

Preventing “Torrents of Hate” or Stifling Free Expression Online?

An Assessment of Social Media Content Removal in France, Germany, and Sweden



Acknowledgments

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About The Future of Free Speech

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Executive Summary

Are recent Internet regulations effective in curbing the supposed “torrents” of hate speech on social media platforms, as some public officials claim? Or are these policies having the unintended consequence of platforms and users going overboard with moderation, thereby throwing out legal content with the proverbial bathwater?

The ubiquitous use of social media has no doubt added a complex dimension to discussions about the boundaries of free expression in the digital age. While the responsibility of content moderation on these platforms has fallen largely upon private entities, particularly the major tech companies, national and regional legislation across Europe has impacted their practices. For instance, in 2017, Germany enacted the Network Enforcement Act (NetzDG), which aimed to combat illegal online content such as defamation, incitement, and religious insults. In 2022, the European Union adopted a similar framework for policing illegal content online called the Digital Services Act (DSA). This law will undoubtedly change the landscape for online speech as it goes into full effect. The DSA created a rulebook for online safety that imposes due process, transparency, and due diligence on social media companies. It was intended to create a “safe, predictable, and trusted online

environment.”¹ The underlying assumptions surrounding the passage of the DSA included fears that the Internet and social media platforms would become overrun with hate and illegal content. In 2020, leading EU Commissioner Thierry Breton asserted, “the Internet cannot remain a ‘Wild West.’”² The DSA therefore sought to create “clear and transparent rules, a predictable environment and balanced rights and obligations.”³ In a similar vein, President Emmanuel Macron warned in 2018 about “torrents of hate coming over the Internet.”⁴

But as our report seeks to demonstrate, these new rules are increasingly having real world regulatory and policy consequences while the potential scope of the DSA continues to broaden. In 2023, both Breton and Macron raised the possibility of using the DSA during periods of civil unrest to shut down social media platforms.⁵ Fortunately, this suggestion received a swift rebuke from civil society organizations, and EU backpedaling followed.⁶

The rapid transformation of the DSA into a tool for broader regulations of Internet speech, including threats of wholesale shutdowns, necessitates a closer look at the underlying assumptions about online discourse. This report seeks to empirically test

the validity of these strongly held convictions about the widespread proliferation of illegal hate speech on the Internet.

This report seeks to understand whether the assumptions underlying regulatory frameworks like NetzDG accurately reflect reality when it comes to the scale of illegal content online as well as the potential ramifications of the DSA. It examines how content moderation occurs on two major online platforms, Facebook and YouTube, analyzing the frequency of comment removals and the nature of the deleted comments. In a world that works the way policymakers intend, we would expect to find that most deleted comments constitute illegal speech.

To understand the nature of deleted comments in this study, the authors gathered comments from 60 of the largest Facebook pages and YouTube channels in France, Germany, and Sweden (20 in each country) and tracked which comments disappeared within a two-week period between June and July 2023. While not feasible to ascertain the actor responsible for deleting comments—the platform itself, the page or channel administrators, or the users—the report can determine the scope and content of the deleted comments on relevant Facebook pages and YouTube channels. Additionally, it is important to note how recent enforcement reports issued by Meta reveal a high percentage of proactive content moderation actions. Reports released for April through September of 2023 show that between 88.8% and 94.8% of content was ‘found and actioned’ by the company itself. Note that Meta defines “taking action” as including removal, covering of

a photo or video with a warning or disabling accounts.⁷ In terms of YouTube, no relevant statistics are available for action taken on comments (only videos).

The collected comments were analyzed by legal experts to determine whether they were illegal based on the relevant laws in effect in each country. The non-legal deleted comments were coded into several categories, including general expressions of opinion, incomprehensible comments, spam, derogatory speech, and legal hate speech. While there was some overlap among the comment categories, it is important to note that our legal experts did not find, for instance, that all hate speech comments would be considered illegal in every country. Additionally, the report analyzes the specific content rules, or lack thereof, for all the pages under examination. These rules apply to content hosted by the pages or channels and complement Facebook’s and YouTube’s general content policies.

Key Findings

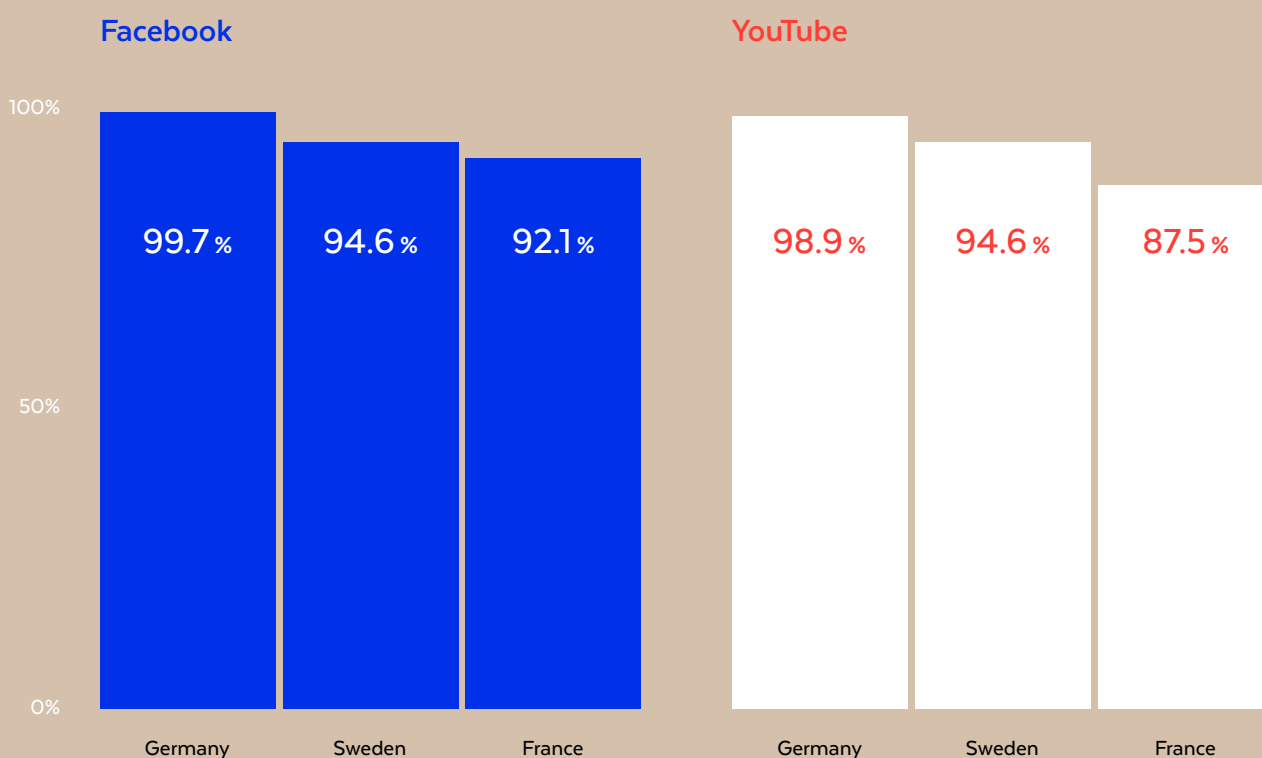
This analysis found that legal online speech made up most of the removed content from posts on Facebook and YouTube in France, Germany, and Sweden. Of the deleted comments examined across platforms and countries, between 87.5% and 99.7%, depending on the sample, were legally permissible.

The highest proportion of legally permissible deleted comments was observed in Germany, where 99.7% and 98.9% of deleted comments were found to be legal on Facebook and YouTube, respectively. This could reflect the impact of the German Network Enforcement Act (NetzDG) on the removal practices of

social media platforms which may over-remove content with the objective of avoiding the legislation's hefty fine. In comparison, the corresponding figures for Sweden are 94.6% for both Facebook and YouTube. France has the lowest percentage of legally permissible deleted comments, with 92.1% of the deleted comments in the French Facebook sample and 87.5% of the deleted comments French YouTube sample.

In other words, a substantial majority of the deleted comments investigated are legal, suggesting that – contrary to prevalent narratives – over removal of legal content may be a bigger problem than under removal of illegal content.

Amount of legal contents among deleted comments



A further breakdown of the findings reflects that on the basis of 1,276,731 collected comments, of which 43,497 were deleted, the report draws the following key conclusions:

- YouTube experienced the highest deletion rates of all comments, with removal rates of 11.46%, 7.23%, and 4.07% in Germany, France, and Sweden, respectively. On Facebook, the corresponding percentages were substantially lower, at 0.58%, 1.19%, and 0.46%.
- Among the deleted comments, the majority were classified as “general expressions of opinion.” In other words, these were statements that did not contain linguistic attacks, hate speech or illegal content, such as expressing the support for a controversial candidate in the abstract. On average, more than 56% of the removed comments fall into this category.
- Out of all the deleted comments, the percentage of illegal comments fluctuates significantly among the pages and channels and countries. The highest proportion is found in France, where it accounts for 7.9% on Facebook pages and 12.5% on YouTube. In Germany, this fraction is markedly lower, with 0.3% on Facebook and 1.1% on YouTube. For investigated Swedish pages and channels, it stands at 5.4% for both Facebook and YouTube.
- The assessment reveals that only 25% of the examined pages or channels publicly disclose specific content moderation practices. This may generate uncertainty among users who may not be able to know whether specific content rules apply in addition to platforms’ general content policies.



Introduction

In today's digital age, a significant portion of public conversation unfolds on social media platforms. These platforms facilitate discussions ranging from pressing political issues like immigration, crime, equality, and climate change to less controversial conversations about sports, hobbies, and various interests. More than 57% of European Union citizens actively engage on social networks.⁸ The opinions and viewpoints that occupy Europeans find themselves extensively examined and debated on social media, making these platforms instrumental even in election campaigns across Europe as pivotal channels for politicians to connect with their voter base.

While social media platforms have, in many ways, democratized public discourse by reducing barriers to entry, the evolving landscape of social media presents its own set of challenges. Globally, during the first quarter of 2023, Google alone reported the removal of more than 853 million comments on YouTube⁹. This staggering figure underscores the fact that the moderation of public discourse has become a matter for social media platforms and tech giants. These companies largely rely on algorithms and artificial intelligence (AI) to identify comments that contravene community standards, often standards that are more restrictive regarding freedom of expression than national legislation and international human rights law. This is discussed further in The Future of Free Speech's 2023 report 'Scope Creep: An Assessment of 8 Social Media Platforms' Hate Speech Policies.¹⁰

Recent debate about tech companies' role in public discourse and online safety culminated in 2022 with the adoption of the DSA. This

regulation, which became fully applicable in February 2024, attempts to address companies' increasing influence by giving users fundamental online rights, establishing transparency and accountability as well as providing a single, uniform framework within the EU¹¹. However, the regulation has been criticized for not adequately safeguarding and addressing freedom of expression¹².

The DSA shares features with national laws in Europe that addressed similar subjects prior to the DSA's implementation. Among these is Germany's NetzDG. Similar to this report, others have found that NetzDG has led to a significant increase in the number of deleted comments in Germany. Meanwhile, specific findings vary between publications, which could potentially be attributed to differences in methodology¹³.

The current report assesses how content moderation is conducted in 60 key political pages and channels of two major online platforms – Facebook and YouTube. It analyzes the volume of user content that is deleted and the nature of the deleted content, for instance, whether it is illegal, constitutes spam or merely expresses an opinion. Three actors have the ability to delete a comment: the user who posted it, the social media platform, or the owner of the channel or page, where the comment was made. This report does not have the capability to distinguish between these three scenarios (see Section 2.2). Furthermore, the report looks at the limited transparency regarding specific content moderation rules applying to Facebook pages and YouTube channels. The opacity surrounding the actors responsible for moderating

public conversation poses its own challenge, as users may find comments disappearing without any notice or explanation.

In 2020, Justitia, Analyse & Tal, and Common Consultancy released a report on social media and freedom of expression in Denmark. The methodology employed by the 2020 report bears a large resemblance to this study, albeit with a focus on only five media pages on Facebook. The Danish study found that 6.2% of all comments on the selected media pages disappeared, with only 1.1% of the removed comments deemed illegal under Danish criminal law.¹⁴

This report delves into the examination of freedom of expression on social media in three other European countries: France, Germany, and Sweden. These nations share characteristics such as a well-functioning liberal democracy and membership of the EU yet possess distinct political traditions and variations in national legislation concerning freedom of expression. Furthermore, they exhibit varying levels of social media participation among their citizens. Sweden stands out with a high participation rate, with 72.90% of its individuals engaging in social networks, while France and Germany fall below the EU27 average which was 57.26% in 2020. France has a participation rate of 42.32%, while the German rate is 54.30%¹⁵.

This report offers a twofold contribution: firstly, it documents the extent of comment deletions on major social media platforms. Additionally, it analyzes the nature of the deleted comments to contribute knowledge

and statistics to the yet untransparent realm of social media.

Before delving into the analysis, it is crucial to comprehend the legal foundation underpinning freedom of expression and its associated boundaries.

1.1 Legal foundations of the Freedom of Expression

Freedom of expression is expressly protected in the French, German, and Swedish constitutions. In Germany, freedom of expression is enshrined in Article 5 of the Basic Law for the Federal Republic of Germany (The German Constitution, Grundgesetz). Article 5 affirms that “...every person shall have the right freely to express and disseminate his opinions in speech, writing, and pictures...”¹⁶. In France, the Right to “the free communication of ideas and opinions...” is defined in the Declaration of the Rights of Man and of the Citizen of 1789. According to article 11 of the French Declaration: “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.” The law which defines speech offences in France is in “Law on the Freedom of the Press of 29 July 1881”. In Sweden, freedom of expression is established in the Basic Laws of Sweden (Sveriges grundlagar) – four laws that combined constitute the Constitution of Sweden. The Instrument of Government (Regeringsformen), one of the four Basic Laws of Sweden contains a catalogue of rights which provides protection for freedom of expression and freedom of information¹⁷. In addition, The Freedom of Press Act (Tryckfrihetsförordningen)¹⁸ and The Fundamental Law of Freedom of Expression (Yttrandefrihetsgrundlagen)¹⁹ also consider different elements of the issue of freedom of expression.

France, Germany, and Sweden are also States Parties to the European Convention on Human Rights and the International Covenant on Civil and political Rights that both protect freedom of expression in articles 10 and 19 respectively. Nevertheless, the right to freedom of expression is not absolute. Considerations such as public safety, public order and the rights and reputations of others constitute possible limitation grounds to the exercise of this right.

Like all other countries, France, Germany and Sweden have established limits to freedom of expression. The report considered, in particular, the limits established by criminal law that can be relevant in the online context. The relevant provisions are explained in detail in Appendixes A, B, and C. In essence, France’s Law on Freedom of the Press prohibits the incitement to commit crimes, defamation, the publication of certain types of content (for example, in order to protect minors and the victims of sexual assault) and even disinformation and offences against heads of state. In Germany, the Criminal Code prohibits speech like the dissemination of propaganda of terrorist organizations, instructions for committing serious violence endangering the country, disturbing public peace by threatening to commit offences, the incitement of masses, the revilement of religious faiths, insult, malicious gossip, defamation, and defiling memory of dead. Importantly, Germany’s NetzDG law imposes fines on major social networking sites for any systemic failure to remove content covered by provisions such as the ones described above, hence, incentivizing the removal of this type of content from platforms. In Sweden,

the Criminal Code also establishes limits on speech, including prohibitions on threats, defamation, insulting behavior, the incitement to commit a crime, and the agitation against a population group (for example, threatening or degrading based on race or religious belief). The Swedish Terrorist Offenses Act also prohibits the public provocation to commit a terrorist act. The current report does not assess whether the applicable limits on freedom of expression comply with international human rights law standards.

1.2 Summary of Legal Provisions

There are substantial differences in the boundaries of freedom of expression across the countries examined potentially due to reasons such as historical events as well as political and legal traditions.

In Germany, the most relevant criminal provision for this report is found in the German Criminal Code (Strafgesetzbuch, StGB). Section 86a, for instance, bans the use of symbols of unconstitutional and terrorist organizations; this includes the use of Nazi symbols like the swastika or posting pictures on Facebook of a user giving the Nazi salute (see elaboration in Appendix B). In addition, relevant for this report is the German *Network Enforcement Act (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, NetzDG)*. The NetzDG defines certain rules about (the speed of) moderation and refers to a series of criminal offenses stated elsewhere in German law. If social networks of a certain size (such as Facebook or YouTube)

fail to remove content according to rules described in NetzDG, the NetzDG provides for the possibility for the State to impose substantial fines on the social media platforms (see also Appendix B).

In accordance with The Future of Free Speech Index²⁰, the public of Sweden stands out as one of the most inclined to permit controversial types of expression. This inclination is also evident in the legal framework relevant to this report, which addresses online expressions. For instance, unlike Germany, Sweden does not have laws prohibiting the use of specific symbols with unconstitutional connotations (see Appendix B and C). Within the context of this report, several sections of the Swedish Criminal Code, in addition to Section 7 of the Swedish Terrorist Offences Act, are considered pertinent (see Appendix C).

France has provisions that criminalize threats, defamation, insulting behavior, incitements to commit crimes, and acts of terror. In contrast to Sweden and Germany, France stands out due to its provisions that criminalize defamation targeting a variety of specific individuals and institutions. These encompass the president, members of parliament, the judiciary, members of the government, and the nation's military units (Law of July 29, 1881, On Freedom Of The Press, Chapter IV, Paragraph 3, Article 30 & 31).

A full review of the legislation used for this report can be found in Appendix A, B, and C. A limitation on freedom of expression not considered in this report are provisions that fall outside the ambit of our analysis. Criminal restrictions on content that can be classed as

“revenge porn” or Child Sexual Abuse Material (CSAM) are discounted from discussion in this report as they are universally recognized as unprotected speech. Further areas that are not interlinked with public discourse are discarded. For example, France, Sweden, and Germany all have provisions on marketing which define certain rules about how businesses are allowed to promote products on the internet. This potentially affects freedom of expression, but the regulations are mainly directed towards commercial communications. As these provisions act to regulate commercial communications rather than political/social communication they are not considered in this report.

The DSA is fully applicable in all three countries since February 17, 2024, but it started applying to the so-called very large online platforms and search engines in late August of 2023. This regulation includes a set of transparency, due diligence, and due process obligation and is expected to significantly impact the content moderation field in the EU. Given that it was not applicable when the current exercise was conducted, the DSA is not included in the Appendixes.

1.3 Reading guide

The subsequent section on methodology provides an explanation of the analysis strategy. Initially, the criteria for selecting pages and channels are outlined, followed by an elucidation of the data collection. Subsequently, the data coding process is described, as well as aspects related to statistical precision.

The methodology section concludes with a paragraph explaining some of the statistical restrictions for the report.

Section 3 contains the first part of the report’s analysis. 3.1. examines the scope of deleted comments in France, Germany, and Sweden, whereas 3.2. delves into a content-based analysis of the deleted comments in the three countries.

The following section entitled “Moderation on social media”, represents the second part of the analysis. Where the first part addressed the range and content of deleted comments on social media, this analysis investigates how transparent the moderation process is. In addition, section 4.2 focuses on the German law NetzDG, which sets certain criteria for large media organizations and their moderation process in Germany.

In section 5, we discuss how the new digital era and the legislation that follows affect freedom of expression. In addition, new advancements, such as the use of Artificial Intelligence in content moderation are looked at. The conclusion is found afterwards which includes an outline of key findings as well as certain dilemmas and perspectives related to freedom of expression and social media. Finally, an appendix can be found last in the report, offering a detailed elaboration on and documentation of various aspects covered in the report.



Methodology

The primary objective of this report is to investigate the extent to which comments are deleted on social media platforms and to examine the content of these deleted comments. Particularly in the context of freedom of expression, it is of interest whether most deleted comments are deemed illegal, or if the majority consists of legally permissible comments. In the following section, we will describe how the examination of freedom of expression on social media was conducted.

The methodology in this report consists of five steps (see figure 2.1.1). In the initial step (Step 1), a source population was selected in each country. Ten YouTube channels and ten Facebook pages were chosen in France, Germany, and Sweden. The selection criteria for these channels and pages are outlined in Section 2.1.

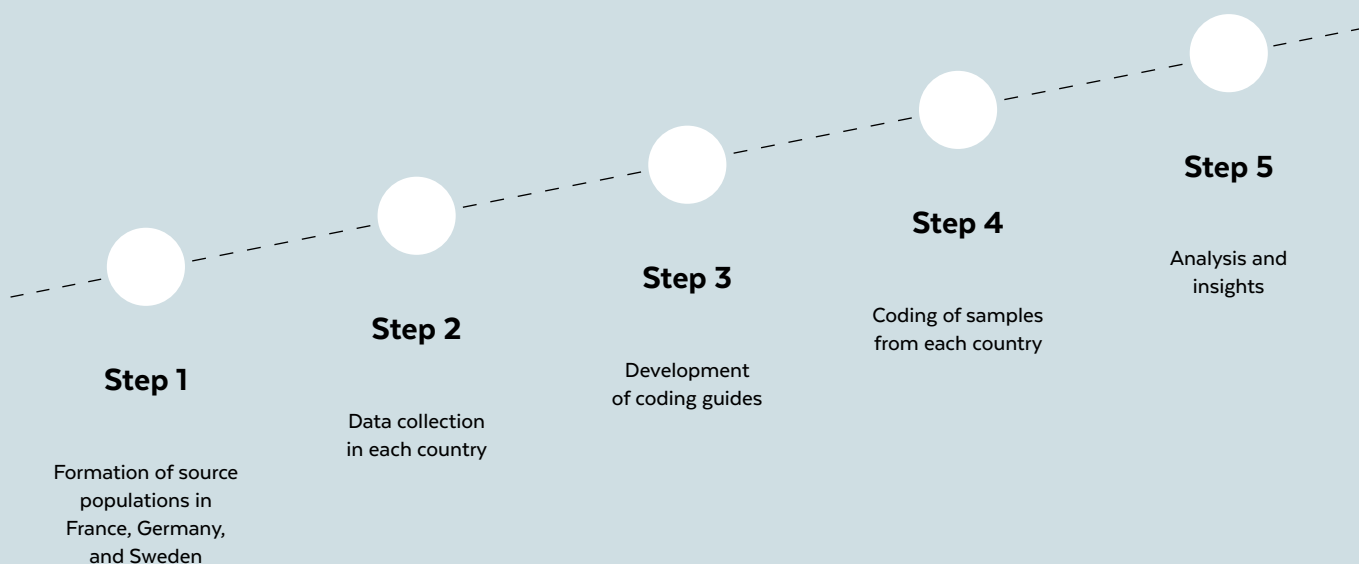
Step 2 involved the collection of data from each source population in France, Sweden and Germany. For a more comprehensive description of this data collection process, please refer to Section 2.2. The section also outlines the challenge to assess who deleted a comment.

Step 3 encompassed the development of coding guidelines. Separate legal coding notes were created for France, Germany, and Sweden – each crafted by experts from the respective country. These legal coding notes emphasize the pertinent national legislation relating to freedom of expression. Additionally, a common coding guide regarding the content of deleted comments was developed. An exhaustive overview can be found in Section 2.3.

Following the development of coding guidelines, data samples of deleted comments from each source population were coded by legal experts and native speakers from each country in Step 4. This step is further elucidated in Section 2.3.

Lastly, in Step 5, the coding was employed to analyze data samples and derive insights concerning freedom of expression and social media. The statistical foundation of this analysis is elaborated upon in Section 2.4, while the analysis itself is presented in Section 3.

Figure 2.1.1: Methodology process



2.1

Selection of pages and channels

The data foundation of this report comprises deleted comments from six source populations collected from two social media platforms, Facebook, and YouTube, across three countries: France, Germany, and Sweden. Our objective was to gather data from the largest Facebook pages and YouTube channels representing either the media or the political sphere in each of these countries. To guide the selection process, we developed seven guiding principles.

The principles are as follows:

1. Existing politicians:

Pages and channels should belong to current politicians, excluding former ones, such as Angela Merkel, Nicolas Sarkozy, or Stefan Löfven.

2. Size based on followers (Facebook) and subscribers (YouTube)

The size of a page or channel was determined solely by the number of followers on Facebook and subscribers on YouTube. Consideration was not given to for example personal votes for politicians or interactions for media.

3. Recent Activity (Within 14 Days):

Pages and channels had to have been active in the 14 days preceding data collection. This principle takes precedence over the size principle (principle 2).

4. National Scope:

Inclusion was limited to national media and national politicians. Pages or channels representing local officials or newspapers were not considered.

5. Inclusion of all media types:

All types of media were welcomed, whether alternative, traditional, exclusively digital, or focused on specific topics, as long as they met the criteria for size and activity.

6. Preference for Politicians Over Parties:

Whenever possible, individual politicians were preferred over political parties. However, if politicians did not meet the requirements below, parties were considered.

- On Facebook, politicians needed at least 50,000 followers; otherwise, parties were included.
- On YouTube, politicians required a minimum of 5,000 subscribers, and if not met, parties with at least 5,000 subscribers were included.

7. Active Comment Sections:

All selected pages and channels were required to have active comment sections, meaning that comment sections were not disabled.

While these seven principles served as valuable tools for forming source populations and provided clear selection guidelines, they also presented certain challenges. In Sweden, for example, many major news media had closed their YouTube comment sections, leading to the inclusion of smaller media in the source population based on size.

Regarding the German YouTube source population, another ambiguity arose. Deutsche Welle, the largest German media on YouTube,

is state-owned and primarily caters to an international audience, often communicating news in English rather than German. Determining whether Deutsche Welle should be considered German media was challenging, but a practical factor played a pivotal role. The NetzDG-Complaint-Process could be activated on Deutsche Welle's English videos, subjecting them to the German NetzDG law. Consequently, Deutsche Welle was included in the German YouTube source population.

Figure 2.1.2: Source population by country

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2.2

Data collection

The same basic data collection method was used to collect data from source populations on Facebook and YouTube, but with slight modification due to technical differences on the platforms. Since both platforms do not provide a comprehensive list of deleted comments, all comments were instead on the relevant Facebook pages and YouTube channels monitored with high frequency. To identify comments removed from the platform, the process involves scrutinizing comments that appear in the data collection window but later vanish from it. This entails maintaining a record of all comments and tracking how long they remain visible on the platform.

The following setup was used to carry this out:

- For Facebook, the Facebook Graph API was used to retrieve the data. Due to rate limits on the API data was collected once every 10th minute. Each time all posts made within the last 48 hours were collected and all the comments made under these posts.
- For YouTube a combination of the YouTube Data API and a custom-built scraper were used. The data was collected once every 8th minute. The API was used to get a list of all videos

posted within the last 48 hours. Due to rate limit restrictions on the API all comments from these videos were collected using a custom-built scraper.

All the posts, videos and comments were saved and analyzed at the end of the collection period to detect the comments that disappeared.

Collection period and important events

Data collection occurred at different times in the three countries due to collection capacity. The process commenced in Sweden on June 2nd, followed by France on June 16th. Lastly, data collection took place in Germany from June 30th to July 14th. Each data collection phase spanned 14 days.

Table 2.2.1: Country and period of collection

	Germany		France		Sweden	
Platform	YouTube	Facebook	YouTube	Facebook	YouTube	Facebook
Data collection started	2023-06-30	2023-06-30	2023-06-16	2023-06-16	2023-06-02	2023-06-02
Data collection done	2023-07-14	2023-07-14	2023-06-30	2023-06-30	2023-06-16	2023-06-16

It is worth noting that the content of the deleted comments is not unrelated to the events that transpired during the data collection period. In general, the Russian invasion of Ukraine emerged as a prominent subject in the deleted comments across all three countries. Whether related to war developments or attitudes toward the Kremlin Regime, the war featured prominently in various ways.

In France, a notable point of contention revolved around the police killing a 17-year-old boy, Nahel, and the ensuing riots that spread across the country. Even though this incident occurred toward the end of the data collection period on June 27th, a substantial number of comments on this topic found their way into the French pool of deleted comments. The debate surrounding this event became quite heated due to its polarizing nature: individuals either expressed opposition to police brutality or took a stance against riots and criminal activities.

In contrast, in Sweden and Germany, no

single event dominated the discussions to the extent observed in France. The deleted comments in these countries did not appear to revolve around a singular, highly prevalent topic during the data collection period.

Who deleted the comment – Deletion or Moderation?

It is essential to emphasize that identifying the actor responsible for deleting a comment is not feasible. In essence, there are three potential reasons why a comment disappears:

- a) The comment is deleted by the Facebook/YouTube user who initially posted it, often due to various reasons such as typos or content concerns.
- b) Administrators managing the Facebook page or YouTube channel remove the comment if they deem it does not align with the standards set by the page or channel itself.

- c) Facebook or YouTube may delete the comment if, in some manner, it is determined that the comment violates the general platform's community standards²¹.

Distinguishing the actor responsible for comment deletion based on the collected data is not possible. Therefore, this report treats the three reasons for comment disappearance as a single phenomenon.

Both Meta and Google published information about their community guidelines enforcement but only on an aggregated level. It was not even always possible to get a national overview. In the context of freedom of expression, this lack of transparency presents a distinct issue: the public cannot discern which actor is moderating public conversation. The DSA includes a set of transparency obligations and more detailed and comprehensive information will likely be available in the future.

2.3

Coding of data

Following the data collection phase, random samples from each platform in each country underwent manual coding. Comments were first assessed by legal experts to determine if they are illegal. Subsequently, comments underwent a qualitative review to evaluate their content.

A team of legal experts specializing in respectively French, German, and Swedish law conducted the legal coding of the data. Each expert, with expertise in their respective legal contexts, developed a legal note outlining the relevant legislation for their specific country. These legal notes are based on legislation related to freedom of expression, which means that violations of marketing legislation, for example, were not coded as illegal. The legal notes can be found in Appendix A, B, and C.

In addition to the legal coding, a qualitative content-based coding process was conducted. This involved categorizing all legal comments into four groups. Within the main categorization of legal speech, the data is divided into 5 mutually exclusive categories: legal hate speech, derogatory speech, general expressions of opinion, incomprehensible comments, and spam. These categories are described more in detail below. They do not correspond to specific legal categories designating specific types of content.

Figure 2.3.1: Data categories



The content-based categorization of legal comments is valuable for further analysis. This categorization was carried out by native speakers of French, German, and Swedish. All coders adhered to common coding guidelines

and highlighted cases where there was doubt about the classification. In cases of doubt, comments were reviewed in collaboration with a second person.

Categories for Content-Based Coding:

Illegal comments

Comments are categorized as illegal if, in accordance with the legal criteria detailed in the provided legal note, they meet the standards for being considered illegal (see appendix A, B, and C). It is essential to recognize that variations in national laws, which delineate the boundaries of freedom of expression, can result in comments being illegal in one country but not in another, and vice versa.

This categorization results from a manual review of deleted comments and an analysis of the legal frameworks in each country. Applying criminal law provisions intended for judging human behavior in a court of law and after all relevant facts have been investigated to pieces of content, with little to no opportunity to further investigate relevant facts or a speakers' intent requires some modulation.

Examples: Illegal comments

French YouTube

Gás nos judeus é nos arab
😂😂😂😂²²

German YouTube

Gebt ihm nen Orden. Macht alles das er sein Job machen kann und dann wirft sein Boss ihn raus...pfui.²³

Swedish YouTube

Inte en djävel till ska få medborgarskap,, hatar den odugliga våldsamma skiten från Afrika och Mellanöstern, NU är det nog ²⁴

Translation

French YouTube

Gas our Jews and our Arabs
😂😂😂😂

German YouTube

Give him a medal. Does everything that he can do his job and then his boss kicks him out...ugh

Swedish YouTube

Not one more devil should get citizenship, hate the incompetent violent crap from Africa and the Middle East, NOW THAT'S ENOUGH

Incomprehensible speech

Comments were initially evaluated for being incomprehensible, meaning that it was impossible to decipher any meaning from them. Comments in a foreign language, such as Greek, Thai, or Arabic, were also considered incomprehensible from the perspective of, for example, the Swedish public conversation. However, English comments or comments partly in English were not categorized as incomprehensible if they were deemed part of the public conversation.

Examples: Incomprehensible speech

French Facebook

Pauvre JOMO nèg lakay...

German Facebook

To We Si claro , tienes problema ?

Swedish YouTube

Video top 🤔🤔🤔.

General expressions of opinion

Comments fell into this category if meaning could be interpreted from them, they were not illegal, did not contain linguistic attacks or fell outside the scope of the report (e.g. CSAM, revenge porn, marketing). Most comments belonged to this category.

Examples: General expressions of opinion

French YouTube

Votez Zemmour ou Le Pen qui prône le côté Patriotique et arrêtez de voter pour ceux qui disent Bienvenue a toute la misère du monde 🇫🇷 Aujourd'hui on aide plus ceux qui débarque dans notre pays avec l'argent de nos impôts qu'un Français qui a toujours vécu et travailler pour notre pays. Y en a marre.

German Facebook

Es gibt keine Klimakrise, das ist genau so ein Hirngespinnst wie "man kann das Klima schützen" oder "man kann das Klima verändern"

Swedish Facebook

Jag fick ofrivilligt föda utan bedövning 2020 precis före covid kom. Trots jag låg på BB med värkar i 7-8 timmar, sa till i god tid så hann jag inte få något utom lustgas. Under all kritik.

Translation

French YouTube

Vote Zemmour or Le Pen who advocates the Patriotic side and stop voting for those who say welcome to all the misery in the world 🇫🇷 Today we help those who arrive in our country with our tax money more than a French person who has always lived and worked for our country. I'm fed up.

German Facebook

There is no climate crisis, that's just as much of a fantasy as "you can protect the climate" or "you can change the climate"

Swedish Facebook

I involuntarily had to give birth without anesthesia in 2020 just before covid arrived. Despite being in labor on the BB for 7-8 hours, gave notice in good time, I didn't have time to get anything except nitrous oxide. Under all critique.

Spam

In this report, the category of spam is defined as general expressions of opinion that satisfy two criteria:

1. They are irrelevant or unsolicited, and
2. They serve the purpose of advertising or phishing.

Additionally, it is observed that the majority of deleted comments in this category tend to appear in multiple identical or very similar versions.

The most common types of comments classified as spam include those related to investment and trading, advertisements for love spells and other alternative treatments, promotions of unauthorized sports betting, and a series of very similar and unsolicited friendship proposals.

Examples: Spam

French Facebook

Maxime Grm



<https://t.me/+E06xv9hOnxhODhk>
<https://t.me/+E06xv9hOnxhODhk>

German Facebook

Hallo, ich suche eine vertrauenswürdige Person, die eine Spende in Höhe von 850.000 € anbietet. Interessierte schreiben mir eine private Nachricht. Vielen Dank

Swedish Facebook

Christina Jag gillar det du kommenterar på den här sidan, men vi är inte vänner, jag har försökt flera gånger att lägga till dig som vän på Facebook, men det fungerar inte. Har du något emot att försöka på din sida? Jag vill att vi ska vara goda vänner här i uppriktighet och ärlighet. Om du är arg, förlåt mitt sätt. Tack...

Translation

French Facebook

Maxime Grm



<https://t.me/+E06xv9hOnxhODhk>
<https://t.me/+E06xv9hOnxhODhk>

German Facebook

Hello, I am looking for a trustworthy person to offer a donation of €850,000. Anyone interested send me a private message. Thank you

Swedish Facebook

Christina I like what you comment on this page, but we are not friends, I have tried several times to add you as a friend on Facebook, but it does not work. Do you mind trying on your side? I want us to be good friends here in sincerity and honesty. If you are angry, forgive my manner. Thanks...

Derogatory Speech

This category encompasses linguistic attacks without targeting protected characteristics defined by the European Commission against Racism and Intolerance (ECRI)²⁵. Such speech includes stigmatizing, offensive, excluding, and harassing expressions.

Examples: Derogatory Speech

French YouTube

Vous devez sans doute avoir une vie de merde et passer votre temps sur les réseaux sociaux 🤔

German YouTube

Ich hoffe wenn du Lebensgefährlich verletzt im Krankenwagen liegst auf dem Weg ins Krankenhaus werden die Straßen von den klimamklebern blockiert

Swedish YouTube

Var glad att du bara blir kallad "landsförrädare".
Finns värre saker att säga om dig 🤔🤔

Translation

French YouTube

You probably have a shitty life and spend your time on social media 🤔

German YouTube

I hope when you're critically injured in the ambulance on the way to the hospital, the roads are blocked by the climate activists

Swedish YouTube

Be glad you're just being called a "traitor". There are worse things to say about you 🤔🤔

Legal hate speech

This category includes linguistic attacks targeting protected characteristics defined by ECRI, such as race/ethnicity, color of skin, nationality, ethnic origin, religion and faith, sexuality, sex and gender identity, functional impairment, and chronic diseases. One can find a comprehensive list of protected characteristics in the ECRI glossary. It is important to note that characteristics such as occupation and education are not protected. While we use the above coding rule to identify comments relevant to legal hate speech, we do not mean to endorse this coding rule as the appropriate definition of hate speech. What subsequently falls in this category are comments which do not meet the threshold of illegality under domestic law, but which do match the ECRI definition.

Examples: Legal hate speech

French YouTube

L'Inde est une fausse à purin!
Quelle bande d'insectes, tous
groupes confondus, toutes
castes, etc

German Facebook

Julia begib dich mal
mit deiner schizophrenen Psychose
zum Psychologen in Behandlung

Swedish YouTube

Varför sparkade du inte omkull svinet?

Translation

French YouTube

India is a manure fake! What
a bunch of insects, all groups,
all castes, etc.

German Facebook

Julia take you and
your schizophrenic psychosis to
a psychologist for treatment

Swedish YouTube

Why didn't you kick the pig over?

One challenge encountered in both legal and non-legal coding pertains to context. Coders were provided with the Facebook post or YouTube video to which a deleted comment had been posted. However, in certain instances, the deleted comment had been posted as a reply to another comment. In these cases, it was not feasible to provide coders with the original comment to which the deleted comment was a reply. This limitation sometimes made it challenging to assess both the legality and the content of deleted comments.

2.4

Statistical analysis and precision

In general, the report follows standard procedure for statistical analysis. However, there are certain methodological differences from classic statistics due to the digital character of data for this report.

Data collection and source population

As mentioned in section 2.1, seven criteria are used to identify the Facebook pages and YouTube channels that comments are collected from. For each platform, the pages/channels in each country constitute the source population. This means that the six source populations (two in France, Germany, and Sweden)

forms the basis from which the data population is obtained over a two-week period. As outlined in the seven criteria in section 2.1 it is important to emphasize that the source population is not somehow representative of media pages/channels or political pages/channels in each country. Rather each source population comprise the largest media pages/channels and political pages/channels in their respective country. An exhaustive list of the source population can be found in section 2.1.

Figure 2.4.1 below shows the process from constituting source populations over data populations to forming random samples of the data populations.

Figure 2.4.1: From source population to sample



Source population

This report treats six source populations; in each of the countries, France, Germany, and Sweden, a source population is formed by 10 Facebook pages and 10 YouTube Channels.

Data population

All deleted comments from the source population.²⁶ The report treats six data populations, each corresponding to a source population.

Random sample

For each data population a random sample is drawn.²⁷

Data population

The data population consists of all deleted comments in a two-week period. Both the collection period and how data is collected is elaborated in section 2.2. The number of deleted comments varies between countries due to country-size and page/channel-size. The size of data populations can be seen below in table 2.4.2.

Table 2.4.2: The six data populations

	Facebook	YouTube
France	4,201 (353,366)	12,537 (173,516)
Germany	2,065 (353,378)	23,070 (201,349)
Sweden	813 (175,217)	811 (19,905)

In section 3.1 where the scope of deletion is considered, the populations consist in contrast to the rest of the report of all comments collected in the collection period.

Aggregated across countries, a total of 1,276,731 comments from Facebook and YouTube were collected. Among these comments, 43,497 were deleted, which corresponds to 3.4% of all comments collected.

Total number of comments	1,276,731
Total number of deleted comments	43,497 (3.4% of all comments)

Random samples

From each data population a random sample is drawn. Therefore, the report treats six distinct samples: one for YouTube and one for Facebook in each of the three countries. The samples for France and Germany each consist of 1,000 randomly selected deleted comments. In Sweden, during the sampling period, only 813 and 811 comments were deleted on Facebook and YouTube, respectively. Consequently, the Swedish samples are equal to the data population and consists of all deleted comments collected.

Figure 2.4.3: The six samples in the report

	Facebook	YouTube
France	1000 deleted comments	1000 deleted comments
Germany	1000 deleted comments	1000 deleted comments
Sweden	813 deleted comments	811 deleted comments

Statistical precision and generalization

This report uses a 95% confidence level ($\alpha = 0.05$). In section 3.1, this means that by 95% confidence the true value falls within the range of $\pm 0.5\%$ -points. The corresponding uncertainty in section 3.2 is $\pm 3.4\%$ -point. The relatively smaller precision in section 3.2 is caused by a smaller data population: in section 3.1 the data considered is all collected comments while only the samples of 1000 deleted comments (813 and 811 in Sweden) are considered in section 3.2.

The use of a source population, comprising the largest media and political pages/channels on YouTube and Facebook has consequences for the generalization of results. Under the assumption that the collection period is representative of two normal weeks, the patterns and trends uncovered in the report can be applied to the source population in general with the confidence outlined above.

Statistical reservations

The application of statistical methods in our analysis reveals certain limitations when comparing the report's six samples.

Differences in Source Populations

The first limitation pertains to differences in source populations. While our samples are randomized, there exists variations among these source populations. The criteria outlined in Section 2.1 provide clear guidelines for selecting similar source populations and aim to ensure consistency across them. However, differences in source populations still exist, particularly across different countries.

For example, in Sweden, several media outlets with YouTube channels have chosen to close their comment sections on YouTube, including TV4 with 325,000 subscribers, Aftonbladet with 75,800 subscribers, and SVT with 100,000 subscribers. A criterion for inclusion in the source population is an enabled comment section. Consequently, TV4, Aftonbladet, and SVT are not part of the Swedish YouTube source population, while smaller media outlets with fewer subscribers, such as Sportsbladet, Världen i dag, and Samnytt, have made it into the source population.

This divergence in source populations, where one may primarily consist of mainstream media while another comprises more alternative media, could potentially manifest in the nature of comments found on these media's Facebook posts and YouTube videos. Media outlets with polarizing coverage may attract subscribers and followers with more radical views, leading to a more contentious tone and a potential increase in the number of illegal comments.

Events during data collection

Another factor affecting comparability is events that occur during data collection. Data collection takes place simultaneously on YouTube and Facebook for each country, but it occurs at different times for France, Germany, and Sweden (see Table 2.2.1). Even if all data were collected simultaneously, significant events in one country could impact the tone of public discourse in that country, differing from the others. A more contentious tone may potentially result in more illegal comments, and vice versa.

For instance, consider the killing of 17-year-old Nahel Merzouk on June 27, 2023, which occurred during our data collection (see Sec-

tion 2.2). This event clearly had a significant impact on and polarized public discourse in France, but Sweden and Germany were not affected in the same manner. A consequence of the killing of Nahel Merzouk in relation to this report could be a higher number of illegal comments in France. However, it is essential to note that maintaining a consistent national context for events is not feasible, as national events during data collection will always influence the national political debates. Data for this report is collected over a two-week period to minimize the impact of isolated events.

Culture

Another crucial factor to consider is culture, both in terms of political culture and moderation practices. Variations in political culture can encourage a contentious tone on social media, leading to an increase or decrease in hate speech or illegal comments.

Similarly, differences in moderation practices within the political debates' culture in France, Germany, and Sweden can (on average) affect which comments are deleted and the specific characteristics that a comment must possess before being deleted.

In summary, there are several distinct differences between countries and potential differences relating to source populations across platforms. Therefore, one must exercise caution when comparing results between platforms and countries.



What content is being removed on Facebook and YouTube?

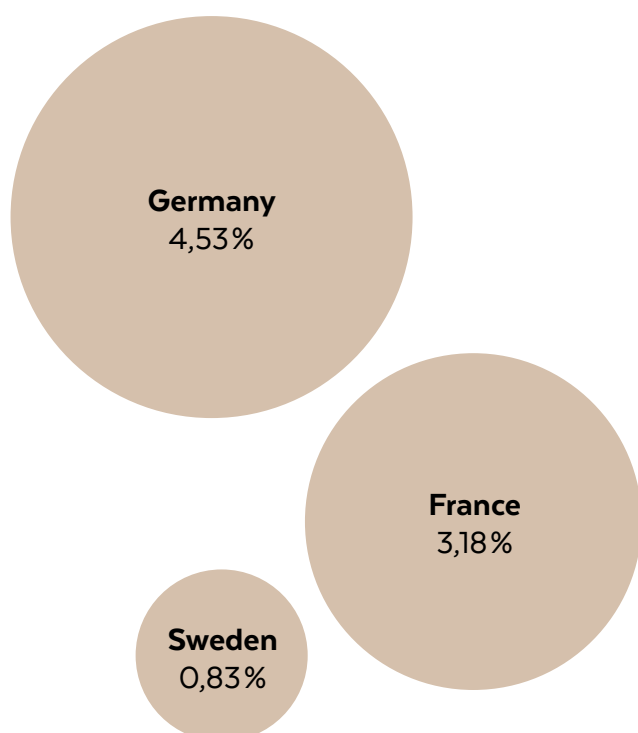
Before delving into a content-based analysis of the deleted comments on social media, it is essential to consider the scope of deletion. Section 3.1 explores various aspects of the amount of deletion on social media. Following that, in Section 3.2, the analysis delves into the content of the deleted comments. When reading the following section, it is important to keep the statistical reservations made in the section above in mind.

3.1

Scope of deletion

As outlined in Section 2.4, the data collection yielded more than a million comments across all platforms and countries, with 43,497 of them being deleted. This deletion rate corresponds to 3.4% of all the comments collected. To put it in perspective, for every 1,000 comments posted, approximately 34 are deleted afterward. However, this calculation reflects an overall average, and when examining specific samples, distinct contextual differences come to light.

Figure 3.1.1: Proportion of deleted comments across countries



Scope by country

Rather than aggregating all data, aggregating by country reveals nuanced differences. In Germany, 4.53% of all comments were deleted during the collection period, whereas in Sweden, this number was only 0.83%. France falls in between, with 3.18% of all comments deleted during the collection period.

Using the statistical basis of this report, it is not possible to definitively determine the cause of the differences observed in the figure. However, it is feasible to provide some plausible explanations. As discussed in section 4, “*Moderation on Social Media*,” the German NetzDG legislation might be one of the reasons why Germany has the largest proportion of deleted comments. Furthermore, German restrictions on freedom of expression, as outlined in section 1.2, sometimes extend beyond what is found in Swedish legislation. For example, sections 86 and 86a of the German Criminal Code (Strafgesetzbuch, StGB) pertain to the dissemination of propaganda material and the use of symbols of unconstitutional and terrorist organizations, as detailed in the legal note (see Appendix B and C). Consequently, the German Criminal Code (which is the what the NetzDG relies on to define illegal speech online) bans a broader

range of expressions compared to Swedish legislation. The same applies when comparing Sweden to France, with the latter including more speech restrictions, such as the prohibition of disinformation and fake news. As regards the impact of NetzDG, it would be interesting for future research to conduct a similar analysis once the EU DSA has become fully applicable in February 2024. It would be relevant to observe whether removal rates across countries have changed, especially in France and Sweden where NetzDG does not apply, but the DSA will.

In the case of France, it is also challenging to provide a definitive explanation. However, one of several possible reasons could be the shooting of the 17-year-old Nahel Merzouk, as mentioned in section 2.5. This event potentially polarized the debate on social media and contributed to a more aggressive and hostile tone, resulting in increased moderation. Note that there are several potential difficulties related to comparing samples in section 2.5. In addition to legislation and events during sampling, differences in political culture and in source populations can also be contributing factors.

Media vs. the political sphere

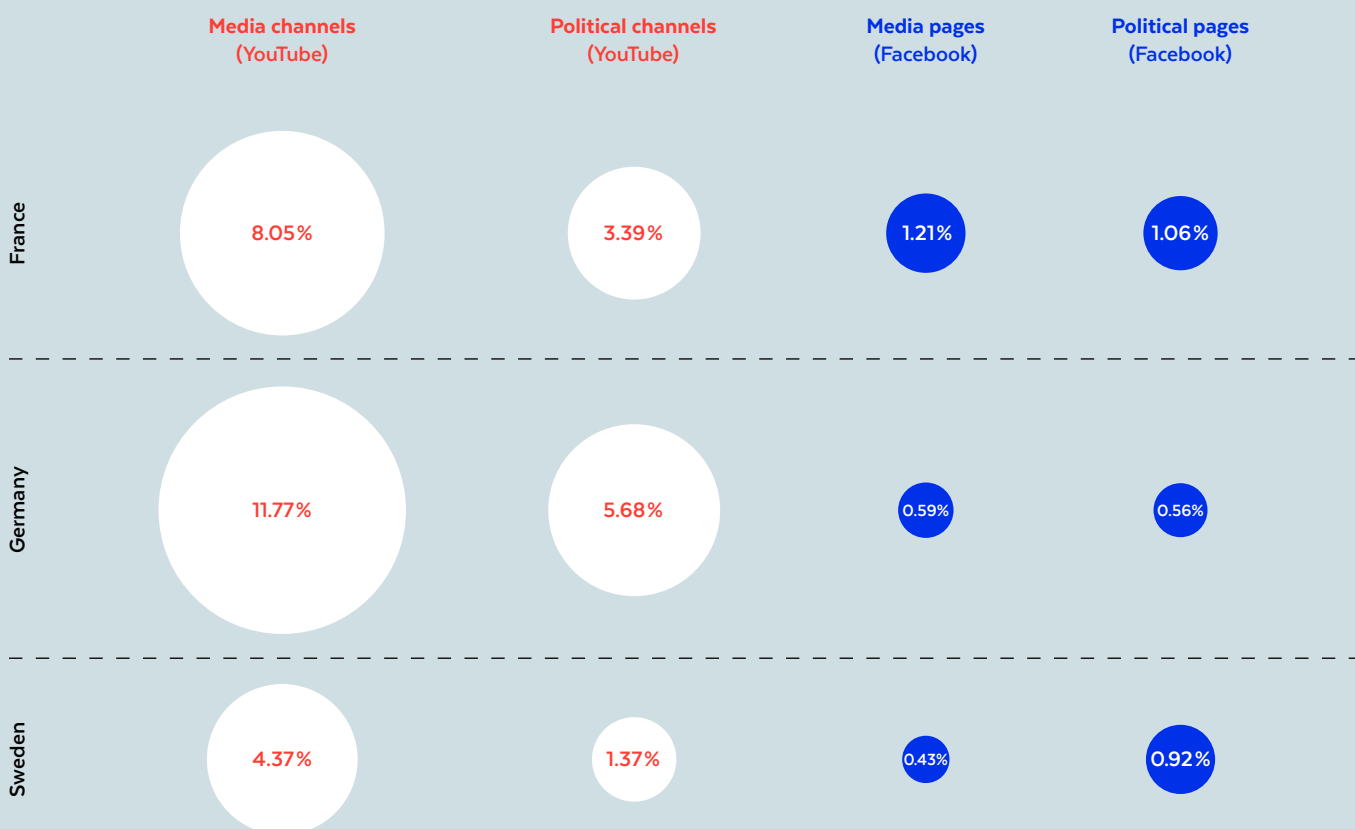
Another intriguing aspect of deletion is the distinction between the proportion of deleted comments on media pages/channels compared to pages/channels from the political sphere. On YouTube, Germany has the highest proportion of deleted comments for both media and political channels. Specifically, 11.77% of comments on investigated media channels on YouTube were deleted, while the percentage was lower for political pages, with 5.68% of all comments collected for this report being deleted.

On Facebook, the pattern differs. In this case, both French media pages and French political pages had the highest proportion of deleted

comments compared to similar types of pages in Sweden and Germany.

When examining the data, Swedish media had the lowest proportion of deleted comments compared to media in Germany and France. This trend is consistent on both Facebook and YouTube. Regarding the political sphere, Swedish political channels on YouTube also had the smallest proportion of deleted comments compared to those investigated in Germany and France. However, on Facebook, it is the German political pages that experienced the lowest proportion of deleted comments. Only 0.56% of the comments on political pages in Germany during the collection period were being deleted.

Figure 3.1.2: The media and political sphere compared



Differences between platforms and countries

In general, there is a trend toward a higher proportion of deleted comments on YouTube compared to Facebook for the pages and channels investigated in this report. Additionally, among Sweden, Germany, and France, Sweden had the fewest deleted comments when considering the data collected for this report. This trend is most evident on YouTube but also holds true for Facebook. However, note, that comparison might be problematic due to differences in source populations.

In Sweden, only 0.46% of all comments posted on Facebook pages during the collection period were deleted. In France, the corresponding number was 1.19%, while in Germany, it was 0.58%.

On YouTube, however, the deletion rate was notably higher across countries. In Germany, 11.46% of all comments collected on YouTube were deleted, more than twice the rate in Sweden, where 4.07% of all collected YouTube comments were deleted. In France, the deletion rate on YouTube was 7.23%.

Figure 3.1.3: Percentage of deleted comments by country and platform

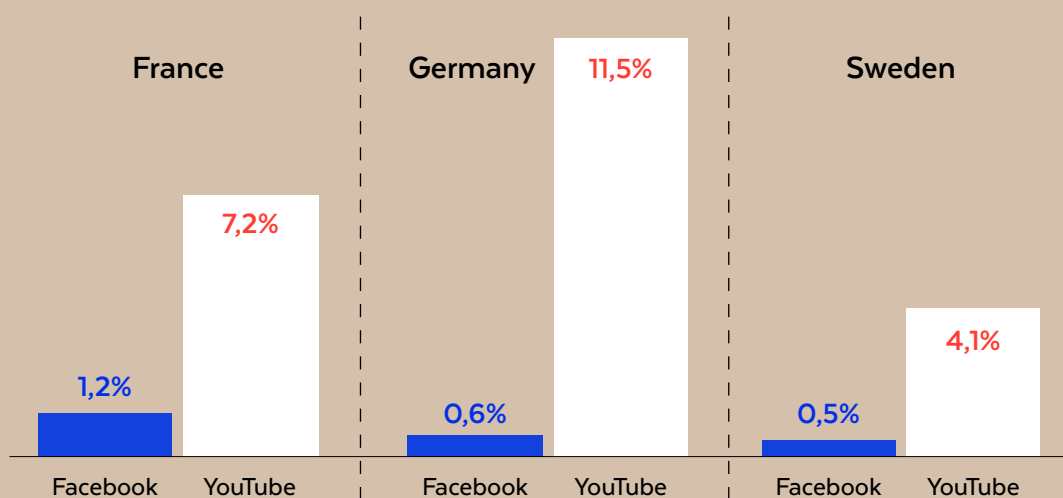


Table 3.1.4: Countries and key statistics

Platform	France		Germany		Sweden	
	YouTube	Facebook	YouTube	Facebook	YouTube	Facebook
Data collection started	2023-06-16	2023-06-16	2023-06-30	2023-06-30	2023-06-02	2023-06-02
Data collection done	2023-06-30	2023-06-30	2023-07-14	2023-07-14	2023-06-16	2023-06-16
Total comments	173,516	353,366	201,349	353,378	19,905	175,217
Comments disappeared	12,537	4,201	23,070	2,065	811	813
Share of disappeared comments	7.23%	1.19%	11.46%	0.58%	4.07%	0.46%

Samples scaled to one year:

The data used for this report was collected over three two-week periods. When the data is scaled to cover one year, it provides an estimate of the annual number of comments deleted from the source population. This calculation is based on several assumptions, which are detailed in Appendix G. The most significant of these assumptions is that the collection period is representative of a typical week. Section 2.5 discusses why this assumption may be subject to dispute.

Over the course of a year, a total of 1,130,922 comments out of an estimate of 33,195,006 (Appendix G 7.7) were deleted from all 60 pages/channels examined in this report. Based on the assumptions employed, the true number falls within a 95% confidence interval ranging from 1,141,367 to 1,120,477 comments. When broken down by country, this translates to approximately 653,510 comments deleted from the German source population per year. For the French source population, the corresponding figure is 435,188 deleted comments, while the Swedish source population sees 42,224 comments removed annually.

It is important to note that the numbers of deleted comments mentioned above are subject to a degree of uncertainty. They are contingent upon specific, albeit relatively stringent, assumptions, and the process of scaling itself carries inherent statistical uncertainties. The figures provided should be considered as approximations for the sake of effective communication; the true numbers, based on the assumptions used, are within

the 95% confidence intervals as detailed in Appendix G. Furthermore, it is crucial to emphasize that the provided intervals alone represent estimates of comments deleted from the source population in this report. The source population considered in this report constitutes only a small fraction of the total number of pages and channels across the three countries. As a result, the overall number of deleted comments in each country is probably significantly larger than the estimations provided above.

3.2

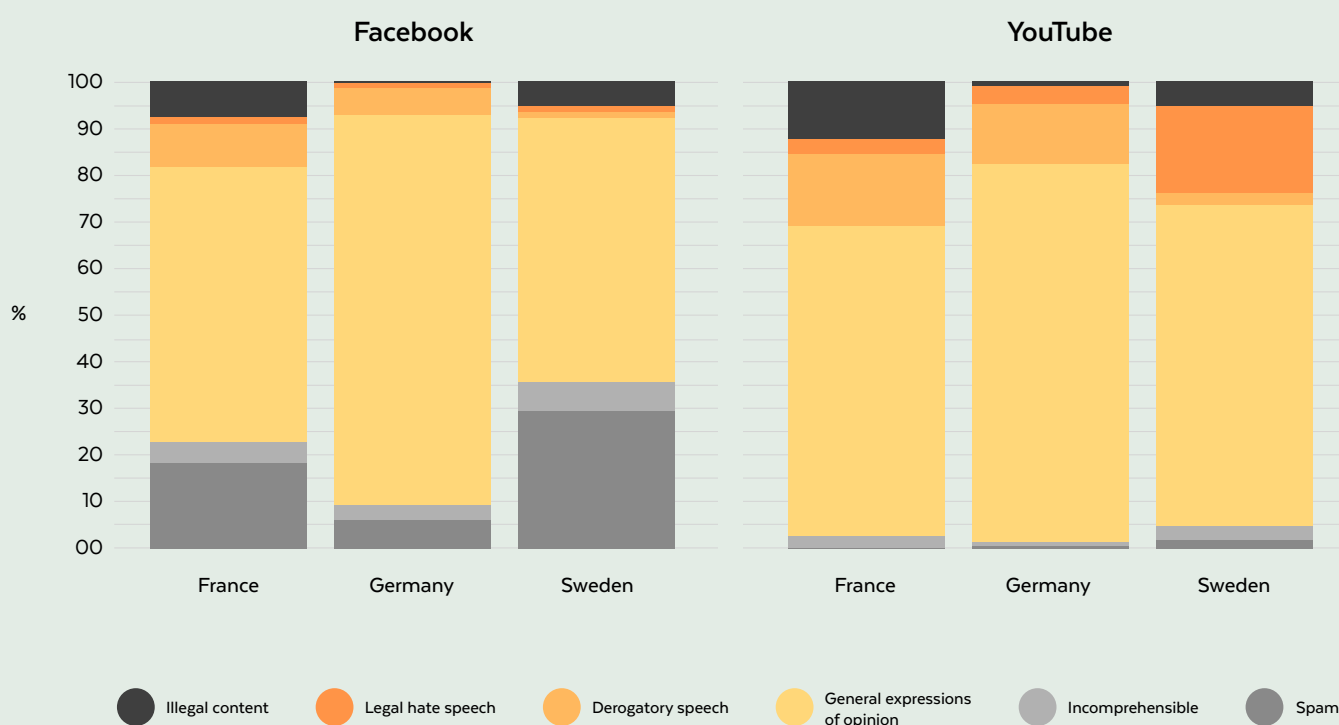
Content-based analysis of deleted content – what is being removed?

To assess the content of the deleted comments, a team of native speakers coded a sample of deleted comments on Facebook and YouTube in France, Germany, and Sweden. As a reminder, data samples of deleted comments from each source population were coded both by native speakers and legal experts from each country. (see Section 2.3).

The following section provides a detailed analysis of the content of these deleted

comments. Appendix E presents frequency tables, confidence intervals, and uncertainties for each platform in France, Germany, and Sweden. In figures featuring error bars, these bars represent a 95% confidence interval. It is important to note that while the samples are representative of their respective populations, comparisons between the source populations may be problematic (see Section 2.5).

Figure 3.2.1: Content of deleted comments



The content-based analysis reveals that the vast majority of deleted comments fall under the category of “*general expressions of opinion*”. This category accounts for between 83.2% and 56.2% of the deleted comments, depending on the country and platform. The removal of such a large volume of legal content that does not openly promote hatred, is not explicitly derogatory, and does not constitute spam seems concerning for freedom of expression.

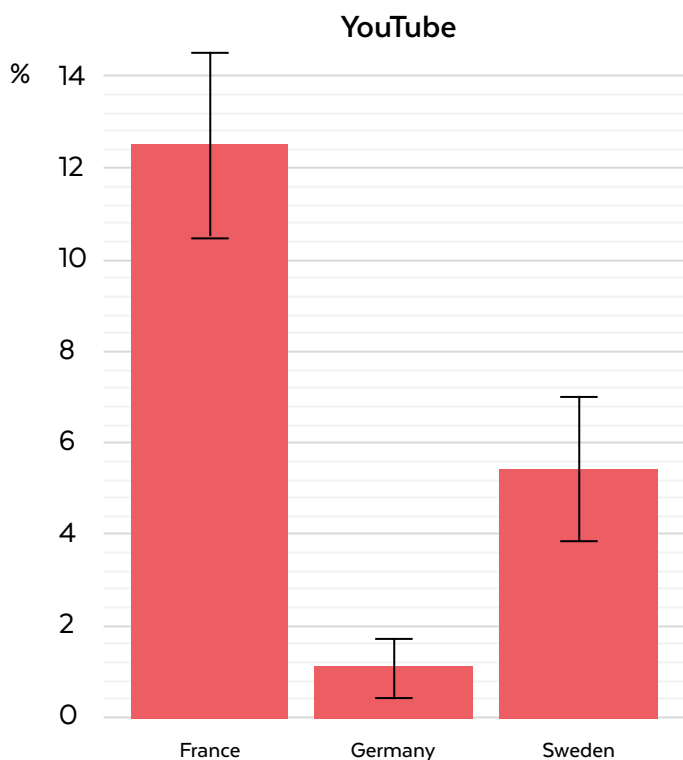
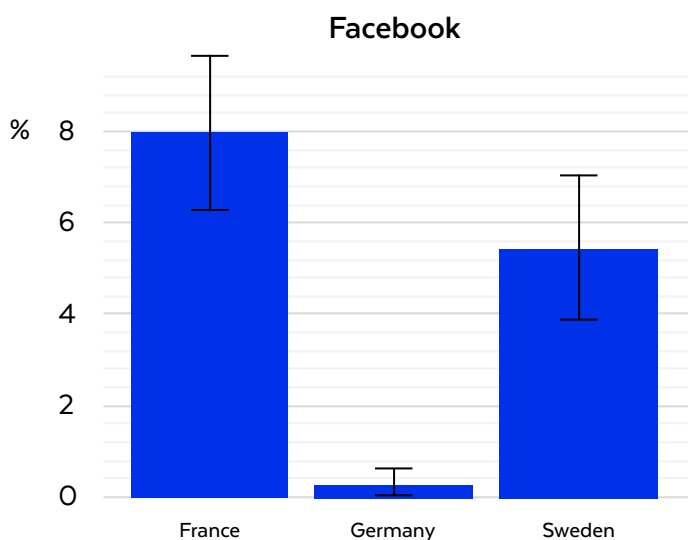
Another noteworthy finding pertains to the proportion of deleted comments that are deemed illegal, which varies from 0.3% to 12.5%. The smallest proportion is observed on investigated Facebook pages in Germany, while the largest is on investigated YouTube channels in France. This means that between 99.7% and 87.5% of all deleted comments, depending on the sample, are legally permissible.

Furthermore, the prevalence of spam comments also varies significantly. For instance, none of the deleted comments on the French YouTube channels were categorized as spam, while 29.5% of all deleted comments on the investigated Swedish Facebook pages were classified as spam. In general, for the investigated source populations, spam appears to constitute a larger portion of the deleted comments on Facebook compared to YouTube.

Illegal content

For both YouTube and Facebook, the highest proportion of illegal content within the sample is observed in France. Specifically, 7.9% of all deleted comments from French Facebook pages were deemed illegal, while the corresponding figure for French YouTube pages stood at 12.5%. One possible explanation for a part of the elevated presence of illegal comments in France could be attributed to the ongoing debate surrounding the tragic killing of 17-year-old teenager Nahel during the data collection period. This highly contentious discussion, revolving around issues of police violence and crime, might have fueled polarization on both sides, contributing to a higher incidence of illegal comments (refer also to Section 2.5). However, the high share of illegal comments in France could also be related to the legal tradition in France and the interpretation of defamation and insult in French legislation or differences in source population.

Figure 3.2.2: Amount of illegal comments among deleted comments



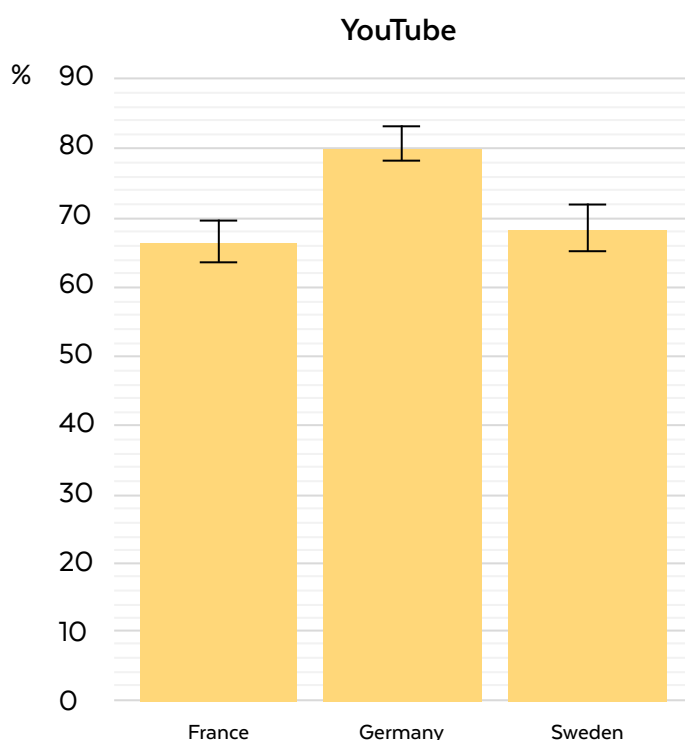
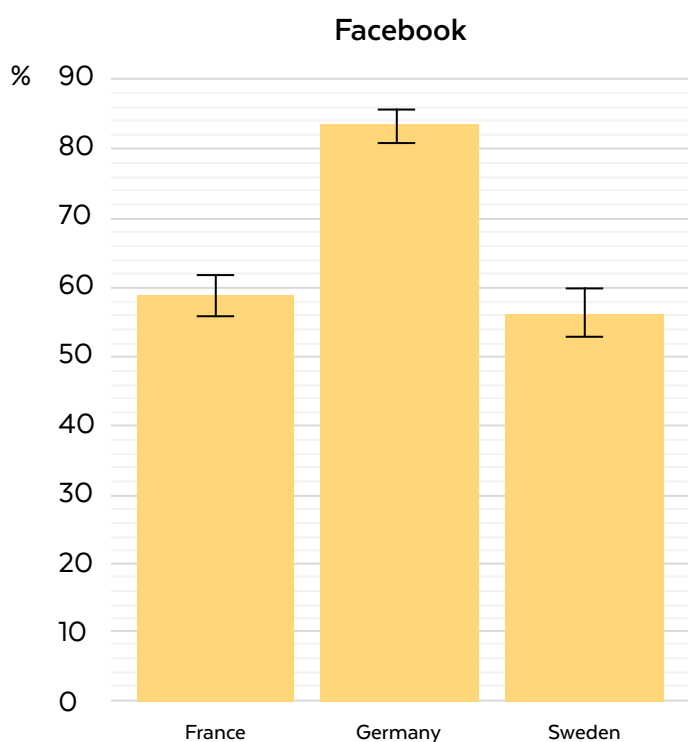
Conversely, the lowest incidence of illegal comments among deleted content is evident in the German dataset. A mere 0.3% of the deleted comments on German Facebook pages are considered illegal, while the corresponding figure for German YouTube channels is 1.1%. While the data does not offer an immediate explanation for this disparity, as noted in Section 3.1, it was found that a larger proportion of all posted comments are deleted in Germany compared to France and Sweden. A potential explanation is that more legal comments are being deleted in Germany due to factors such as the NetzDG, which imposes strict obligations regarding illegal content and may lead to an excessive content removal out of an abundance of caution. Assuming that the number of illegal comments remains consistent over time, but legislation causes the number of legal comments removed to increase, illegal comments naturally constitute a smaller proportion. Additionally, disparities in source populations (see Section 2.5) may also impact the prevalence of illegal comments.

General expressions of opinion

Building on the previous paragraph, the highest proportion of *general expressions of opinion* among deleted comments is likewise observed in the two German data samples. Specifically, 83.2% of all deleted comments in the sample from German Facebook pages were categorized as *general expressions of opinions*, while 80.7% of the deleted comments on German YouTube channels fell into this category.

The proportion of deleted comments categorized as general expressions of opinion is comparable for Sweden and France on both Facebook and YouTube platforms. On Facebook, the percentage of deleted comments is approximately 57% in the sample from both countries, while the corresponding percentage on YouTube is approximately 67%.

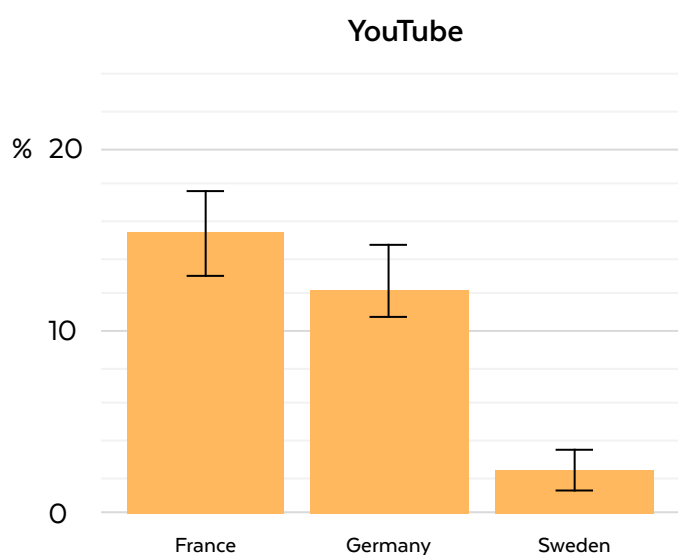
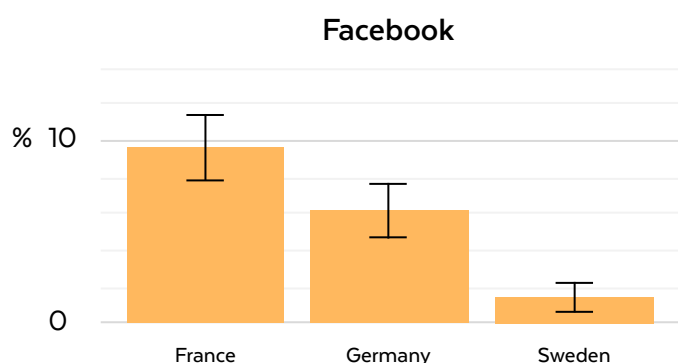
Figure 3.2.3: Amount of general expression of opinion among deleted comments



Derogatory speech

The highest frequency of *derogatory speech* was observed on both Facebook and YouTube in the French sample. However, these frequencies do not significantly differ from their German counterparts. It is worth noting that comparing the samples directly may not be appropriate due to differences in the source populations. The proportion of deleted comments containing derogatory language is 9.6% on the examined French Facebook pages and 15.4% on the investigated French YouTube channels. For the German Facebook pages and YouTube channels we analyzed, the corresponding percentages are 6.2% and 12.8%. Sweden exhibited the lowest incidence of derogatory speech on both Facebook and YouTube, with shares of 1.4% and 2.5%, respectively.

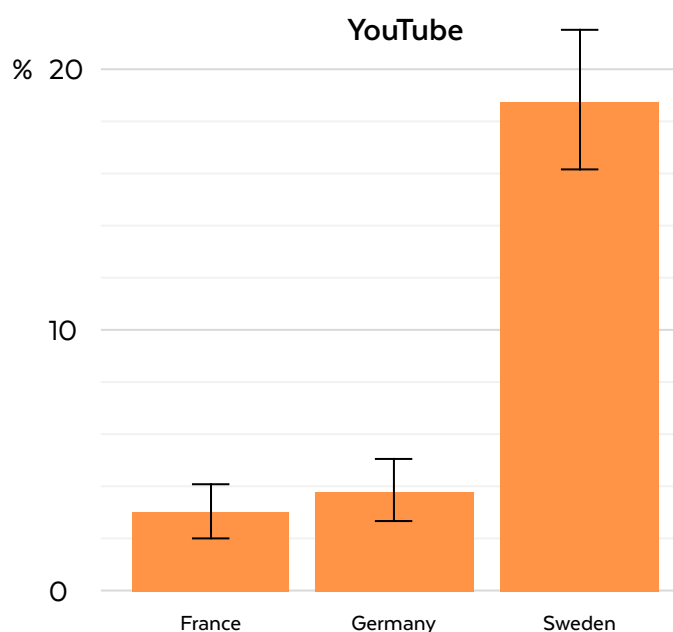
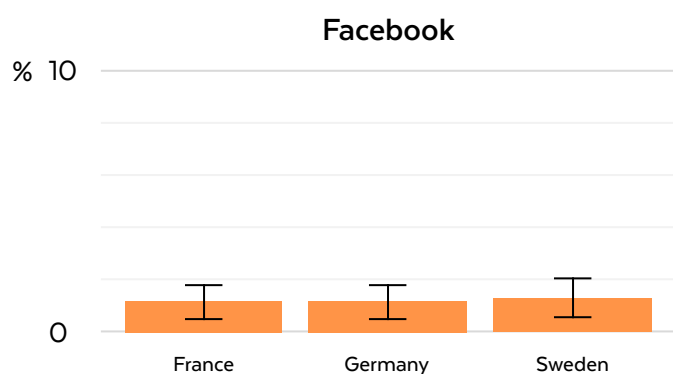
Figure 3.2.4: Amount of derogatory speech among deleted comments



Legal hate speech

During the legal coding process, a substantial portion of comments were identified as illegal by the legal experts based on domestic law. However, there remains a portion of comments which fall into what we refer to as 'legal hate speech.' This is speech which, although not considered illegal under domestic laws, is still regarded as hate speech according to the ERCI definition. (See section 2.3 regarding coding of data.)

Figure 3.2.5: Amount of legal hate speech among deleted comments



Notably, the largest proportion of deleted comments categorized as legal hate speech is observed among the analyzed Swedish YouTube channels, where 18.7% of deleted comments fell into this category. In contrast, the percentages of legal hate speech among deleted comments on examined YouTube channels in France and Germany were 3.0% and 3.8%, respectively. These differences are statistically insignificant; however, comparison of the samples may be problematic due to variations in source populations.

Legal hate speech on examined Facebook pages accounts for only 1.1%, 1.1%, and 1.3% in France, Germany, and Sweden, respectively. These proportions are not significantly different and comparing them may be problematic due to the aforementioned source population differences.

Variations between platforms

Drawing definitive conclusions about platform variations is challenging due to differences in the populations from which data was extracted. Nonetheless, it is interesting to observe *illegal speech*, *legal hate speech*, and *derogatory speech* combined. The categories appear to constitute a larger proportion of the deleted comments on YouTube than on Facebook. In contrast, the two categories, *spam* and *incomprehensible comments*, seem to be more prevalent on Facebook than on YouTube.

In summary, it is noteworthy that general expressions of opinion overwhelmingly

dominate as the largest category in all samples. This trend holds true across all countries and all platforms. In addition, between 99.7% and 87.5% of all deleted comments are found to be legally permissible, depending on the sample.



Moderation on social media

Up to this point, the report has predominantly delved into the extent and content of comment deletions. However, another critical facet connected to freedom of expression pertains to the transparency surrounding the moderation process. In particular, whether the criteria for moderation transparent and publicly available, or the boundaries of freedom of expression remain unclear and lack transparency. This section focuses on the specific content moderation rules established by the owners and administrators of the relevant pages and channels. These rules complement the general content policies established by Meta and Google for their platforms, Facebook and YouTube, as a whole²⁸. The general platform-wide rules are not analyzed.

4.1

Moderation by owners of pages and channels

Table 4.1.1: Guidelines for moderation

	Germany		France		Sweden		All
	Facebook	YouTube	Facebook	YouTube	Facebook	YouTube	
Community rules for debate	20% (2 of 10)	0% (0 of 10)	50% (5 of 10)	40% (4 of 10)	40% (4 of 10)	0% (0 of 10)	25% (15 of 60)
Rule against anonymity/ fake profiles	0% (0 of 10)	0% (0 of 10)	0% (0 of 10)	0% (0 of 10)	20% (2 of 10)	0% (0 of 10)	3.3% (2 of 60)
Rule regarding contextual relevance to the post	20% (2 of 10)	0% (0 of 10)	20% (2 of 10)	30% (3 of 10)	30% (3 of 10)	0% (0 of 10)	16.7% (10 of 60)
Rule against abusive lan- guage and/or hate speech	20% (2 of 10)	0% (0 of 10)	30% (3 of 10)	30% (3 of 10)	30% (3 of 10)	0% (0 of 10)	18.3% (11 of 60)
Rule against unlawful expressions	20% (2 of 10)	0% (0 of 10)	30% (3 of 10)	10% (1 of 10)	0% (0 of 10)	0% (0 of 10)	8.3% (5 of 60)
Rule against commercial content	0% (0 of 10)	0% (0 of 10)	30% (3 of 10)	30% (3 of 10)	10% (1 of 10)	0% (0 of 10)	11.7% (7 of 60)

Within the context of this report, it is worth noting that merely one out of every four media outlets and political figures investigated have on their respective platforms established any type of publicly accessible directives governing the discourse and moderation of user comments. It is also apparent from the ensuing comparison in table 4.1.1 that those who do possess such guidelines exhibit considerable divergence in both content and scope.

The table above illustrates the diversity in the content of debate rules. Specifically, 11

out of the 60 pages/channels have rules in place against abusive language and/or hate speech, representing 18.3% of all the pages/channels. Rules stipulating that comments should be contextually relevant to the post they are placed under are found on 16.7% of all pages/channels. A smaller proportion, 8.3%, directly enforces rules against unlawful expressions, while only 3.3% (or 2 out of the 60 pages/channels) impose regulations against anonymity and the use of fake profiles in debates. Lastly, 11.7% of all 60 pages/channels feature rules against the inclusion of commercial content.

In this analysis, guidelines are considered only when they are readily available on the pages of media outlets and politicians, either explicitly described on the page or accessible through a link from the Facebook page or YouTube channel. The table reveals that a limited proportion of media outlets and politicians actively and explicitly address if and how comments on their platforms are subject to moderation. Moreover, the directives governing moderation for those who have established guidelines are not particularly exhaustive. On the whole, this, in turn, leads to a lack of transparency and predictability for users, leaving them uncertain about which posts are subject to moderation. Perhaps of even greater concern is the implication that the absence of guidelines may imply that content moderation across various pages is conducted in an arbitrary and inconsistent manner, without adherence to a clear set of transparent directives.

It is noteworthy that this report compiles data from what can generally be regarded as the most prominent political and media pages/channels in each respective country. Assuming that these prominent pages/channels tend to provide more comprehensive descriptions of their moderation procedures, owing to their available resources, it is possible that issues of transparency could be even more pronounced at large.

4.2

The NetzDG and moderation by social media platforms

As Section 3.1 has shown, the ten investigated German YouTube channels have a significantly higher rate of deleted comments compared to their investigated counterparts in France and Sweden. This could be due to differences between the populations from which the data was extracted. However, another contributing factor to this phenomenon could be the German NetzDG legislation. The NetzDG does not explicitly define what is legal and illegal but rather sets certain rules for the removal and complaint process regarding illegal content (see also Appendix B). If content is deemed illegal according to German law, it can either be deleted or blocked in Germany. The risk of infringing NetzDG by not removing illegal content, may be leading platforms to be overly cautious and remove more content than required, leading to over-censoring.

In the first six months of 2023, Facebook received 124,597 NetzDG complaints. 13.1% of these complaints resulted in removals or blocking²⁹. During the same period, YouTube received 193,131 NetzDG complaints, with 15.98% of them being removed or blocked³⁰.

Statistically, it is not possible to directly link the NetzDG to the significantly higher number of deleted comments on German YouTube channels, but the correlation is noteworthy.



Freedom of expression and social media

The internet has rapidly become one of the most crucial means of communication, if not the most important, within just a few years. It has leveled the playing field, providing equal opportunities for seeking information and democratizing access to express opinions. A pivotal aspect of the latter is the emergence of social media platforms, where a significant portion of democratic conversation has found a new home. Platforms like Facebook and YouTube allow citizens to interact directly with politicians and media, enabling them to voice their opinions and disagreements openly. Conversations that were previously confined to private homes, political clubs, or controlled media outlets have now been liberated for anyone wishing to participate.

Moreover, the internet and social media have given rise to a new breed of digital-only media outlets, focused solely on online publication, whether it be posts on Facebook or videos on YouTube. Several of these outlets are included in the source population examined in this report. These cost-efficient new media entities have made it possible to convey alternative perspectives, discuss specialized agendas, and broaden the spectrum of available information.

However, the newfound ease of entering the realm of democratic conversation does not come without its challenges. Instances such as Russian interference in the Brexit referendum³¹, the Russian interference in the U.S. presidential election in 2016³², the Cambridge Analytica scandal³³, and the recent escalation of Russian's misinformation operations towards Ukraine and open democracies after the invasion of Ukraine³⁴ highlight the threat

posed by foreign countries using social media to intervene in democratic elections and public conversation.

The listed examples highlight that some states perceive moderation on social media as a challenging balance between the protection of minorities, state security, and freedom of expression. Whether this constitutes a false trilemma is not a matter for discussion here. One can only observe that several countries have chosen to perceive these factors as internally conflicting.

Several initiatives have been launched to protect minorities and ensure internal security. Among these initiatives are the screening and classification of ads related to housing, employment, credit, and politics³⁵. Additionally, there has been the implementation of ID verification³⁶ for advertisers and business verification, geofencing for ads concerning social issues, elections, or politics³⁷, and increased transparency through Ads Libraries³⁸.

The German legislative framework known as NetzDG can also be seen as an effort to empower individual citizens against major tech platforms by granting certain rights related to response times for illegal content and the complaint process. The DSA, which became fully applicable on February 17, 2024, shares some similarities with NetzDG and contains an even broader and less nuanced definition of illegal content³⁹. Excessively restrictive measures aimed at online safety in both laws could potentially encroach upon freedom of expression. Moreover, strict rules regarding content moderation, including tight deadlines for the removal of illegal content, might motivate

social media platforms to adopt a “*better safe than sorry*” approach to moderation. Meaning they are inclined to remove more content than necessary due to the threat of significant fines. Furthermore, the potential moderation done by page/channel owners and administrators, add to this imbalance. That being said, criminal proceedings and private content moderation are not exact analogs. The former involves the threat of criminal sanctions, including – ultimately – the risk of prison, whilst the latter ‘merely’ results in the removal of content or, at worst, the deletion of user accounts. Moreover, when restricting freedom of expression, States must follow time-consuming criminal procedures and respect legally binding human rights standards. On the other hand, private platforms are generally free to adopt terms of service and content moderation practices less protective of freedom of expression and due process than what follows under international human rights law.

This report does not definitively establish whether NetzDG unintentionally impacts freedom of expression, but the high rate of deleted comments on German YouTube, possibly in response to laws like NetzDG, suggests that some social media platforms choose to delete comments more frequently than required. However, when it comes to private companies (not bound by international human rights law) and following a strict business model, the risk of over removal is real due to the inclination to adopt a ‘better safe than sorry approach’ so as to avoid fines. Both Google and Meta enforce stricter content rules (community guidelines) than what national laws, which define the boundaries of freedom of expression, stipulate. For instance, these companies may

have stricter regulations regarding nudity and explicit content⁴⁰.

To keep up with the sheer amount of online content and rapidly growing state pressure, platforms are increasingly using AI for purposes of content moderation. According to Meta’s own reports, AI identifies and removes over 90% of removed content (across most violation categories) before users report it⁴¹. Google reports that 99.4% of comments removed between January 2023 and March 2023 were initially flagged by AI⁴²; 99.5% of comments removed between July 2023 and September 2023 were initially flagged by AI⁴³. During the January to March 2023 period, Google removed 193,673 videos from German YouTube and 50,628 from French YouTube (based on uploaders’ IP addresses). Unfortunately, no data about videos uploaded from Sweden was disclosed for the same period. Globally, Google reported deleting 853 million comments in the first quarter of 2023 but did not provide specific information about national or European distribution⁴⁴.

These numbers highlight how Google and Meta largely define the boundaries of digital conversation in Europe. This is underscored by the fact that, on average, there were 258 million active monthly users on Facebook in the European Union in the first half of 2023⁴⁵. Google estimates that there are 416.6 million active monthly users on YouTube in the EU based on sign-ins⁴⁶. In summary, social media platforms oversee most of the public conversation online and use AI to monitor and remove content that does not comply with domestic legislation or meet the standards set by the platforms themselves.

As clarified in Section 2.2, this report is unable to distinguish between the actors responsible for comment deletion. However, both Google and Meta emphasize that a substantial amount of content is identified and removed through AI. This report reveals that within a two-week period, 25,135 comments, 16,738 comments, and 1,624 comments were deleted in Germany, France, and Sweden, respectively, from the ten largest media and political pages on YouTube and Facebook. Additionally, this section demonstrates that tech giants maintain moderation practices stricter than required by national legislation. Furthermore, Section 4 indicates that administrators and owners of the investigated pages and channels, in addition to Facebook and YouTube's own moderation, may enforce an additional layer of moderation, some potentially without transparency and clear guidelines.



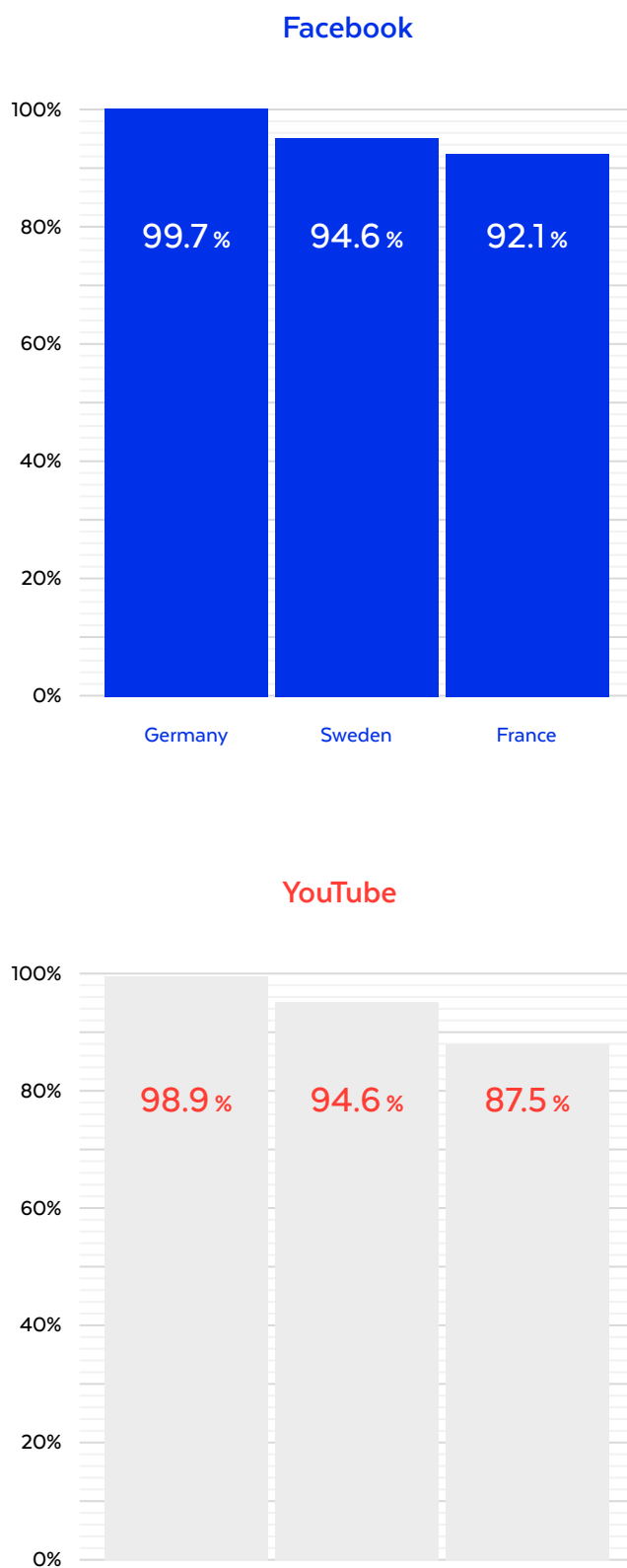
Conclusion, Perspectives, and Dilemmas

To bring clarity to the debate about freedom of expression on social media, this report examined the content of deleted comments. Firstly, it is noteworthy that between 87.5% and 99.7% of all deleted comments, depending on the sample in this report, are, in fact, legally permissible.

The highest proportion of legally permissible deleted comments was observed in Germany, where 99.7% and 98.9% of deleted comments were found to be legal on Facebook and YouTube, respectively. In comparison, the corresponding figures for Sweden are 94.6% for both Facebook and YouTube. France has the lowest percentage of legal deleted comments, with 92.1% of the deleted comments in the French Facebook sample and 87.5% of the deleted comments French YouTube sample still being considered legal.

In other words, less than 12.5% of deleted comments were illegal, suggesting that – contrary to prevalent narratives – over removal of legal content may be a bigger problem than under removal of illegal content.

Figure 6.1.1: Amount of Legal Contents Among Deleted Comments



As such, this report has provided a factual overview of the extent and content of comments deleted on ten Facebook pages and ten YouTube channels in France, Germany, and Sweden. The proportion of deleted comments varies between countries and platforms, with the largest proportion of deleted comments found on German YouTube, where 11.46% of all comments were deleted. In contrast, the smallest share of deleted comments was found on Swedish Facebook, where only 0.46% of all comments were deleted. Generally, the proportion of deleted comments seems to be highest on YouTube, with deletion rates of 11.46%, 7.23%, and 4.07% in Germany, France, and Sweden, respectively. The corresponding proportions on Facebook are 0.58%, 1.19%, and 0.46%. However, due to differences in the populations from which the data was extracted, it is not possible to draw any definitive conclusions about country variations.

When comparing deleted comments in the three countries without taking into account the platform, the fraction of deleted comments is largest in Germany (4.53%) and smallest in Sweden (0.83%), while France falls in between (3.18%).

Germany is notable for two distinct reasons in this report. Firstly, our analysis reveals that the German Facebook pages and YouTube channels investigated have the highest rate of comment deletion compared to those examined in Sweden and France. Secondly, the examination of the German samples of deleted comments shows that they have the lowest proportion of illegal content compared to the Swedish and French samples. This

could be directly related to the impact of the German NetzDG on the practices of social media platforms seeking to avoid fines in fear of non-compliance. Respectively, 99.7% and 98.9% of all deleted comments in the German Facebook and YouTube samples are found to be legal.

By adopting several assumptions (described in the section 'Samples Scaled to One Year'), the dataset representing the number of comments deleted over a span of 14 days has been utilized to statistically extrapolate an equivalent annual figure. This estimation indicates that approximately 1,130,922 comments are deleted from the source population's pages and channels on an annual basis.

The category of *general expression of opinion* is the largest category across all samples. This means that for all Facebook and YouTube samples in all three countries, the largest fraction of comments belongs to the category of *general expression of opinion*. In fact, the category of *general expression of opinion* constitutes more than 56% in all samples, and in some samples, the fraction is even larger than 80%. Meanwhile, the proportion of illegal comments ranges from 12.5% (French YouTube) to 0.3% (Germany Facebook). The fraction of illegal comments in France seems to be higher than in Germany and Sweden; however, without the ability to draw definitive conclusions, this could be connected to events during the data collection period. During data collection in France, the police killed a 17-year-old, sparking a very polarizing debate.

The report also shows that spam comprises

a significant share of deleted comments in some samples, while literally no comments were categorized as spam in one sample. Among the deleted comments from investigated Swedish Facebook pages, the spam category constitutes 29.5%, whereas none of the deleted comments from examined French YouTube channels were categorized as spam. In general, the share comprised by the spam category tends to be smaller on YouTube compared to Facebook.

Both *derogatory speech* and *legal hate speech* can be found in all samples. The size of these categories, however, varies between samples; in general, both categories are small on Facebook, comprising between 2,6% and 10,7%, while on YouTube, they range between 16.6% and 21.2%.

There are different aspects of moderation on social media and freedom of expression. One aspect is the extent to which comments are being deleted, while another important aspect is the transparency surrounding the moderation process. Ideally, the criteria for moderation should be publicly available and completely transparent. However, the opposite can also be the case: that the boundaries of freedom of expression remain unclear, lack transparency, and are enforced on an ad hoc and arbitrary basis.

During the review of all investigated pages and channels' moderation rules, which apply in addition to platform-wide rules, it was found that only 25% had publicly available guidelines expressing how they moderated the debate. The rules of moderation were not particularly exhaustive in several cases. Only

8.3% (5 out of 60 pages/channels) had rules against unlawful expression, and 18.3% had rules against abusive language and/or hate speech (corresponding to 11 out of 60 pages/channels).

In summary, the review shows that only a few owners and administrators of Facebook pages and YouTube channels lay out clear and transparent principles for their moderation. Both Facebook and YouTube have defined community rules indicating what is allowed on their platform, but without owners and administrators being transparent about their moderation guidelines, users have no chance of knowing if the page or channel enforces stricter moderation on top of Facebook/YouTube community rules. What might be even more critical is that the lack of guidelines could indicate that the moderation for many pages/channels might be arbitrary and inconsistent and does not follow any transparent guidelines.

As outlined in section 5, moderation of social media is understood by several countries as a delicate balance between freedom of expression, security, and protection of minorities. However, recent events and geopolitical developments could disrupt this perceived balance. National security concerns have caused governments to try to counter misinformation and interference from hostile nations with blunt tools. Additionally, but without making any definitive conclusions, there is some indication that legislation, such as the NetzDG, aimed at strengthening citizens and granting them certain rights, has the unintended effect of encouraging social media platforms to delete a larger fraction

of legal comments. This is a preview into the potential impact of the EU's DSA now in force on freedom of expression.

Further perspectives and Dilemmas

The data collected and analyzed in this report demonstrates that much more legal as opposed to illegal content is removed by social media platforms. The enforcement reports released by Meta and YouTube strongly suggest that most of the content moderation is driven by the platforms themselves. In relation to Facebook, our data collection time-frame falls within the ambit of two reports on Community Standards Enforcement⁴⁷ (April-June 2023 and July-September 2023). In relation to hate speech during the first time period, Meta found that 88.80% of such content had been found and actioned proactively by the company as opposed to 11.20% which was reported by users. During the second time period, the figures rise to 94.80% and 5.20% accordingly. In line with our findings, these removal rates strongly suggest that the company itself has removed a large amount of legal content.

The assumptions of a digital Wild West, a flood of harmful content online and the lawlessness of the internet frontier may have prompted intense public pressure to address harmful online content quickly and effectively but are not, as has been starkly demonstrated in this report, reflective of the empirical reality. As a result, these unfounded assumptions which actually contradict our findings (much more legal than illegal content is actually

removed from social media) have constituted the central framework upon which the German NetzDG was established and, more recently, the European-wide DSA as well as other initiatives such as Codes of conduct and practice on themes such as disinformation and hate speech. The direct result of this is a system has been created which undermines freedom of expression on the basis of shallow empirical evidence with governments giving (private) social media giants the key and, increasingly, the obligation to steer the speech of billions, essentially dictating digital discourse. The current system leads to platforms erring on the side of caution, removing huge amounts of content.

As such, The Future of Free Speech raises the alarm on the current system adopted in legislation such as DSA and, specifically, the powers and obligations placed on private social media to remove speech. We highlight the lack of empirical support for such drastic moves and underline that the report's findings demonstrate that free speech is at risk since high levels of legal rather than illegal content are being removed. Moreover, content removal is not a subject to be taken lightly, with possible unintended consequences including, amongst others, deplatformed haters enjoying a martyr status, their migration to other less regulated platforms, with speech repression creating the psychological conditions for political violence.⁴⁸ Moreover, the spillover effect of the NetzDG on over twenty countries including authoritarian states such as Russia and Venezuela and the expected Brussels Effect of the DSA must further caution legislators and the executive to reconsider a faulty approach to online content.⁴⁹



Appendix

Appendix A: Legal Note: Relevant French legislation for assessing the legality of expressions

Relevant provisions (summary)

Law of July 29, 1881 On Freedom Of The Press

Chapter IV

Paragraph 1: Incitement to crimes and misdemeanors. (Article 23 to 24a)

- Article 23: Incitement to crimes and misdemeanors
- Article 24: Special incitement offenses
- Article 24a: Challenge of the existence of crimes against humanity

Paragraph 2: Offenses against public property. (Article 27)

- Article 27: Disinformation and fake news

Paragraph 3: Crimes against persons (Article 29-35)

- Article 29: Defamation against persons
- Article 30: Defamation against public servants or institutions
- Article 31: Defamation against the president, members of government, members of parliament, etc.
- Article 32: Defamation against minorities
- Article 33: Insults
- Article 34: Conditions for Applying Defamation and Insult Laws to Deceased Persons
- Article 35: Establishing Truth in Defamation Cases
- Article 35a: Reproducing defamatory statements
- Article 35b: Restrictions on the Dissemination of Images and Information in Criminal Proceedings
- Article 35c: Consequences for Disseminating Disturbing Crime or Misdemeanor Reproductions

Paragraph 4: Offenses against heads of state and foreign diplomatic agents (Article 37)

- Article 37: Public Contempt Against Diplomatic Agents

Penal code

- Book IV, Title II, Article 421-2-5: Provoking acts of terrorism or publicly advocating terrorism

French Legislation relevant to content moderation:

The analysis on France focuses on the application of Law of July 29, 1881 On Freedom Of The Press online. The latest updated of the law was enacted on January 1, 2023. The law determines what constitutes illegal speech in France.

Articles 23 to 24a Incitement to crimes and misdemeanors.

Article 23 defines incitement as “directly inciting to crimes and misdemeanors either by speeches, shouting or threats uttered in public places or meetings, or by writings, prints, drawings, engravings, paintings, emblems, images or any other medium of writing, speech or images sold or distributed, put on sale or exhibited in public places or meetings, either by placards or posters exposed to public view, or by any means of communication public by electronic means. Incitement is punished if it was followed by effect or by an attempted crime only provided for by article 2 of the penal code.

Article 24 foresees some special incitement offenses. It prohibits incitement to committing Willful attacks on life, willful attacks on personal integrity and sexual assault, defined by Book II of the Penal Code, theft, extortion and deliberate destruction, damage and deterioration dangerous to people, defined by Book III of the Penal Code. It also prohibits incitement to one of the crimes and offenses affecting the fundamental interests of the nation provided for by Title I of Book IV of the Penal Code. Incitement to those offenses is punishable even if this provocation has not been followed by effect. The same article foresees penalties for those who have defended the crimes referred to in the first paragraph, war crimes, crimes against humanity, crimes of reduction enslavement or exploitation of a person reduced to slavery or crimes and offenses of collaboration with the enemy, even if these crimes have not given rise to the conviction of their perpetrators.

Any seditious shouting or chants uttered in public places or meetings is also punishable.

The same clause foresees serious penalty enhancements for those who, by one of the means set out in Article 23, have incited to discrimination, hatred or violence against a person or a group of people because of their origin or of their belonging or non-belonging to a specific ethnic group, nation, race or religion. The article foresees that those who, by these same means, provoke hatred or violence against a person or a group of people on the basis of their sex, their sexual orientation or gender identity or their disability or will have caused, with regard to the same people, the discrimination provided for by articles 225-2 and 432-7 of the penal code. When these acts are committed by a person holding public authority or entrusted with a public service mission in the exercise or during the exercise of his functions or his mission, the penalties are increased to three years of imprisonment and a fine of 75,000 euros. The French Cour de Cassation has held that posting on Twitter phrases such as “there are too many Blacks in France’s national team. Too many Jewish people on television” constitutes incitement to discrimination and hatred towards these groups⁵⁰. The Cour de Cassation has also held that a Facebook post meets the conditions of incitement to hatred against a person or a group of people because of their belonging to a specific religion when it arouses a feeling of rejection or hostility, hatred or violence, towards a group of people or a person on the basis of a specific religion⁵¹. An article merely associating the presence of a religious group with an increase in criminality and insecurity in a city is not enough to arouse such a feeling⁵².

Article 24 a: Denial of crimes against humanity

This article prohibits the challenge of the existence of one or more crimes against humanity as they are defined by article 6 of the statute of the international military tribunal annexed to the London agreement of August 8, 1945 and which were committed either by members of an organization declared criminal pursuant to article 9 of the said statute, or by a person convicted of such crimes by a French or international court. It also prohibits the denial, minimization or trivialization in an outrageous manner, by one of the means set out in article 23, of the existence of a crime of genocide other than those mentioned in the first paragraph of this article, another crime against humanity, a crime of enslavement or exploitation of a person reduced to slavery or a war crime defined in articles 6, 7 and 8 of the statute of the International Criminal Court signed in Rome on July 18, 1998 and articles 211-1 to 212-3, 224-1 A to 224-1 C and 461-1 to 461-31 of the penal code.

This behavior is prohibited when:

1° This crime gave rise to a conviction pronounced by a French or international court; When the acts mentioned in this article are committed by a person holding public authority or entrusted with a public service mission in the exercise or during the exercise of his functions or his mission, the penalties are increased to three years' imprisonment and a fine of 75,000 euros.

Section 27: Prohibition of fake news

French law prohibits the publication, dissemination or reproduction, by any means whatsoever, of false news, fabricated, falsified or falsely attributed to third parties when, done in bad faith, it has disturbed public peace, or has been likely to disturbing it. The law foresees a penalty enhancement, when the publication, distribution or reproduction made in bad faith is likely to undermine the discipline or morale of the armies or to hinder the Nation's war effort.

Article 29: Defamation and Insult

The law defines defamation as "any allegation or attribution of a fact which harms the honor or consideration of the person or body to which the fact is attributed". Direct publication or reproduction of this allegation or imputation is punishable, even if it is made in doubtful form or if it targets a person or body not expressly named, but whose identification is made possible by the terms incriminating speeches, shouting, threats, written or printed material, placards or posters. The same article prohibits insult which is defined as "any outrageous expression, terms of contempt or invective which does not contain the imputation of any fact". Defamation committed against individuals by one of the means set out in article 23 will be punished by a fine of 12,000 euros. Posting on twitter a message according to which "Jewish people are the responsible for the massacre of thirty million Christians in USSR between 1917 and 1947" constitutes defamation, because it attributes to the Jewish people a fact which may be proven otherwise, and which violates their honor and their consideration⁵³.

Article 30: defamation of public authorities

French law outlaws the defamation committed by one of the means set out in article 23 against the courts, tribunals, land, sea or air and space armies, constituted bodies and public administrations. The fine the law foresees is 45,000 euros.

Article 31: defamation of the President of the Republic or other public officials

Modified by LAW n°2013-711 of August 5, 2013 - art. 21 (V)

Will be punished with the same penalty, defamation committed by the same means, because of their functions or their quality, against the President of the Republic, one or more members of the government, one or more members of either Chambers of the Parliament, a public official, a depositary or agent of public authority, a minister of one of the religions employed by the State, a citizen entrusted with a service or a temporary or permanent public mandate, a juror or witness, for his testimony. Defamation against the same people regarding private life falls under Article 32 below.

Article 32: Penalty enhancements for Defamation

Article 32 foresees heavier penalties for defamation committed against a person or group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, or against a person or group of people because of their sex, their sexual orientation or gender identity or their disability. The penalty foreseen in this case is one year imprisonment and a fine of 45,000 euros or one of these two penalties only.

Article 33: Penalty Enhancements for Insult

This article foresees that any insult committed against a person or a group of people based on their origin or their membership or non-membership of a ethnicity, nation, race or religion or against a person or a group of people because of their sex, their sexual orientation or gender identity or their disability will be punished with a heavier penalty. Posting on Twitter a photo of a person condemned for denial of crimes against humanity standing outside of a Courthouse and invoking a nazi salutation was seen to constitute public insult towards a group of persons based on their membership in an ethnicity or nation⁵⁴.

Article 34: Defamation or insults directed against the memory of the dead

Articles 31, 32 and 33 will only be applicable to defamation or insults directed against the memory of the dead only in the event that the authors of these defamations or insults had the intention of harming the honor or consideration of the heirs, spouses or living universal legatees.

Whether or not the authors of the defamation or insults had the intention of harming the honor or consideration of living heirs, spouses or legatees, they may use, in both cases, the right of reply provided for by article 13.

Article 35: Truth Defense

The truth of the defamatory fact, but only when it relates to the functions, can be established by ordinary means, in the case of imputations against the constituted bodies, the armies of land, sea or air and air space, public administrations and against all persons listed in article 31.

The truth of defamatory and insulting imputations may also be established against the directors or administrators of any industrial, commercial or financial company, whose financial securities are admitted to trading on a regulated market or offered to the public on a multilateral trading system or on credit. The truth of defamatory facts can always be proven, except when the imputation concerns the private life of the person.

The third paragraph of this article does not apply when the acts are provided for and punished by articles 222-23 to 222-32 and 227-22 to 227-27 of the penal code and were committed against a minor. Evidence to the contrary is then reserved. If proof of the defamatory act is provided, the complaint will be dismissed.

In any other circumstance and towards any other non-qualified person, when the alleged act is the subject of proceedings initiated at the request of the public prosecutor, or of a complaint from the accused, there will be, during the investigation which must take place, suspension of the prosecution and judgment of the offense of defamation.

The accused may produce for the purposes of his defense elements resulting from a violation of the secrecy of the investigation or instruction or any other professional secrecy that are likely to establish good faith or the truth of the defamatory facts, without this production giving rise to prosecution.

Article 35a

Creation Ordinance of May 6, 1944 - art. 7

Any reproduction of an attribution which has been deemed defamatory will be deemed to have been made in bad faith, unless proven otherwise by its author.

Article 37: Public Contempt against foreign officials

Public contempt committed against ambassadors and plenipotentiary ministers, envoys, heads of mission or other diplomatic agents accredited to the government of the Republic will be punished by a fine of 45,000 euros.

Penal Code

Legislative part (Articles 111-1 to 727-3)

Book IV: Crimes and offenses against the nation, the State and public peace (Articles 410-1 to 450-5)

Title II: Terrorism (Articles 421-1 to 422-7)

§ Chapter I: Acts of terrorism (Articles 421-1 to 421-8) Navigate the summary of the code

Article 421-2-5

Version in force since November 15, 2014

Modified by Decision No. 2020-845 QPC of June 19, 2020, v. init.

Creation LAW n°2014-1353 of November 13, 2014 - art. 5

Directly provoking acts of terrorism or publicly advocating these acts is punishable by five years' imprisonment and a fine of €75,000. The penalties are increased to seven years' imprisonment and a fine of €100,000 when the acts were committed using an online public communication service.

When the acts are committed through the written or audiovisual press or through communication to the public online, the specific provisions of the laws governing these matters are applicable with regard to the determination of the persons responsible. According to the reservation set out by the Constitutional Council in its decision no. 2020-845 QPC of June 19, 2020, the words or to publicly defend these acts appearing in the first paragraph of article 421-2-5 of the penal code, in its wording resulting from law no. 2014-1353 of November 13, 2014 strengthening the provisions relating to the fight against terrorism, cannot, without disregarding freedom of expression and communication, be interpreted as repressing the offense of receiving stolen goods of apologizing for acts of terrorism.

Appendix B: Legal Note: Relevant German legislation for assessing the legality of expressions

Background

The analysis for Germany focusses on provisions in German Criminal Code (Strafgesetzbuch, StGB) referred to in the German NetzDG)⁵⁵. The NetzDG was still fully in force at the time of sample collection and although large parts of it have become inapplicable with the entry into force of intersecting provisions of the DSA on 17 February 2024, most/all of the NetzDG will likely be formally repealed by a law that is currently in the legislative process⁵⁶. The NetzDG does not itself determine which pieces of content are illegal but contains an (exhaustive) catalogue of preexisting criminal offenses in Section 1 (3) NetzDG, whose enforcement it aims to improve through imposing fines on major “Social Networking” sites for any systemic failure to remove content covered by these provisions.

It is important to note that the Content, *as such*, does not fulfill the elements of a criminal offense, which is always associated with an individual’s – within these provisions, intentional – act. The evaluation of a piece of content within the NetzDG thus focuses on the respective (objective) crime characteristics, such as the classification of a piece of content as an inciting writing in Section 130, or an insult in Section 185, while leaving the required subjective components (i.e. intent) of the person sharing it out of scope.⁵⁷ Another factor to bear in mind is the limited inducibility from example pieces of content: Assessing the legality of content raises complex questions of interpretation; given most offences are in tension with users’ freedom of expression, their assessment depends on a difficult balancing process which has to take into account the individual context of the statement.⁵⁸

This document aims to provide an overview of the most relevant⁵⁹ of the provisions regarding their scope in relation to online content, and of pieces of content that have been found to fall under these provisions by German courts or expert panels within

the NetzDG’s self-regulatory mechanism.⁶⁰ This serves as additional background; the basis for the legal assessment within the analysis remains a comprehensive evaluation against national criminal law provisions, relevant jurisdiction and literature.

Criminal law provisions relevant in the context of NetzDG

Against this background, the most relevant criminal provisions are:

- Section 86: Dissemination of propaganda material of unconstitutional and terrorist organizations
- Section 86a : Use of symbols of unconstitutional and terrorist organizations
- Section 91 : Instructions for committing serious violent offence endangering state
- Section 111: Public incitement to commit offences
- Section 126: Disturbing public peace by threatening to commit offences
- Section 130: Incitement of masses
- Section 131: Depictions of violence
- Section 140: Rewarding and approval of offences
- Section 166: Revilement of religious faiths and religious and ideological communities
- Section 185: Insult
- Section 186: Malicious gossip
- Section 187: Defamation
- Section 189: Defiling memory of dead
- Section 241: Threatening commission of serious criminal offence

Section 86: Dissemination of propaganda material of unconstitutional and terrorist organizations

Section 86 covers the making available to the public in Germany of propaganda material of unconstitutional organizations, that is intended to further the activities of a specific former National Socialist organization (no. 4), such as the NSDAP or SS. The mere reproduction of their propaganda, without further “updating” additions, consequently does not fulfil the offence⁶¹ (but may fall under Sections 86a or Section 130). Covered is, for example, the depiction of a fist piercing a hammer and sickle with the inscription “Rotfront verrecke” (red front die).⁶² A general praise of Nazi policies – without reference to a specific organization – is not propaganda within the meaning of the provision.⁶³ The provision also covers making available propaganda of terrorist organizations listed by the EU.⁶⁴

Section 86a : Use of symbols of unconstitutional and terrorist organizations

Section 86a bans the use of symbols of these organizations (such as the Swastika, but also of other forms of signs, such as the Nazi salute, or specific songs) from political life, establishing a communicative “taboo”; the provision does not require that the offender is in favor of the aims of one of the parties or associations designated in Section 86 (1),⁶⁵ but bans the symbols as such, in order to avoid any appearance that unconstitutional organizations could, pursue their revival and that their symbols would be tolerated.⁶⁶ The use of the symbol of an unconstitutional organization in a representation whose content expresses opposition to the organization in an obvious and unambiguous manner does not constitute “use”;⁶⁷ the same goes for contexts in which the symbol is clearly employed to accuse the respective other of “Nazi methods”.⁶⁸ Pursuant to para. 3 in connection with Section 86 para. 4, the use is also not illegal in the context of civic education, art, research or teaching.

Within recent case law, a photo posted to Facebook in which the user was giving the Hitler salute was found to violate Section 86a,⁶⁹ as well as – numerous – uses of the swastika within collages of vaccine passports in the context of the COVID-19 pandemic.⁷⁰

Section 91 : Instructions for committing serious violent offence endangering state

Section 91 para. 1 No. 1 covers the sharing of “terror manuals”, that is promoting or making available content likely to serve as instruction for a serious act of violence endangering the state (as per Section 89a (1)), if the circumstances of the dissemination are likely to promote or arouse the willingness of others to commit a serious act of violence endangering the state.

Section 111: Public incitement to commit offences

Section 111 covers both the “successful” as well as “unsuccessful” public inciting of the commission of an unlawful act, which can also be realized through disseminating content. The “incitement” requires an appellative character beyond mere endorsement, hint or recommendation.⁷¹ In addition, the statement must at least give the impression of seriousness, and be directed towards a certain conduct of the recipient.

For instance, a post on a public Facebook-profile, offering a 200 Euro payment for the killing of the users' ex-partner, alongside photos and location information has been found to violate the objective characteristics of Section 111.⁷²

Section 126: Disturbing public peace by threatening to commit offences

Section 126 para. 1 covers threatening (para.1) or falsely pretending an imminent (para. 2) commission of a number of serious criminal offences (among others crimes against sexual self-determination, murder and aggravated forms of bodily harm). This threat needs to be articulated "in a manner suited to causing a disturbance of the public peace", thus it has to be apt to undermine the confidence of the population in public security under the law, or by creating a "psychological climate" in which acts such as those threatened can be committed.⁷³

Multiple posts of "announcements" / threats of imminent school shootings have been found to violate the provision,⁷⁴ as well as other calls for "lynching" on the internet.⁷⁵

Section 130: Incitement of masses

Section 130 on the incitement of masses covers acts irrespective of the medium within which they are committed, thus also on online platforms;⁷⁶ it can be roughly differentiated into three areas:

Section 130 (1) relates to expressions that incite hatred against (No. 1) or insult (No. 2) a national, racial, religious, or ethnic group, or individuals on account of their belonging to one of these groups, or other societal groups⁷⁷ in a manner "suited to causing a disturbance of the public peace". This disturbance can, for instance, result from the suitability of a piece of content to affect the sense of security of the group it refers to. In practice, a public comment was found to be covered by Section 130 (1) that read:

"In your face!!! This Jew to the concentration camp and that is it ... I can't take it any more, this shit everywhere!!!!".⁷⁸

Section 130 (2) relates more broadly to any dissemination of content that contains the same expressions covered by para 1., but without requiring the suitability to disturb public peace (thus also prescribing a lesser penalty). Statements that have found to be in violation of § 130 (2) include:

“Fences just don’t do anything. Teller mines seem more suitable to me.” (on a post about border fences against refugees).⁷⁹

Section 130 (3) and (4) reference specific forms of denying or approving the genocide committed under the National Socialist Regime.⁸⁰ An example for piece of content that has been identified as in violation of Section 130 (3) include a picture collage equating vaccination campaigns, with the Holocaust with the slogan “Impfen macht frei” (alluding to the phrase “Arbeit macht frei” known for appearing on entrances of Nazi concentration camps).⁸¹

Section 131: Depictions of violence

Section 131 refers to content that describes cruel or otherwise inhuman acts of violence against humans in a manner which glorifies or downplays such acts of violence or which represents the cruel or inhuman aspects of the event in a manner which violates human dignity. A mere depiction of inhuman or dignity-violating is thus insufficient. In addition the manner of presentation has to glorify or banalize the event, or represent the cruel or inhuman aspects counter to human dignity (such as by serving only to create sadistic feelings of the addressee).

In practice, a Facebook post depicting a video of a child being bitten by soldier’s military dogs was seen not to violate Section 131, as it could not be found that the manner in which the – cruel and inhuman – content was presented glorified the act or violated human dignity.⁸²

Section 140: Rewarding and approval of offences

The public approving of a concrete, prior, unlawful act in a manner which is suited to disturb public peace can be sanctioned by Section 140 No. 2. The protection of public peace is intended to “prevent the creation of a psychological climate in which similar misdeeds can flourish”.⁸³ The provision is prosecuted “extremely rarely”,⁸⁴ although currently a debate about the circumstances under which the use of the “Z” symbol as a sign of solidarity with Russia in the context of its war of aggression is an approval of an offence is being led.⁸⁵

In practice, comments found to violate Section 140 No. 2 include “Victory to the freedom fighters” as a comment on a news article regarding a terror attack;⁸⁶

“Not a single second of silence for these creatures” in relation to the murder of two police officers;⁸⁷

“Can you also drop by here after your work is done (...)? We, the people, are on your side!”, addressing Vladimir Putin in the context of the war against Ukraine.⁸⁸

Section 166: Revilement of religious faiths and religious and ideological communities

Reviling the religion or ideology of others in a manner suited to causing a disturbance of the public peace⁸⁹ is criminalized by Section 166, although the provision is prosecuted extremely rarely.⁹⁰ Pieces of content that were identified as violating Section 166 include

“(...) the Muslims are worshipping Adolf Hitler until this day, and celebrate him for this”;⁹¹

“No it is a Murderideology!” (referring to islam).⁹²

Section 185: Insult

Section 185 protects the honor of individuals against untrue statements of fact and against value judgments that express the offenders’ disregard of the affected person. As within other provisions, the interpretation of a statement has to take into account fundamental rights of the speaker, such as their freedom of expression or artistic freedom. Examples for pieces of content that were identified as violations of Section 185 include:

“Who are you scaring, old pigcat, with the Volkssturm? Russian? Shut your filthy mouth or we’ll turn up on your doorstep again, like in 1945. A vile, fascist shit.”;⁹³

“[...] for all of you who don’t just want to make big speeches here. This paedophile filthy pig must be expelled from society by you!”⁹⁴

““The disgusting cunt [...] stinks all the way to Ukraine”;⁹⁵

“I used to think [...] was mentally retarded, meanwhile my opinion has also changed 360 degrees.”;⁹⁶

“While his party colleague, the antisemite [...] keeps sitting on the post of a vice president of the Bundestag”.⁹⁷

“The dirty pig Federal Minister of the Interior F. now wants to oppress the German people with all her might, like in the GDR in 1953. She is the worst German asshole”.⁹⁸

Section 186: Malicious gossip

Asserting or disseminating a fact about another person which is suited to degrading that person or negatively affecting public opinion about them, which is sanctioned by Section 186, unless this fact can be proved to be true. Examples include comments containing:

- an unfounded claim that another person has AIDS;
- an unfounded claim that a murdered politicians’ son was involved in the assassination. ⁹⁹

Section 187: Defamation

Section 187 refers to knowingly asserting or disseminating an untrue fact about another person which is suited to degrading that person or negatively affecting public opinion about that person.

For online content, the requirement of knowledge of the falsehood of the fact is often difficult, which leads to a stronger reliance on Section 186; the most frequent examples for violations of Section 187 online are posts assigning fictitious quotes to politicians.¹⁰⁰

Section 189: Defiling memory of dead

Defiling the memory of a deceased person is sanctioned by Section 189; examples include pieces of content exaggerating the criminal history of George Floyd.¹⁰¹

Section 241: Threatening commission of serious criminal offence

Section 241 penalizes threats against individuals of an unlawful act against sexual self-determination, physical integrity, personal liberty against that person or a person

close to them, or against objects of significant value (para 1, para 2). The provision also penalizes pretending that a serious criminal offense against another person is imminent (para 3).

Content assessed to fulfill Section 241 include:

“I warn you one last time, separate or your blood or your mother’s will flow”

“I will raze your childhood home to the ground and take everything that means anything to you (...)

You apologize to me and send me back my bracelet or it’s your turn (...);

“(...) I will skin her boyfriend like a lamb and afterwards he will taste the lead (...)”¹⁰²

Appendix C: Legal Note: Relevant Swedish legislation for assessing the legality of expressions

We conducted a legal analysis of the comments in the report and the criminal law provisions that may be invoked in connection with expressions made on the internet.

We found that the most relevant Swedish criminal law provisions are:

- Criminal Code¹⁰³ Chapter 4 Section 5, on threats,
- Criminal Code Chapter 5 Section 1, on defamation,
- Criminal Code Chapter 5 Section 3, on insulting behavior,
- Criminal Code Chapter 16 Section 5, on incitement to commit a crime,
- Criminal Code Chapter 16 Section 8, on agitation against a population group, which encompasses threats and degrading statements based on race, color, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression, and
- Terrorist Offences Act¹⁰⁴ Section 7, on public provocation to commit a terrorist act.

Below is an elaborative review of the mentioned provisions against which the comments have been assessed.

The Swedish Criminal Code Chapter 4 Section 5

According to chapter 4 Section 5 of the Criminal Code a person who threatens another person with a criminal act in a manner that is liable to cause serious fear in the person threatened, for the safety of their own or someone else's person, property, liberty or peace is guilty of making an *unlawful threat*. The threat has to be directed against "another person", which means that threats directed against the public at large are not encompassed by the provision – the protected person or persons must be identifiable.

The threat does not have to be made directly to the protected person, but the threat must be intended to be brought to the knowledge of the protected person. In the case NJA 2020 p. 510 the Swedish Supreme Court found that statements made on social media constituted unlawful threats under Chapter 4 Section 5. The defendant had stated that he intended to enter a school and shoot those present at the premises.

Chapter 5 Section 1

Chapter 5 Section 1 of the Criminal Code deals with defamation. A person who identifies someone as being a criminal or as having a reprehensible way of life, or otherwise provides information liable to expose that person to the contempt of others is guilty of *defamation*. However, if it was justifiable to provide information about the matter, and if it is shown that the information was true or that there were reasonable grounds for it, the person making the statement is free from criminal responsibility. It is a peculiar feature of the Swedish law on defamation that the truth is not an absolute defense. The truth of the defaming statement is only a relevant defense if it is deemed that it was justifiable to spread the defaming information in question. In determining whether it was “justifiable” or not to spread the information, the public interest of the information is weighed against the intrusion into the private life of the protected person. This means that public figures – such as politicians – will have to accept intrusions to a larger extent than private persons.

Chapter 5 Section 3

Chapter 5 Section 3 of the Criminal Code goes beyond Section 1, by also criminalizing derogatory statements or humiliating conduct directed at another person is, if the act is liable to violate the other person’s self-esteem or dignity (*insulting behavior*). Whereas defamation principally criminalizes derogatory statements of fact, insulting behavior encompasses derogatory value judgments. Another difference between the two provisions is that the principal recipient of defamatory statements is someone other than the protected person, whereas insulting behavior must be directed at the protected person herself.

Chapter 16 Section 5

According to Chapter 16 Section 5 a person who publicly tries to induce others to commit a criminal act, disregard their civic duty or refuse to obey a public authority is guilty

of inciting crime. In minor cases criminal responsibility is excluded. When assessing whether a case is minor, particular consideration is given to whether there was only an insignificant danger that the urging or attempt would be complied with. The criminalization encompasses the incitement of crimes directed to the public at large, it does not include instances where a particular person is induced to commit a certain crime – such behavior can however be criminal according to other provisions in the Criminal Code, see e.g. Chapter 23 Sections 3 and 4.

Chapter 16 Section 8

Chapter 16 Section 8 makes it a criminal offense to make statements that threaten or expresses contempt for a group of people based on their race, color, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression (*agitation against a population group*). For a statement to be in violation of the provision it must target a group of people. Furthermore, the content must be demeaning, or threatening towards one of the protected groups mentioned in the provision. Finally, the comment must have a certain degree of severity. In the case NJA 2020 p. 1083 the Swedish Supreme Court found that a Facebook comment, made in relation to a post containing a link to an article on a crime, was considered to be in violation of the provision. The comment read: “Disgusting Muslim bastard”. The Supreme Court found that even though the comment was formulated as being directed against a specific individual – the person suspected of committing the crime in the article – it also displayed contempt for Muslims in general, and was therefore in violation of Chapter 16 Section 8.

The Terrorist Offences Act Section 7

Section 7 of the Terrorist Offences Act prescribes criminal responsibility for *public provocation* to commit a terrorist act. The criminalization is not limited to publicly inducing others to commit gross terrorist acts such as murder or sabotage, but also covers provocation to commit, inter alia, the offences of recruitment for terrorism, training for terrorism and travel for the purpose of terrorism.

7.4

Appendix D: Data – scope of deleted comments

The following three tables show the scope of deleted comments including uncertainties. CI lower and CI upper show the 95%-level confidence interval ($\alpha = 0.05$) in percentage. Confidence intervals are calculated under the assumption that the two-week period of collection is representative of a normal two-week period.

Confidence intervals are calculated as: $CI_{\hat{p}} = \hat{p} \pm z \cdot \sqrt{\frac{\hat{p}(1-\hat{p})}{n}}$

Where \hat{p} is the estimated proportion of deleted comments, z is the z -value for a double-sided standard normal distribution on 95%-level ($\alpha = 0.05$), and n is the size of the sample.

Scope of deleted comments by platform and country

Country	Platform	Total comments	Comments disappeared	Share	Percentage disappeared	CI lower	CI upper	Uncertainty, %-point
Germany	YouTube	201349	23070	0.11458	11.45772	11.31860	11.59684	0.13912
Germany	Facebook	353378	2065	0.00584	0.58436	0.55923	0.60949	0.02513
France	YouTube	173516	12537	0.07225	7.22527	7.10345	7.34709	0.12182
France	Facebook	353366	4201	0.01189	1.18885	1.15312	1.22459	0.03574
Sweden	YouTube	19905	811	0.04074	4.07435	3.79971	4.34899	0.27464
Sweden	Facebook	175217	813	0.00464	0.46400	0.43218	0.49582	0.03182

Scope of deleted comments among media pages/channels by platform and country

Country	Platform	Total comments <small>(page type: Media)</small>	Comments disappeared <small>(page type: Media)</small>	Share	Percentage disappeared <small>(page type: Media)</small>	CI lower	CI upper	Uncertainty, %-point
Germany	YouTube	191033	22484	0.11770	11.76969	11.62519	11.91420	0.14451
Germany	Facebook	312102	1833	0.00587	0.58731	0.56050	0.61412	0.02681
France	YouTube	142643	11489	0.08054	8.05437	7.91315	8.19560	0.14122
France	Facebook	298065	3614	0.01212	1.21249	1.17320	1.25178	0.03929
Sweden	YouTube	17929	784	0.04373	4.37280	4.07348	4.67213	0.29932
Sweden	Facebook	162576	697	0.00429	0.42872	0.39696	0.46048	0.03176

Scope of deleted comments among political pages/channels by platform and country

Country	Platform	Total comments <small>(page type: Political)</small>	Comments disappeared <small>(page type: Political)</small>	Share	Percentage disappeared <small>(page type: Political)</small>	CI lower	CI upper	Uncertainty, %-point
Germany	YouTube	10316	586	0.05680	5.68050	5.23383	6.12717	0.44667
Germany	Facebook	41276	232	0.00562	0.56207	0.48995	0.63419	0.07212
France	YouTube	30873	1048	0.03395	3.39455	3.19255	3.59655	0.20200
France	Facebook	55301	587	0.01061	1.06146	0.97605	1.14688	0.08541
Sweden	YouTube	1976	27	0.01366	1.36640	0.85453	1.87826	0.51187
Sweden	Facebook	12641	116	0.00918	0.91765	0.75142	1.08387	0.16622

Appendix E: Data – content-based analysis and scope of punishable comments

The tables below show the distribution of content categories in each of the 6 samples used for this report. CI lower and CI upper show the 95%-level confidence interval in percentage. Confidence intervals are calculated as explained in Appendix D above.

France, Facebook

Category	Observations	%	Uncertainty, %-point	CI lower	CI upper
A. Illegal speech	79	7.90	1.67	6.23	9.57
B. Legal hate speech	11	1.10	0.65	0.45	1.75
C. Derogatory speech	96	9.60	1.83	7.77	11.43
D. General expressions of opinion	585	58.50	3.05	55.45	61.55
E. Incomprehensible	46	4.60	1.30	3.30	5.90
F. Spam	183	18.30	2.40	15.90	20.70

France, YouTube

Category	Observations	%	Uncertainty, %-point	CI lower	CI upper
A. Illegal speech	125	12.50	2.05	10.45	14.55
B. Legal hate speech	30	3.00	1.06	1.94	4.06
C. Derogatory speech	154	15.40	2.24	13.16	17.64
D. General expressions of opinion	665	66.50	2.93	63.57	69.43
E. Incomprehensible	26	2.60	0.99	1.61	3.59
F. Spam	0	0.00	-	-	-

Germany, Facebook

Category	Observations	%	Uncertainty, %-point	CI lower	CI upper
A. Illegal speech	3	0.30	0.34	-0.04	0.64
B. Legal hate speech	11	1.10	0.65	0.45	1.75
C. Derogatory speech	62	6.20	1.49	4.71	7.69
D. General expressions of opinion	832	83.20	2.32	80.88	85.52
E. Incomprehensible	31	3.10	1.07	2.03	4.17
F. Spam	61	6.10	1.48	4.62	7.58

Germany, YouTube

Category	Observations	%	Uncertainty, %-point	CI lower	CI upper
A. Illegal speech	11	1.10	0.65	0.45	1.75
B. Legal hate speech	38	3.80	1.19	2.61	4.99
C. Derogatory speech	128	12.80	2.07	10.73	14.87
D. General expressions of opinion	807	80.70	2.45	78.25	83.15
E. Incomprehensible	12	1.20	0.67	0.53	1.87
F. Spam	4	0.40	0.39	0.01	0.79

Sweden, Facebook

Category	Observations	%	Uncertainty, %-point	CI lower	CI upper
A. Illegal speech	44	5.41	1.56	3.86	6.97
B. Legal hate speech	10	1.23	0.76	0.47	1.99
C. Derogatory speech	11	1.35	0.79	0.56	2.15
D. General expressions of opinion	457	56.21	3.41	52.80	59.62
E. Incomprehensible	51	6.27	1.67	4.61	7.94
F. Spam	240	29.52	3.14	26.38	32.66

Sweden, YouTube

Category	Observations	%	Uncertainty, %-point	CI lower	CI upper
A. Illegal speech	44	5.43	1.56	3.87	6.98
B. Legal hate speech	152	18.74	2.69	16.06	21.43
C. Derogatory speech	20	2.47	1.07	1.40	3.53
D. General expressions of opinion	555	68.43	3.20	65.24	71.63
E. Incomprehensible	25	3.08	1.19	1.89	4.27
F. Spam	15	1.85	0.93	0.92	2.78

Appendix F: Moderation – overview of guidelines and rules

Under the collection of pages/channels own rules of moderation several dead links were found. In addition, the table below alone reflects rules of moderation presented on the YouTube channel or Facebook page – for instance under the “About”-tab on Facebook.

The category ‘Rule against illegal expressions’ encompasses only instances where it explicitly states that illegal expressions will be moderated.

Country	Platform	Type	Name	Followers/ subscribers	Guidelines for debate	Rules against fake profiles / anonymity	Rule regarding content relevance to the post	Rule against profanity and/or hate speech	Rule against illegal expressions	Rule against commercial content
France	Facebook	media	France24	12500000	Yes	No	Yes	Yes	Yes	No
France	Facebook	media	Brut	7730000	No	No	No	No	No	No
France	Facebook	media	RFI	5940000	Yes	No	Yes	Yes	Yes	No
France	Facebook	media	TF1	5700000	No	No	No	No	No	No
France	Facebook	media	L'Équipe	5650000	No	No	No	No	No	No
France	YouTube	media	France24	2720000	No	No	No	No	No	No
France	YouTube	media	Brut	1680000	No	No	No	No	No	No
France	YouTube	media	bfmtv	1570000	No	No	No	No	No	No
France	YouTube	media	Le Monde	1550000	No	No	No	No	No	No
France	YouTube	media	LeHuffPost	1170000	No	No	No	No	No	No
France	Facebook	politician	Emmanuel Macron	4700000	No	No	No	No	No	No
France	Facebook	politician	Marine Le Pen	1700000	No	No	No	No	No	No
France	Facebook	politician	Jean-Luc Mélenchon	1400000	No	No	No	No	No	No
France	Facebook	politician	François Ruffin	764000	No	No	No	No	No	No
France	Facebook	politician	Nicolas Dupont-Aignan	658000	No	No	No	No	No	No

France	YouTube	politician	Jean-Luc Mélenchon	830000	No	No	No	No	No	No
France	YouTube	politician	Eric Zemmour	455000	No	No	No	No	No	No
France	YouTube	politician	Florian Philippot	451000	No	No	No	No	No	No
France	YouTube	politician	Emmanuel Macron	304000	No	No	No	No	No	No
France	YouTube	politician	François Ruffin	241000	No	No	No	No	No	No
Germany	Facebook	media	Arte	3500000	No	No	No	No	No	No
Germany	Facebook	media	Bild	2700000	Yes	No	No	Yes	Yes	Yes
Germany	Facebook	media	Der Spiegel	2200000	Yes	No	Yes	Yes	Yes	Yes
Germany	Facebook	media	Welt	1800000	Yes	No	Yes	Yes	Yes	Yes
Germany	Facebook	media	SPORT1	1600000	Yes	No	No	No	No	No
Germany	YouTube	media	Deutsche welle	4580000	Yes	No	Yes	Yes	No	Yes
Germany	YouTube	media	Arte	1820000	Yes	No	Yes	Yes	No	Yes
Germany	YouTube	media	Der Spiegel	1630000	No	No	No	No	No	No
Germany	YouTube	media	SPORT1	828000	No	No	No	No	No	No
Germany	YouTube	media	Bild	1460000	Yes	No	No	No	No	No
Germany	Facebook	politician	Sahra Wagenknecht	627000	No	No	No	No	No	No
Germany	Facebook	politician	Alice Weidel	341000	No	No	No	No	No	No
Germany	Facebook	politician	Christian Lindner	253000	No	No	No	No	No	No
Germany	Facebook	politician	Markus Söder	223000	No	No	No	No	No	No
Germany	Facebook	politician	Jens Spahn	153000	Yes	No	No	No	No	No
Germany	YouTube	politician	Sahra Wagenknecht	659000	No	No	No	No	No	No
Germany	YouTube	politician	Alice Weidel	156000	Yes	No	Yes	Yes	Yes	Yes
Germany	YouTube	politician	Stephan Brandner	48600	No	No	No	No	No	No
Germany	YouTube	politician	Peter Boehringer	42300	No	No	No	No	No	No
Germany	YouTube	politician	Roger Beckamp	50400	No	No	No	No	No	No
Sweden	Facebook	media	Aftonbladet	536000	Yes	Yes	Yes	Yes	No	Yes
Sweden	Facebook	media	Expressen	536000	Yes	No	Yes	Yes	No	No
Sweden	Facebook	media	NewsNer	580000	No	No	No	No	No	No
Sweden	Facebook	media	TV4	556000	No	No	No	No	No	No
Sweden	Facebook	media	SVT	589000	Yes	No	No	No	No	No
Sweden	YouTube	media	Riks	103000	No	No	No	No	No	No
Sweden	YouTube	media	Cluee News	244000	No	No	No	No	No	No
Sweden	YouTube	media	Sportbladet	24800	No	No	No	No	No	No
Sweden	YouTube	media	Världen i dag	20100	No	No	No	No	No	No
Sweden	YouTube	media	Samnytt	32600	No	No	No	No	No	No

Sweden	Facebook	politician	Ulf Kristersson	65000	Yes	Yes	Yes	Yes	No	No
Sweden	Facebook	politician	Ebba Busch	87000	No	No	No	No	No	No
Sweden	Facebook	politician	Magdalena Andersson	98000	No	No	No	No	No	No
Sweden	Facebook	politician	Jimmie Åkesson	185000	No	No	No	No	No	No
Sweden	Facebook	politician	Nooshi Dadgostar	41000	No	No	No	No	No	No
Sweden	YouTube	party	Sverigedemokraterna	78100	No	No	No	No	No	No
Sweden	YouTube	party	Vänsterpartiet	5450	No	No	No	No	No	No
Sweden	YouTube	party	Socialdemokraterna	13400	No	No	No	No	No	No
Sweden	YouTube	party	Medborgerlig Samling	8050	No	No	No	No	No	No
Sweden	YouTube	party	Alternativ för Sverige	16200	No	No	No	No	No	No

Appendix G: Samples scaled to one year

The calculations below are based on the assumption that a) all three collection periods are representative for a normal week and b) that a year consists of 52 weeks. 52 weeks is equivalent to 364 days, which is 1,25 days less than the average number of a year (365,25 days due to leap year).

Country	Platform	Collection period				Scaled to one year			
		Comments disappeared	Percentage disappeared	CI lower (%)	CI upper (%)	Total comments	Deleted comments	Deleted comments, lower bound	Deleted comments, upper bound
Germany	YouTube	23,070	11.46	11.32	11.60	5,235,074	599,820	592,537	607,103
Germany	Facebook	2,065	0.58	0.56	0.61	9,187,828	53,690	51,381	55,999
France	YouTube	12,537	7.23	7.10	7.35	4,511,416	325,962	320,466	331,458
France	Facebook	4,201	1.19	1.15	1.22	9,187,516	109,226	105,943	112,509
Sweden	YouTube	811	4.07	3.80	4.35	517,530	21,086	19,665	22,507
Sweden	Facebook	813	0.46	0.43	0.50	4,555,642	21,138	19,688	22,588

Aggregated by country

Germany	-	25,135	4.53	4.48	4.59	14,422,902	653,510	645,616	661,404
France	-	16,738	3.18	3.13	3.22	13,698,932	435,188	428,701	441,675
Sweden	-	1,624	0.83	0.79	0.87	5,073,172	42,224	40,179	44,269

All samples aggregated

-	-	43,497	3.41	3.38	3.44	33,195,006	1,130,922	1,141,367	1,120,477
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Notes

- 1 https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348
- 2 <https://www.reuters.com/article/idUSL1N2HZOR4/>
- 3 https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348
- 4 <https://www.elysee.fr/en/emmanuel-macron/2018/11/12/speech-by-m-emmanuel-macron-president-of-the-republic-at-the-internet-governance-forum>
- 5 <https://www.politico.eu/article/social-media-riot-shutdowns-possible-under-eu-content-law-breton-says/>;
<https://www.politico.eu/article/macron-mulls-cutting-access-social-media-during-riots/>
- 6 <https://www.accessnow.org/press-release/commissioner-breton-responds-dsa/>
- 7 <https://transparency.fb.com/policies/improving/content-actioned-metric/>
- 8 EuroStat, (ISOC_CI_AC_I), see: https://doi.org/10.2908/ISOC_CI_AC_I
- 9 <https://transparencyreport.google.com/youtube-policy/removals>
- 10 <https://futurefreespeech.org/scope-creep/>
- 11 https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348
- 12 https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/04/DSA_Commentary.pdf
- 13 See, for example, the paper ‘Evaluating the Regulation of Social Media: An Empirical Study of the German NetzDG and Facebook.’

Although some aspects of the methodology in this report are similar to other studies, there are significant differences as well. This report primarily provides an overview of the situation in three different countries. Furthermore, we monitored each collected comment at 10-minute intervals over a 48-hour period in 2023, by which time the NetzDG (for the German pages and channels) was expected to be fully implemented. This approach allowed us more than 140 opportunities to determine if comments were deleted, and the brief 10-minute intervals ensured that any automated deletions (e.g., by AI) had to occur rapidly, otherwise, we could detect them. Another notable difference in this report relates to the process of determining which comments should be deleted based on legality. In our report, samples of comments were initially coded by legal experts specialized in the respective countries under examination. Subsequently, the parts deemed legal were categorized by native speakers from each country. We believe this method is superior to, for example, sentiment analysis of comment tracks, as legality cannot necessarily be inferred from sentiment.
- 14 <https://futurefreespeech.org/report-the-wild-west-illegal-comments-on-facebook/>
- 15 EuroStat, (ISOC_CI_AC_I), see : <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20210630-1>

The percentages are reflection the situation in 2020. France’s figure is from 2019 due to unavailability in 2020.
- 16 https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0034, Article 5
- 17 <https://www.riksdagen.se/globalassets/05.-sa-fungerar-riksdagen/demokrati/the-instrument-of-government-2023-eng.pdf>, Chapter 2
- 18 <https://www.riksdagen.se/globalassets/05.-sa-fungerar-riksdagen/demokrati/the-freedom-of-the-press-act-2023-eng.pdf>
- 19 <https://www.riksdagen.se/globalassets/05.-sa-fungerar-riksdagen/demokrati/the-fundamental-law-on-freedom-of-expression-2023-eng.pdf>
- 20 The Future of Free Speech Index:
<https://futurefreespeech.com/interactive-map/>
- 21 Both Facebook (Meta) and YouTube (Google) have defined community standards which are defining the boundaries of the public conversation at the platform. Find the community standards here:

Facebook: <https://transparency.fb.com/policies/community-standards/>

YouTube: <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>
- 22 According to Article 23 (Incite to crimes and misdemeanors), in Law of July 29, 1881 On Freedom Of The Press Chapter IV, Paragraph 1
- 23 § 140 No. 2 StGB: In referring to a video of a truck driver deliberately running over a climate activist blocking the street, and calling for him to receive a medal, the comment is an illegal public approval of a prior offense listed in §§ 140,126 para. 1 No. 4 StGB (namely of dangerous bodily harm, §224 no. 2 StGB).
- 24 Criminal Code Chapter 16 Section 8: Agitation against a population group
- 25 See what is defined as protected characteristics in ECRI’s glossary under ‘Hate speech’
- 26 In section 3.1 the report is investigating the scope of deleted comments. In this specific section the data population is all comments collected from the source population – and not only the deleted comments collected from the source population.
- 27 The Swedish data population and sample are equal due to the size of the Swedish data population.
- 28 Facebook’s community standards: <https://transparency.fb.com/da-dk/policies/community-standards/>

YouTube’s community standards: <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>
- 29 Facebook’s NetzDG Transparency Report, July 2023.
- 30 <https://transparencyreport.google.com/netzdg/youtube>
- 31 Russia, Intelligence and Security Committee of Parliament, ordered by the House of Commons, (also known as “The Russia Report”), https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207_CCS0221966010-001_Russia-Report-v02-Web_Accessible.pdf

- 32 Press release: Russian Project Lakhta Member Charged with Wire Fraud Conspiracy, U.S. Department of Justice, Office of Public Affairs, <https://www.justice.gov/opa/pr/russian-project-lakhta-member-charged-wire-fraud-conspiracy>
- 33 Cambridge Analytica and Facebook: The Scandal and the Fallout So Far, The New York Times, <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html>
- 34 Disinformation and Russia's war of aggression against Ukraine: Threats and governance responses, OECD, <https://www.oecd.org/ukraine-hub/policy-responses/disinformation-and-russia-s-war-of-aggression-against-ukraine-37186bde/>
- 35 Both Meta and Google have special rules for these four categories of ads to avoid discrimination and/or promote transparency of advertisers, however the category names may vary a bit.
- For Google see: <https://support.google.com/adspolicy/answer/9997418?hl=en> and for Facebook see: <https://www.facebook.com/business/help/298000447747885>
- 36 Meta's ID-verification by users: <https://www.facebook.com/help/314201258613998> and Meta's business verification: <https://www.facebook.com/business/help/109566147394687?id=180505742745347>.
- Read more about Google's verification process here: <https://support.google.com/adspolicy/answer/9703665#900>
- 37 See Meta's rules: <https://www.facebook.com/business/help/208949576550051?id=288762101909005> and Google's: <https://adstransparency.google.com/political>
- 38 Meta's: <https://www.facebook.com/ads/library> and Google's <https://adstransparency.google.com/>
- 39 See Art. 3 lit. h) DSA where illegal content is defined as "any information that, in itself or in relation to an activity (...) is not in compliance with union law or the law of any Member State", raising concerns of a "race to the bottom" for content that is legal in one member state and lawful in another, cf. Hofmann in Raue/Hofmann (eds.) DSA/DMA Article-by-Article Commentary, Art. 3 margin no. 81; Maamar in Kraul (ed.), Der neue DSA S 4 margin no. 77 (both in German).
- 40 Facebook's rules about nudity: <https://www.facebook.com/business/help/725672454452774?id=208060977200861>
- There is numerous examples of Facebook censoring content showing nudity (without involving sexual activity). Among the examples of censored content are: the historic Pulitzer Prize winning image "Napalm Girl", the book cover to the Danish book "Hippie" showing one naked breast and links to the authors webpage, several pieces of art, etc.
- <https://www.aftenposten.no/meninger/kommentar/i/G892Q/dear-mark-i-am-writing-this-to-inform-you-that-i-shall-not-comply-with-your-requirement-to-remove-this-picture>
- <https://glasstire.com/2018/12/15/facebook-and-the-art-of-censorship/>
- 41 <https://transparency.fb.com/en-gb/enforcement/detecting-violations/technology-detects-violations/>
- 42 <https://transparencyreport.google.com/youtube-policy/removals>
- 43 <https://transparencyreport.google.com/youtube-policy/removals?hl=en>
- 44 <https://transparencyreport.google.com/youtube-policy/removals>
- 45 See <https://transparency.fb.com/sr/dsa-report-aug2023/>
- 46 https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-24_2023-1-1_2023-6-30_en_v1.pdf
- 47 <https://transparency.fb.com/reports/community-standards-enforcement/dangerous-organizations/facebook/>
- 48 <https://royalsocietypublishing.org/doi/full/10.1098/rsos.221227>
- 49 For those interested in The Future of Free Speech's recommendations on approaches to the issue of dealing with harmful speech online see, for example, <https://futurefreespeech.org/a-framework-of-first-reference-decoding-a-human-rights-approach-to-content-moderation-on-social-media/> and <https://futurefreespeech.org/thoughts-on-the-dsa-challenges-ideas-and-the-way-forward-through-international-human-rights-law/>
- 50 Cour de cassation, criminelle, Chambre criminelle, 15 octobre 2019, 18-85.365, Inédit, ECLI:FR:CCASS:2019:CR01823, available at: https://www.legifrance.gouv.fr/juri/id/JURITEXT000039285274?init=true&page=1&query=provocation+a+la+haine+raciale&searchField=ALL&tab_selection=all
- 51 Cour de cassation, criminelle, Chambre criminelle, 17 mars 2015, 13-87.922, Publié au bulletin, available at: https://www.legifrance.gouv.fr/juri/id/JURITEXT000030381677?init=true&page=3&query=provocation+a+la+haine+raciale&searchField=ALL&tab_selection=all
- 52 Ibid.
- 53 Cour de cassation, criminelle, Chambre criminelle, 15 octobre 2019, 18-85.368, Inédit, ECLI:FR:CCASS:2019:CR01825, available at: https://www.legifrance.gouv.fr/juri/id/JURITEXT000039285275?init=true&page=2&query=provocation+a+la+haine+raciale&searchField=ALL&tab_selection=all
- 54 Cour de cassation, criminelle, Chambre criminelle, 18 janvier 2022, 21-80.611, Inédit, ECLI:FR:CCASS:2022:CR00060, available at: https://www.legifrance.gouv.fr/juri/id/JURITEXT000045067654?init=true&page=1&query=provocation+a+la+haine+raciale&searchField=ALL&tab_selection=all
- 55 Unless specified otherwise, sections cited in this part are referring to the StGB; for an English version see https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf.

- 56 See the Government draft for a “Digitale-Dienste-Gesetz”, Deutscher Bundestag Drs. 20/10031, <https://dserver.bundestag.de/btd/20/100/2010031.pdf>, proposing to repeal every NetzDG provision except one relating to service providers with no office in the EU; the Bundestag has however been advised to instead repeal the NetzDG in its entirety: Mast, Expert Opinion on the DDG-E for the German Bundestag, p. 6, p. 28 et seq., <https://www.bundestag.de/resource/blob/990562/688777df60250ea4d22b717e8131a852/Mast.pdf>. At the time of publication preparation discussion were ongoing regarding Section 5 of the NetzDG and keeping it in force to facilitate the process in cases of civil liability.
- 57 As a case in point, see LG Aachen, 5.9.2012, 94 Ns 27/12 – MMR 2013, 269 and AG Wolfratshausen, 25.3.2013, 2 Cs 11 Js 27699/12 – MMR 2014, 206; in both cases the defendants had posted threats of a School Shooting on Facebook which fulfilled the objective elements of Section 126; they were however ultimately not criminally liable, because they could claim to have assumed that the Facebook entries in question would only be read by the small number of persons that were their Facebook friends, thus not acting with sufficient intent regarding the disturbance of public peace under Section 126.
- 58 For context assessments, BVerfG, 24.01.2018 – 1 BvR 2465/13, at 18, with further references.
- 59 The criminal offenses which are referred to by the NetzDG, but not expanded on below due to their comparatively little practical relevance for the analysis are: Section 89a (Preparation of serious violent offence endangering the state); Section 100a (Treasonous forgery – spreading false information about government documents, weapons systems and the like, cf. BeckOK StGB/Ellbogen, § 100a at 2.); Section 128 – 129b (Forming and supporting armed, criminal and domestic or foreign terrorist organizations, which can also be committed through communication if it is “objectively useful” to the organization, see BGH, 19.4.2018 – 3 StR 286/17); Section 184b (Dissemination, procurement and possession of child pornographic content); Section 201a (Violation of intimate privacy and of rights of personality by taking photographs or other images); Section 269 (Forgery of data of probative value).
- 60 Freiwillige Selbstkontrolle Multimedia-Diensteanbieter (FSM), as „Einrichtung der Regulierten Selbstregulierung“ pursuant to Section 3 (6) NetzDG.
- 61 BGH, 25.07.1979 – 3 StR 182/79.
- 62 BGH MDR 1994, 238.
- 63 BeckOK StGB/Ellbogen § 86 StGB at 20.
- 64 Under Regulation No 2580/2001 of 27 December 2001.
- 65 BGH, 18.10.1972 – 3 StR 1/71; BVerfG, 23.03.2006 – 1 BvR 204/03.
- 66 BGH, 18.10.1972 – 3 StR 1/71.
- 67 BGH, 15.03.2007 – 3 StR 486/06.
- 68 OLG Koblenz, 28.01.2008 – 1 Ss 331/07 (shouting “Sieg Heil” during a police check, where it was clear from the circumstances that this was meant to accuse the police officers of „Nazi methods“).
- 69 BGH, 19.8.2014 – 3 StR 88/14.
- 70 OLG Braunschweig, 5.10.2022 – 1 Ss 34/22.
- 71 BeckOK StGB/Dallmeyer, § 111 at 4.
- 72 BGH, 26.6.2018 – 1 StR 71/18.
- 73 BGH, 09.08.1977 – 1 StR 74/77; BGH, 19. 5. 2010 – 1 StR 148/10.
- 74 See LG Aachen, 5.9.2012, 94 Ns 27/12 (MMR 2013, 269); and AG Wolfratshausen, 25.3.2013, 2 Cs 11 Js 27699/12 (MMR 2014, 206): in both cases the defendant ultimately lacked subjective intent regarding the disturbance of public peace).
- 75 Ostendorf/Frahm/Doegel NStZ 2012, 529 (533).
- 76 MüKo StGB/Schäfer, § 130 at 14.
- 77 MüKo StGB/Schäfer, § 130 at 30: any group can be protected by Section 130 (1), if it „can be distinguished from the rest of the population on the basis of common external or internal characteristics of a political, national, ethnic, racial, religious, ideological, social, economic, professional, gender or other nature“, as long as the group is „numerically of some significance“.
- 78 OLG Jena 27.9.2016 – 1 OLG 171 Ss 45/16, BeckRS 2016, 128466.
- 79 FSM, Dec. 52374, <https://www.fsm.de/files/2022/03/tellerminen.pdf>.
- 80 The threshold is thus set rather high, requiring a reference to an attack on a group that was directly aimed at destroying their existence, although this is subject to an ongoing debate; for instance, local courts have identified the depiction of a modified “Jewish star” where the word “Jew” was replaced by the words “not vaccinated” or “SUV driver” as a violation, while scholarship maintains a direct reference to an act of genocide as defined in the German law on crimes against international law would be required Hoven/Obert, NStZ 2022, 331.
- 81 BayObLG 20.03.2023 – 206 StRR 1/23.
- 82 BayObLG 14.02.2020 – 207 StRR 8/20.
- 83 BGH 17.12.1968 – 1 StR 161/68
- 84 BeckOK StGB/Heuchemer § 140 Rn. 3.
- 85 OLG Hamburg, 31.01.2023 – 5 Ws 5-6/23; see also Stegbauer, NStZ 2023, 400 (404 et seq.) with further references.
- 86 FSM, Dec. NetzDG 0162023, https://www.fsm.de/files/2023/04/netzdg0162023_voe.pdf.
- 87 More specifically, merely “liking” this comment was deemed by a district court to fulfill the offense in itself: LG Meiningen, 5.8.2022 – 6 Qs 146/22 (AG Meiningen).
- 88 FSM, NetzDG0292022, https://www.fsm.de/files/2022/04/netzdg0292022_voe.pdf.
- 89 On the requirements of disturbance of public peace see above, Section 130.
- 90 For instance, only 30 Persons were convicted for either Sections 166 or 167 in the three years 2016–2018: MüKo/Hörnle § 166 Rn. 5.
- 91 FSM, Dec. NetzDG0882022, https://www.fsm.de/files/2022/11/netzdg0882022_voe.pdf.

- 92 FSM, Dec. NetzDG0282023, https://www.fsm.de/files/2023/05/netzdg0282023_voe.pdf.
- 93 FSM, Dec. NetzDG0902022, https://www.fsm.de/files/2022/12/netzdg0902022_voe.pdf.
- 94 FSM, Dec. NetzDG 0942022, https://www.fsm.de/files/2022/12/netzdg0942022_voe.pdf.
- 95 FSM, Dec. NetzDG0392023, https://www.fsm.de/files/2023/05/netzdg0382023_voe.pdf.
- 96 FSM, Dec. NetzDG0312023, https://www.fsm.de/files/2023/05/netzdg0312023_voe.pdf.
- 97 FSM, Dec. NetzDG0182023, https://www.fsm.de/files/2023/04/netzdg0182023_voe.pdf.
- 98 FSM, Dec. NetzDG0742022, https://www.fsm.de/files/2022/11/netzdg0742022_voe.pdf.
- 99 FSM, Dec. NetzDG 0712022, https://www.fsm.de/files/2022/10/netzdg0712022_voe.pdf.
- 100 Such as LG Frankfurt/M. 8.4.2022 - 2-03 O 188/21; see also FSM, Dec. NetzDG 0802022, https://www.fsm.de/files/2022/11/netzdg0802022_voe.pdf.
- 101 FSM, Dec. NetzDG0312022, https://www.fsm.de/files/2022/05/netzdg0312022_voe.pdf.
- 102 All examples are Facebook-Messages cited in LG Dortmund 22.11.2012 - 44 KLs -110 Js 720/11- 33/12.
- 103 Brottsbalken, SFS 1962:700. An English translation, up to date as of 2020, can be found here: The Swedish Criminal Code (government.se)
- 104 Terroristbrottslag, SFS 2022:666.