement of reason for that decision to the user, and the user has the right to appeal that decision, Art. 20 or 21 DSA.

2. Substantive Assessment

The conditions for a permanent suspension of the user account have been met. According to its policies, the online platform is authorised to suspend user accounts if users repeatedly violate guidelines or in the case of a single severe violation.

In this case the content displayed in the bio can be considered as one single severe violation.

The above mentioned phrase and symbols lead to a breach of Instagram's policy on Dangerous Organisations and Individuals. The policy differentiates between different categories (tiers) of violations. Exemplified breaches under Tier 1 result in the most extensive, breaches under Tier 2 in less extensive enforcement measures by the platform.

Referring to Tier 1, the policy stresses that the platform "removes content that glorifies, supports or represents ideologies that promote hate, such as nazism and white supremacy." Also, "unclear references to these designated events or ideologies are removed." Furthermore, the policy specifies that the following pieces of content are affected: "unclear or contextless references if the user's intent was not clearly indicated. This includes unclear humor, captionless or positive references that do not glorify the designated entity's violence or hate."

The phrase used by the complainant in their bio, explaining that their honour was called loyalty, was the official motto of the "Schutzstaffel (SS)" during the Nazi regime. The saying expressed the SS members' loyalty to Adolf Hitler. The usage of the motto is prohibited under German and Austrian law. It meets the conditions of § 86a of the German Criminal Code (Strafgesetzbuch), which punishes the use of symbols of anti-constitutional organisations (Information brochure by the German Federal Office for the Protection of the Constitution on 'Right-wing extremism - symbols, signs and banned organisations', September 2022, pg. 65, 82, available at

https://www.verfassungsschutz.de/DE/themen/rechtsextremismus/verbotsmassnahmen/verbotsmassnahmen_node.html#doc714138bodyText3).

As the complainant placed the phrase prominently in their bio it can be considered as a glorification, support or at least representation of the Nazi ideology. While the phrase is published without any context, the policy has specified that also contextless references to the Nazi ideology fall within its scope. If a user has not clearly indicated their intent to discuss or raise awareness about historical facts regarding nazism for example, the contextless reference is also prohibited and ought to be removed.

In the present case, the statement was placed prominently as the main visual element in the complainant's bio. Contrary to the policy, the complainant failed to provide any contextual framing. The text is written in runes, a form of symbolism appropriated by the Nazi and today predominantly used in far-right circles. Although the lightning symbol and the number "06" that follow the statement cannot be clearly assigned a specific meaning, it cannot be excluded that they constitute codes used in right-wing extremist contexts. Two consecutive lightning bolt emojis, for example, are commonly used to represent the SS.

The complainant's assertion that the account primarily aims to inform and educate about historical events such as the First and Second World Wars is not credible. At the very least, it remains unclear why the complainant would feature the central motto of the SS in the bio without any explanation or reference to the stated educational purpose.

The content in question violates the policy on Dangerous Organisations and Individuals, as it must be understood as a form of glorification, or at least as support or representation, of Nazi ideology.

Moreover, the conditions of Instagram's policy on disabling accounts are met as the violation has reached a level of severity that justifies the permanent suspension of the account. The fact that the central motto of the SS appears as the sole sentence in the bio, without any contextual explanation, points to significant risks posed by the account. One of the core aims of the guideline—and of Instagram's content

moderation more generally—is to prevent the glorification and dissemination of Nazi ideology on the platform at the earliest stage. It cannot be ignored that the complainant appears to intend the dissemination of this ideology or other far-right content. The complainant has also failed to present any arguments to the contrary that could serve to exonerate or mitigate this impression.

According to the wording of the policy, the content is not permitted on the platform. However, a final assessment of whether the platform's action was justified and complies with all requirements of the DSA depends on whether the decision adequately took into account the fundamental rights of the complainant (Article 14(4) DSA).

3. Fundamental Rights Assessment

Finally, Instagram's decision does not violate the fundamental rights of the complainant.

a. Application of fundamental rights under the DSA

Art. 14 (4) DSA specifies that platforms, when enforcing restrictions, have an obligation to pay due regard to the fundamental rights and legitimate interests of users and other involved parties, and to act in a diligent, objective and proportionate manner.

The obligation to respect fundamental rights does not arise from the DSA but from the Charter of Fundamental Rights of the European Union (CFR). The fundamental rights enshrined in the Charter apply not only to disputes between citizens and the state. Rather, they are also applicable to purely private disputes that do not involve state authorities (cf. CJEU, judgment of January 29, 2008, C-275/06 *Promusicae*, ECLI:EU:C:2008:54). Art. 14(4) DSA merely specifies this in relation to disputes between users and providers of online platforms.

Against this background, User Rights will weigh the opposing fundamental rights positions of the complainant and the platform to determine whether the platform's decision is in accordance with Art. 14(4) DSA.

b. Fundamental rights to be considered

The complainant can invoke the fundamental right to freedom of expression (Art. 11 CFR). The publication of the content by the complainant is protected under Art. 11 CFR. To determine the scope of protection of Art. 11 CFR, the case law of the European Court of Human Rights (ECtHR) on Art. 10 of the European Convention on Human Rights (ECHR) may be used as a source of interpretation pursuant to Art. 52(3) CFR (Lock, "Art. 52 GRC" in Kellerbauer et al. (eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, 2019, paras. 28f.).

It is first necessary that the content in question constitutes an opinion. This potentially includes any form of communication, regardless of whether it consists of value judgments or factual statements (ECtHR NJW 1985, 2885). When determining the scope of protection of freedom of expression, no substantive evaluation of the statement takes place. However, the ECtHR has denied any protection under Art. 10 ECHR to Holocaust denial, as such statements violate the prohibition of abuse under Art. 17 ECHR (ECtHR, judgment of 23.9.1998 – 24662/94, para. 47). Art. 11 CFR protects all forms and modes of expression. The dissemination of content via online platforms is also covered by Art. 11(1) CFR. Based on these standards, the publication of the content on the online platform falls within the scope of protection of freedom of expression under Art. 11 CFR.

Furthermore, the complainant can invoke their fundamental right to non-discrimination (Art. 21 CFR). This right includes a prohibition of arbitrary and discriminatory treatment of users.

The provider of the online platform, in turn, can invoke its fundamental rights to freedom of enterprise (Art. 16 CFR) as well as freedom of expression (Art. 11(1) and (2) CFR).

The fundamental right to freedom of enterprise under Art. 16 CFR includes the right to freely conduct an economic or commercial activity (ECJ, judgment of 14 May 1974, Nold, C-4/73, ECLI:EU:C:1974:51, paras. 12-14). This encompasses the right to operate a commercial online platform, to establish its policies, and to moderate content in order to enforce these standards towards users.

Freedom of expression can be exercised not only by natural persons but also by legal entities, such as online platform providers (ECJ, judgment of 22 January 2013, *Sky Österreich GmbH v Österreichischer Rundfunk*, C-283/11, ECLI:EU:C:2013:28). Online platforms can invoke the fundamental right to freedom of expression under Art. 11(1) and (2) CFR because they fulfill a communicative function. This applies even if they merely transmit information or opinions of others. The ECtHR has ruled that online platform providers can invoke the right to freedom of expression under Art. 10 ECHR, even if they do not endorse the content disseminated by users and merely transmit it.

The ECtHR has explicitly highlighted the "communicative value" of platforms (ECtHR, judgment of 23 January 2018, *Magyar Kétfarkú Kutya Párt*, App no. 201/17, para. 37).

c. Fundamental rights requirements for moderation decisions of online platforms
From the balancing of the fundamental rights positions of the complainant and the platform, it follows that content moderation measures must not be arbitrary, must be proportionate, and that online platform providers are obliged to implement moderation measures consistently (on these requirements, see: *Wischmeyer/Meißner*, *Horizontalwirkung der Unionsgrundrechte – Folgen für den Digital Services Act*, NJW 2023, 2678).

(1) Non-arbitrariness

The content moderation measure of the online platform is not arbitrary. Moderation measures are not arbitrary if they are based on an objective reason and serve a legitimate goal. This is the case here. The measure serves to enforce platform policies, which aim to maintain an attractive communication environment and prevent negative impacts on the users of the online platform as well as third parties.

(2) Proportionality

The content moderation measure is proportionate.

Under the proportionality requirement, platforms must impose sanctions in a graduated manner. For instance, depending on the severity of the breach of

policies, platforms can be required to delete individual posts prior to suspending an account. It is not apparent that the online platform could have applied a less serious, equally effective content moderation measure. As it seems to be the complainant's main intention to publish dangerous far-right content, this can only be entirely prevented by a permanent suspension of the account.

The principle of proportionality furthermore requires a balancing of the rights and interests of the complainant, the online platform, and, if applicable, third parties. These rights and interests should be given the highest possible level of effectiveness. In this balancing process, not only fundamental rights positions but also principles enshrined in European secondary law may be taken into account (ECJ, Judgment of April 17, 2018, Egenberger, C-414/16, ECLI:EU:C:2018:257, para. 81).

The principle of proportionality is also reflected in Art. 14(4) DSA, which stipulates that providers of online platforms must act proportionately. This includes the obligation to consider "the rights and legitimate interests of all parties involved as well as the fundamental rights of users."

The factors to be considered in the balancing include, among others, the size and focus of the platform, as well as the nature of the expression of opinion disseminated by the complainant.

In consideration of these factors, User Rights finds that the content moderation measure is proportionate. The platform's fundamental right to conduct a business (art. 16 CFR) outweighs the complainant's freedom of expression (art. 11 CFR). Given the significant dangers posed by Nazi ideology and the responsibility arising from the historical context, Instagram's fundamental rights and interests to establish safety on the platform through the complainant's account suspension should be prioritised. The aim is also to protect third users—both on and beyond the platform.

V. Result

User Rights upholds Instagram's decision to permanently suspend the complainant's account. Online platforms are authorised to take such measures in

exceptional cases where users repeatedly violate guidelines or in the event of a single serious violation. Such an exceptional case applies in this instance.

Note: The decisions of out-of-court dispute settlement bodies are not binding for platforms according to Art. 21 para. 2, third sentence of the DSA. However, as part of their duty to cooperate in good faith pursuant to Art. 21 para 2, first sentence of the DSA, platforms must assess whether there are reasons against implementing the decision and must inform the dispute resolution bodies about the implementation of the decision.