

The Digital Services Act and Switzerland

– or what is happening to freedom of expression in the EU

by Ursula Cross*

Through the informal influence of the EU, Switzerland is also increasingly falling under the spell of an authoritarian surveillance mentality that is gaining ground worldwide. In many areas, we unquestioningly adopt political and constitutional views and attitudes from the EU. Notably not a democratic entity. In the EU, the Digital Services Act (DSA) has become a powerful instrument for monitoring opinion.

Former judge and renowned German lawyer *Manfred Kölsch* outlined the consequences of the *Digital Services Act* (DSA) even before its introduction in 2024. Some of the most controversial consequences are outlined below. If Switzerland moves closer to the EU, it will have to deal with the DSA. Do these – to put it mildly – autocratic laws also fall within the scope of the “automatic adoption of EU law”? Or will they be introduced sneakily into Switzerland via EU “regulations”? Will judges appointed by the EU in a mixed arbitration tribunal ultimately decide what can still be said in Switzerland?

Manfred Kölsch on the DSA:¹ Since 17 February 2024 at the latest, the *Digital Services Act* has been directly applicable in every EU member state, primarily to “very large online platforms and very large online search engines” (Art. 33(4), Art. 92, 93(2) DSA). These are obliged, under threat of severe financial penalties, to monitor all their content and delete it if necessary. They are monitored in this by the EU Commission, by state coordinators and by civil society whistleblowers.

The DSA, which replaces the *Network Enforcement Act* (NetzDG) and the *Telemedia Act* (TMG) previously in force in Germany, is a major legislative project with more than 150 recitals and 93 articles. The accompanying report by the

European Parliament is almost 1,000 pages long.²

“This European regulation is a prime example of how national and EU institutions are working hand in hand to prevent alternative flows of information. In doing so, they are undermining the constitutionally enshrined freedom of expression and information and promoting this endeavour through a Europe-wide surveillance system”, says Kölsch.

It will also be possible to delete entries that are not illegal, for example the “mediation and dissemination of illegal or otherwise harmful information and activities”; preventive measures for information control. Each Member State appoints a *Coordinator for Digital Services* (CDS).

The CDS can issue orders against a content on the platforms that it objects to and request information about its implementation. It has the right to “carry out inspections in all premises [...] or request a judicial authority in his Member State to order such inspections [...] in order to investigate and secure information about a *suspected* infringement [...]”. The EU Commission ultimately has sole decision-making power in the event of a conflict. The powers of the coordinators of the Member States undermine the principle of subsidiarity.

The DSA and Switzerland

In connection with lectures on the WHO pandemic treaty and the *International Health Regulations* (IHR), the former chief public prosecutor in the canton of Zurich, *Jürg Vollenweider*, pointed out that the Federal Council had already planned to introduce a similar law and that, on the other hand, similar legislation would have to be adopted through a possible extended dynamic adoption of EU law.³

The German *Network of Critical Judges and Prosecutors* (KRiSTA) in particular is addressing the worrying developments within Germany and the EU. It is also becoming increasingly important for Swiss legal culture to actively engage with

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these developments. A symposium in Halle an der Saale entitled "From a free state to a surveillance state" on 29 November offers an opportunity to do so.⁴

(Translation "Swiss Standpoint")

¹ <https://netzwerkkrista.de/2024/01/16/meinungsfreiheit-ein-auslaufmodell/>, 16 January 2024

² https://www.europarl.europa.eu/doceo/document/A-9-2021-0356_DE.html, 20 December 2021

³ <https://wissensgeist.tv/who-symposium-2025-in-winterthur-referent-juerg-vollenweider-eh-staatsanwalt/>

⁴ <https://netzwerkkrista.de/>



Announcement: "From a free state to a surveillance state?"