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2024: The Year of AI Regulation and Elections. A look ahead

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The Year 2024

As 2024 comes to an end, it will be remembered as a year where society made important choices and where policymakers confronted the reality of new technologies. Probably there are many other important events and stories to include in an yearly wrap-up in Europe and globally. However, in order not to indulge into lengthy enumerations, risking to missing the point, in this wrap-up of the year contribution two main topics are put to the front: the unprecedented in number and crucial elections as well as the adoption of the world's first AI Act.

Elections

The year has been a record breaker in terms of elections. In Europe, several Member States and the EU Parliament called millions to the ballots in an enormous exercise of democracy. The challenge was shared as governments and big tech had to ensure that the process was secure and fair given the pressure stemming from misinformation and disinformation campaigns. The consequences of citizens vote in the EU, in the US and worldwide should give rise to geopolitical, economic and legislative measures, which would impact digital policies as well, looking ahead in 2025.

The influence of tech giants and the systemic risks stemming from online platforms use has been at the core of two Regulations. The first one, the Digital Services Act (DSA) is applicable since 17 February 2024, and it upgrades the European legislation against disinformation and hate speech. It concerns all types of digital intermediary services. However, the most important and stringent requirements are for very large online platforms and very large online search engines, which among series of transparency and accountability rules have to account for users' fundamental rights protection and more importantly put efforts to curb "any actual or foreseeable negative effects on civic discourse and electoral processes, and public security" as a potential systemic risk. This is a challenging task given the tricky nature of efficient content moderation due to inherent human and technological obstacles therefor as it has been pointed out more in detail in another contribution of the BPH.¹ Issues related

¹ Liubomir Nikiforov, 'The Digital Services Act, Content Moderation and Elections' [2024] Brussels Privacy Hub <<https://ssrn.com/abstract=4746498> and <https://brusselsprivacyhub.com/wp-content/uploads/2024/01/The-Digital-Services-Act-content-moderation-and-elections-January-2024-Liubomir-Nikiforov.pdf>>.

to diverging investments in technology and human resources capable of curbing infringing content nonetheless persist.

Supplementary to the DSA is the Transparency and Targeting of Political Advertising Regulation (TTPA) adopted this year in March (EU Regulation 2024/900). Despite that its actual application will not start until October 2025, the Regulation brings additional transparency and accountability measures for publishers of political ads and different political actors, acting as sponsors. The main objective is to shed light on the sponsorship of political advertisements in order to combat illicit meddling in European elections. The actual impact of this piece of legislation has been put into doubt in a piece from the BPH.² The TTPA leaves large margins for appreciation for the ad's sponsor who may circumvent the measures in the Regulation by not disclosing the political nature of the advertisement. The TTPA includes safeguards in such stances which are insufficient, given that general monitoring is forbidden and the issues, already mentioned around the content moderation, are present and even more acute here. Thus, the reliance on the good-will of political players and the connection to the DSA, precisely where the latter is most vulnerable, makes the TTPA an interesting piece of legislation to follow, but with an uncertain impact on democracy.

Artificial Intelligence

This year the EU confirmed its stance on AI by adopting in June the world's first comprehensive AI Regulation.³ Definitely not an easily accomplished task. The initiative for a legislation regulating AI dates back to 2017, followed by a series of supporting documents. It is not until 2021 that the final proposal is published⁴ as part of the EU digital strategy. The ambition of the AI Regulation is three-fold: to create an AI legislation which accounts for the citizens in a secure and ethical manner; to harmonize EU members' legislations; and with that to ensure legal certainty and foster European AI industry. With those guiding lines in mind,

²Liubomir Nikiforov, 'Political Advertising, Targeting and Minors. The Belgian Case.' [2024] Brussels Privacy Hub <<https://ssrn.com/abstract=4800690>>.

³ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (OJ L 22024/1689, 12.07.2024) 2024.

⁴ Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts (COM/2021/206 final) 2021.

the AI Act follows a risk-based approach, categorizing AI systems based on their potential societal harm.

In fact, not many jurisdictions have adopted similar *hard* approach, rather preferring a soft law solution. Different policy choices stem from a meditated cost-benefit analysis based on the potential impact on investors, administrative and enforcement costs and the uncertainty related to the evolving nature of the technology. While some praised the EU for championing a human-centric and ethical vision for AI, critics warned that overly rigid requirements could stifle innovation and hinder Europe's global competitiveness.⁵

Beyond Europe, the global governance of AI continues to be a central focus in 2024, where certain multistakeholder' initiatives took final shape. For example, the OECD has been collaborating with governments to align with advancements in AI legislation. During the AI Act negotiations, the international organization revised its definition of AI, which has been widely replicated in the EU AI Regulation. Moreover, it developed a "Revised Recommendation on Artificial Intelligence," which was adopted on 3 May, outlining core principles of AI ensuring respect for human right and democratic values.⁶ The G7 Hiroshima AI Process adopted eleven principles and a Code of conduct for AI developers, which are supposed to guide organisations in the same vein towards trustworthy and safety.⁷

In the meantime, technology is evolving faster than ever, and it is in the upcoming years, potentially with the application of the AI Act starting gradually in 2025, that is when we are going to see any tangible fruits of the global efforts made throughout the years. Nevertheless, the past 12 months marked a cornerstone event in EU digital legislation with the adoption of the AI Act.

⁵ Manuel Wörsdörfer, 'The E.U.'s Artificial Intelligence Act: An Ordoliberal Assessment' [2023] AI and Ethics <<https://link.springer.com/10.1007/s43681-023-00337-x>>; Liubomir Nikiforov, 'Joint Non-Paper on the AI Act. France, Germany and Italy Reach Consensus.' [2023] Brussels Privacy Hub <<https://brusselsprivacyhub.com/wp-content/uploads/2023/12/Joint-Non-Paper-on-the-AI-Act.-France-Germany-and-Italy-reach-consensus.-November-2023-LN-FINAL.pdf>>.

⁶ <https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449>

⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5379

Looking Ahead in 2025

Looking ahead to the next couple of months, it is difficult to speculate what shape would take the issues discussed during the year and mentioned throughout these lines. A lot of the efforts of the past years have materialized as legislative achievements, upgrading Europe's digital legislation. The new EU Commission has set its goals for the next term. The Commissioner for Democracy, Justice and the Rule of Law has been assigned with several tasks stemming from his portfolio, among which several concerning the EU's digital policy. In 2025 a new Digital Fairness Act is set to be developed aiming at curbing dark patterns and online exploitation, which has been reviewed in the BPH October piece.⁸ Consequently, the next Commissioner will focus on consumers' protection, compliance with current legislation and its enforcement. In sum, the next government of the EU will build on, consolidate and strengthen what has been achieved.

Crucial political, geopolitical, economic and societal changes reshaped national and global agenda's, making the year 2024 a turning point wherefrom the fruits of the efforts and choices made until now will tell if enough and the best has been done.

⁸ Liubomir Nikiforov, 'Digital Fairness Act: If and How?' [2024] Brussels Privacy Hub <<https://brusselsprivacyhub.com/wp-content/uploads/2024/11/Digital-Fairness-Act-If-and-How-Liubomir-Nikiforov.pdf>>.