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Bridging the Gap in Byte-Sized Democracies: the European and Brazilian Approach to Disinformation

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**Panel 2.16 – Transatlantic Dialogues in the Digital Age: An EU-Brazil Comparison of the
Protection of Rights in the Online Environment**

Tiago Morais Rocha (CIJ/FDUP)
trocha@direito.up.pt

Disinformation: a persistent menace.



The data, presented by the European Commission, date from 2019. It is quoted in Meireles, 2022, p. 214, and comes from a presentation by Luis Viegas Cardoso in the Portuguese parliament on April 15, 2019, at the Parliamentary Conference "Information and Disinformation in the Digital Age." We thank both for kindly providing us with the presentation.

- § A complex and multifaceted issue that sets a collision course between freedom of expression and other constitutional values, principles, and rights.
- § Regulatory responses (if any) are not self-evident and may vary greatly between countries (even if they have common constitutional traditions). **How militant should democracies be when facing digital threats, particularly disinformation?**

Disinformation: a persistent menace.

A problem of:

- § Speed;
- § Spread;
- § Reach;
- § Scale;
- § Credibility
(AI's decisive contribution).



A hydra-like phenomenon



Global risks ranked by severity over the short and long term

"Please estimate the likely impact (severity) of the following risks over a 2-year and 10-year period."



World Economic Forum, Global Risks Report 2025, 2025.

Disinformation: a persistent menace.

- § Disinformation targets the pillars of participation and deliberation that constrain political power and allow democracies to function.
- § It affects public trust in accountable institutions, potentially lowering the costs for authoritarian and illiberal politicians to bypass societal and institutional checks on their power (Keller & Arguelhes, 2024).
- § “Discursive integration” (Mourão & Robertson, 2019), post-truth, and the rejection of the traditional norms and procedures for examining claims of validity and setting epistemic truths (Hofman, 2023).
- § Disinformation and democratic backsliding.
 - § The “rise of illiberal public spheres” (Bennett & Kneuer, 2024).
 - § **“Constitutional stupidity”** (Musil, 2025).
- § Sajó: «**Overly confident democracies have paid an immense price for their careless shortsightedness**» (Sajó, 2021).

The European Union strategy: from soft-law to a centaur-like hybrid regulatory model.

- § 2016 – the beginning of the “moral panic”: US elections and Brexit referendum. The “Cambridge Analytica” scandal. Suspicions of “FIMI” (Foreign Information Manipulation and Interference) operations.
- § Two phases in the European Union’s strategy to counter disinformation (Rocha, 2023):
 - § **2015 – 2022**
 - § Predominance of soft-law instruments:
 - § Communication from the Commission, *Tackling online disinformation: a European Approach*, 2018;
 - § **Code of Practice on Disinformation** (2018, reformulated in 2025, and integrated in the DSA in 2025);
 - § Joint Communication from the Commission and the High Representative, *Action Plan against Disinformation*, 2018;
 - § Joint Communication from the Commission and the High Representative, *Tackling COVID-19 disinformation - Getting the facts right*, 2020.
 - § Self and co-regulation.
 - § Objectives: improve the capacity of institutions to study, detect, analyze, and report disinformation, create common responses to fight the phenomenon, **mobilize the private sector, promote transparency and self-accountability**, and strengthen the resilience of societies.
 - § Characteristics: lack of a systematic approach and a reliable political mandate (Member States' regulatory interventions – Germany (NetzDG, 2017), France (2018), and Austria (KoPI-G, 2021)).

The European Union strategy: from soft-law to a centaur-like hybrid regulatory model.

§ Two phases in the European Union's strategy to counter disinformation (Rocha, 2023):

§ **2022 – present**

§ A hybrid model between soft and hard-law instruments:

§ Digital Services Act;

§ Artificial Intelligence Act;

§ Regulation on the transparency and targeting of political advertising;

§ European Media Freedom Act;

§ Code of Practice on Disinformation (2025);

§ Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065.

§ Co and heteroregulation.

§ Objectives: change the dynamics affecting the circulation of disinformation in online platforms and hold private actors accountable.

§ Characteristics: content neutrality; hybrid strategy based on a regulatory mix that gives prevalence to information integrity, procedural safeguards, (*ex-ante*) risk regulation, and collaboration between public and private powers (Gregorio & Pollicino, 2025).

§ The rise of a “**right to informational integrity**” regarding synthetic content (Rocha, 2025, forthcoming).

Brazil: a judiciary-driven model.

§ Pioneers in internet regulation and governance.

§ The normative architecture:

§ Brazilian Federal Constitution (1988): freedom of expression is guaranteed, but anonymity is prohibited;

§ Marco Civil da Internet or *Internet Bill of Rights* (2014):

§ A global trend stemming from digital constitutionalism (Gill, Redeker & Gasser, 2015).

§ The Marco Civil and the potential to bridge the gap in civic and political participation, reducing digital inequalities (Omari, 2021).

§ Protection of freedom of expression. Right to internet access. Net neutrality. Data protection.

§ Digital platforms' liability regime – Article 19 (follows the US model). STF – 2025: Article 19 is partially **unconstitutional**.

§ General Personal Data Protection Law (2018);

§ Electoral Code (1965);

§ Electoral Law (1997);

§ TSE (a *sui generis* hybrid legislative, administrative, and judicial body) regulations:

§ TSE-Resolution n.º 23.610, from 18/12/2019;

§ TSE-Resolution n.º 23.714, from 20/10/2022;

§ TSE-Resolution n.º 23.732, from 27/02/2024.

Brazil: a judiciary-driven model.

§ The focus on electoral processes and electoral propaganda:

§ **The TSE regulations on political and electoral propaganda:**

- § Using any type of content in election advertising, including content disseminated by third parties, presupposes that the candidate has verified the presence of elements that allow them to conclude, with reasonable certainty, that the information is reliable.
- § The use in electoral advertising, in any form, of synthetic multimedia content generated by artificial intelligence imposes on the person responsible for the advertising the duty to inform, in an explicit, prominent, and accessible manner, that the content has been fabricated or manipulated.
- § The use of fabricated or manipulated content in election advertising, in any form or manner, to disseminate facts that are notoriously untrue or taken out of context, with the potential to cause damage to the balance of the election or the integrity of the electoral process, is prohibited. It is forbidden to use synthetic content to harm, or favor a candidate, to create, replace, or alter the image or voice of a living, deceased, or fictional person (deep fake).
- § It is prohibited to disclose or share facts known to be untrue or seriously taken out of context that affect the integrity of the electoral process, including the voting, counting, and tabulation of votes.

§ **The TSE and STF decisions on the limits of freedom of (political) expression:**

- § The “Francischini” case;
- § The take-down of contents and suspension of accounts;
 - § Lula da Silva accused of corruption in political ads: TSE grants provisional measure and orders the take down of the contents;
 - § Lula da Silva is said to support the Nicaraguan regime: TSE rules in favor of the candidate. “It's a good thing nature created the coronavirus monster.”: TSE doesn't rule in favor of the candidate.
- § The powers self-conferred to STF to investigate and judge disinformation networks.

Brazil: a judiciary-driven model.

- § Failed attempts to regulate the disinformation phenomenon: the **Fake News Bill** introduced in 2020 (without political support).
- § Characteristics of the Brazilian model to curb disinformation:
 - § **Reactive** in nature and **electoral emergency-oriented**;
 - § Focus on **content**;
 - § Dependent on **institutional responses, mainly through the electoral bodies and the judiciary**;
 - § Rests in an **extensive toolbox of civil, administrative, and criminal reactions (judicially applied)** to fight the phenomenon (right to response, fines, provisional measures, temporary bans of digital service providers, etc.);
- § Risks:
 - § “Policy by judicialization” (Keller, 2020);
 - § Judicial personalization and tendency for “tecno-clashes”;
 - § Higher exposure to accusations of bias and partisanship;
 - § Loose or broad definition of “disinformation” and the impact (“chilling-effect”) on freedom of expression: any information or content - regardless of format, medium of presentation, or channel of dissemination, whether in text, audio, video, news, or social media posts - identified as false, misleading, inaccurate, manipulated, fabricated, fraudulent, illegal, or hateful. Thus, the characterization of content as disinformation is **independent of the agent's intent** (encompassing both the notion of disinformation and misinformation). It is also considered to fall under the concept of disinformation, **information that is out of context, manipulated, maliciously edited, falsified at source, presented in a sensationalist manner, or used for illegitimate purposes** (TSE, 2022).

Conclusion

Dimension	European Union	Brazil
Regulatory model	Preventive, systemic, rule-based	Reactive, ad hoc, judiciary-led
Institutional actors	European Commission, national digital services coordinators	STF, TSE, TRE
Enforcement	Administrative	Judicial
Legitimacy and transparency	Emphasizes digital due process and “digital rule of law” (Rocha, 2025, forthcoming)	Risks of personalization, opacity, and partisanship

§ No “Brussels effect” in the approaches regarding disinformation.

§ Brazil has a uniquely institutional response.

§ **There are valuable lessons to be learned from both models.**

Tiago Morais Rocha

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trocha@direito.up.pt

Thank you!



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