

## Discussion Report

### The review of content moderation decisions related to false information by ODS bodies

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#### KEYWORDS

False information; misinformation; disinformation; standard of review by ODS bodies; DSA; EU Code of Conduct on Disinformation

#### INTRODUCTION

The [Article 21 Academic Advisory Board](#) (the Board) discusses the most challenging issues arising in the development of out-of-court dispute settlement bodies (ODS bodies) under the Digital Services Act (DSA). Article 21 DSA allows for different models of ODS bodies. The Board explores these models and discusses their upsides and downsides. It provides guidance to ODS bodies and regulators and informs the work of academics and civil society organisations. It helps to develop reasonable solutions where the law and regulators grant ODS bodies discretion in their operations.

This discussion report reflects insights from the Board's third meeting which focused on the role of ODS bodies in reviewing content moderation decisions related to false information, including manipulated content. The Board examined the intersection of fact-checking, content moderation, and dispute resolution and discussed how ODS bodies should function in light of the existing fact-checking landscape.

ODS bodies should actively assess the moderation of false information and

manipulated content, ensuring platforms apply their policies fairly and respect fundamental rights, particularly freedom of expression.

However, they should not conduct fact-checking themselves. Platforms must maintain fact-checking systems that comply with recognised standards and disclose their processes and partnerships. If these meet DSA requirements, ODS bodies should accept them as reasonable attempts to balance freedom of expression with ensuring the integrity of the online information sphere.

Platforms should also provide clear statements explaining why content is deemed false, manipulated or misleading; failure to do so should lead to recommendations for reinstatement. Given the implications for freedom of expression, strict standards should apply to moderation decisions.

Further engagement with fact-checking networks, journalists and media representatives is needed to refine best practices, particularly in defining criteria for evaluating platforms' fact-checking processes.

The Board also discussed the evolving role of fact-checking networks, challenges in distinguishing false statements from opinions, and the impact of content labels on visibility.

## PROBLEM STATEMENT

It remains unclear how ODS bodies should review disputes related to platform misinformation policies. A key aspect of this review is assessing whether information is actually “false” or intended to deceive. Even before the adoption of the DSA, an ecosystem of fact-checking organisations and networks had emerged, which platforms rely on, and the EU had introduced a “Code of Practice on Disinformation.” The European Commission and the Digital Services Coordinator (DSC) Board have endorsed integrating this Code into the DSA framework.

The third meeting of the Board examined the role ODS bodies should play in assessing the veracity of information and how they should integrate into the existing fact-checking landscape. Concretely, it discussed the following question:

**How should ODS bodies review content moderation decisions related to false information on social media platforms?**

## OPTIONS

The Board considered the following options. Importantly, this does not mean that the discussion was limited to these options—they merely present a concise range of possibilities and serve as a starting point for identifying the most compelling approach.

### **Option 1: Relying on fact-checking outcomes reached by platforms**

#### *Solution*

- To avoid taking on the role of fact-checkers themselves, ODS bodies should not re-evaluate assessments made by platforms regarding the falsehood and deception of information but should instead accept the conclusions reached by them.

- The responsibility to have adequate fact-checking processes in place remains with the platforms. Other mechanisms of the DSA, such as systemic risk assessments and structural indicators as the key performance indicators under the Code of Conduct on Disinformation, should serve as the basis for reviewing their adequacy.

### **Option 2: ODS bodies should verify information by consulting fact-checking portals and other trusted sources**

#### *Solution*

- ODS bodies should consult fact-checking portals and other trusted sources to assess whether the information is false. They may even establish partnerships with fact-checking organisations.
- If these sources provide a clear basis for determining the falsehood of a claim, ODS bodies should make their decision accordingly and cite the relevant portals or sources.
- In cases where platforms do not work with fact-checkers, and fact-checking portals or trusted sources do not provide any guidance, ODS bodies should initiate independent fact-checks by fact-checkers.

### **Option 3: Restore information if fact-checking processes and justifications by platforms are insufficient, focus on fundamental rights review**

#### *Solution*

- In cases where platforms have not relied on fact-checkers or failed to provide sufficient information on their cooperation with fact-checkers, ODS bodies should overturn the platform’s decisions to remove, label or demote misinformation.
- ODS bodies should also assess whether, even if the information is false, moderating that content may infringe on users’ right to freedom of expression.

## CONCLUSIONS REACHED BY THE BOARD

### **The Board rejected Options 1 and 2, and mostly endorsed Option 3.**

First, ODS bodies should not refrain from making a substantial assessment regarding the moderation of false information (unlike what is proposed in Option 1). The moderation of false information—and the opinions interlinked with such information—is a particularly important issue from the perspective of freedom of expression, and ODS bodies should play a role in protecting this right.

Second, the Board emphasised that ODS bodies should not replicate existing fact-checking processes or engage in fact-checking themselves (unlike what is proposed in Option 2).

Instead, they should assess whether platforms have applied their false information policies fairly, consistently, and with due consideration of fundamental rights, particularly freedom of expression (mostly aligning with Option 3).

The unique contribution that ODS bodies can make within the broader framework of the DSA is to conduct a thorough review of whether the processes and justifications provided by platforms for content moderation decisions were adequate and respected user rights.

Additionally, they should ensure that even where information may be false, the fundamental right to freedom of expression—which, under European fundamental rights law, also protects false information—has been duly considered.

#### *Accounting for the adequacy of processes*

Platforms should not arbitrarily decide whether content is false. Under the DSA, platforms are expected to maintain adequate fact-checking systems that align with recognised standards such as standards of the European Fact-Checking Standards Network (EFCSN) or of the International Fact-Checking Network (IFCN). Platforms should inform ODS bodies about their

fact-checking processes and partnerships. Where these processes and partnerships comply with the requirements of the DSA, ODS bodies should accept them as generally reasonable, provided they were relied on for the particular decisions under analysis.

#### *Reviewing the justification provided by platforms*

When moderating content for containing false information, platforms should specify in their statement of reasons the concrete information and/or source of information on which their assessment of falsity or deception is based. This allows users to understand the reasoning behind the platform's decision.

If a platform fails to provide a sufficient statement of reasons, ODS bodies should recommend reinstating the content in accordance with the DSA.

Refining the differentiated approach developed in the first discussion report—particularly concerning the role of statements of reasons under Article 17 of the DSA and the consequences of platforms meeting the requirements of Article 17—the Board emphasised that moderating content, including by adding labels or demoting content, for containing false information is particularly sensitive from the perspective of freedom of expression. Therefore, strict standards should be applied regarding the justification of such measures.

#### *Further stakeholders engagement*

Further engagement with stakeholders, including fact-checking networks, journalists and media representatives, will be essential to refining best practices and ensuring the effective implementation of the DSA's provisions on false information.

Specifically, this engagement should address the following key question: What criteria should platforms' fact-checking processes and

partnerships meet for ODS bodies to regard them as reasonable?

### **ADDITIONAL DISCUSSION POINTS**

#### *Integration of Fact-Checking into the DSA Framework*

The Board noted that ODS bodies must consider the evolving role of fact-checking networks, such as the EFCSN, and their integration into platform policies. The transition of the Code of Practice on Disinformation into a Code of Conduct under the DSA reinforces the importance of fact-checking.

#### *Fundamental rights*

As [explained in the Board's second report](#), European fundamental rights do not only apply in disputes between private parties and public authorities but there could also be exceptional cases where they are also applicable to purely private disputes that do not involve a public authority.

False and manipulated information often exists in a legal gray area as it may not be illegal but can still be harmful. ODS bodies must navigate this complexity, balancing the need to address harmful content with the protection of fundamental rights, particularly freedom of expression.

The Board recognised that a core challenge is differentiating between verifiable false information and subjective opinions, particularly in light of the legal and constitutional standards set under the European Human Rights Jurisprudence. ODS bodies must ensure that content moderation decisions account for this distinction, and do not unduly limit protected speech.

#### *The Role of Labels and Content Moderation Measures*

The Board discussed whether content labels constitute visibility restrictions or merely informational tools. Labels may stigmatise

content and affect engagement, especially if they are accompanied by demotion. This raises questions about whether users should be able to appeal such labelling decisions. ODS bodies should determine whether labelled content is effectively restricted and whether such measures warrant appeal mechanisms under the DSA.

#### *European Media Freedom Act (EMFA) Impact*

The Board noted the special protections in content moderation by very large online platforms granted to media service providers under Article 18 of the EMFA. However, such delayed content moderation for media applies only when platforms take action based on their Terms and Conditions and not when they act within the scope of the DSA systemic risk management. This means that ODS bodies may need to adjudicate complaints where media organisations claim unjust moderation under the DSA that prevents them from benefiting the special protection granted by EMFA.

Additionally, the Board considered insights from the European Digital Media Observatory's (EDMO) work on systemic risk assessment and mitigation under the DSA. Several fact-checkers are signatories to the Code of Conduct, reflecting their role in supporting compliance efforts. However, challenges remain in standardising methodologies across different platforms and ensuring that fact-checking efforts remain free from political or commercial influence. ODS bodies may need to consider these factors when assessing the reliability of fact-checking mechanisms employed by platforms.

#### *Challenges and the Need for a Collaborative Approach*

The Board highlighted significant challenges with platforms' approaches to fact-checking. Platforms have varying approaches to fact-checking. This inconsistency makes it difficult for ODS bodies to assess the reliability of platforms' decisions. There is a growing concern

that platforms are stepping back from their commitments to collaborate with fact-checkers, which could undermine the effectiveness of the DSA's provisions on systemic risks management and the incorporated Code of Conduct on Disinformation.

A key highlight of the meeting was the discussion on the work of the EDMO in coordinating fact-checking efforts across the EU. EDMO operates as a collaborative initiative, bringing together researchers, fact-checkers, and media literacy experts to better understand disinformation narratives and assess the effectiveness of policy interventions. Through its extensive network of fact-checkers and structured monitoring, EDMO has played a crucial role in tracking the spread of

misinformation, particularly around elections and major geopolitical events. This collaborative approach underscores the necessity of integrating fact-checking expertise into the ODS process while ensuring that oversight mechanisms remain transparent and independent.

#### **NEXT MEETING AND CONTACT**

The Board will hold its next meeting in June 2025. You can find all relevant information and news on the Board's website: <https://user-rights.org/de/advisory-board>.

To contact the Board, please write: [board@user-rights.org](mailto:board@user-rights.org)