

# The EU soft regulation of digital campaigning: regulatory effectiveness through platform compliance to the code of practice on disinformation

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## ABSTRACT

How does the European Union handle the soft regulation of digital political campaigning? We assesses the effectiveness of the EU's soft governance concerning digital campaigning by examining how global digital platforms respond to the EU Code of Practice on Disinformation. In doing so, we advance a framework for analysis which measures specific steps in the platform compliance with soft law. Our results, based on the content analysis of platforms' annual reports, show that compliance depends on the priority assigned to regulatory themes by on-line corporations. Overall, we find higher levels of platform formal commitment rather than symbolic commitment through forms of report editing to signal compliance with the code of practice. Our analysis also shows evidence of implementation following from formal commitments when reporting requirements are less rigid. Consequently, EU soft governance can be effective for digital campaigning in areas prioritised by the addressees of regulation.

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## Introduction

Regulation of digital campaigning has become a topical issue in academic and practitioner spheres in recent years. As the money spent by political parties for electoral digital campaigning is rapidly growing (Electoral Commission 2019), so is the call for regulation. The necessity of regulation is also driven by recent scandals related to Cambridge Analytica's use of Facebook data affecting the Brexit referendum, and ultimately by the necessity to address the global challenge of foreign election interference (Baldwin-Philippi 2019; Ringhand 2021). International institutions have recognized that on-line electoral campaigning has several implications for contemporary democracies

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and needs to be regulated. For instance, the Council of Europe (2017) acknowledged that new techniques for reaching voters could influence the confidence over the integrity of elections and referendums. As digital campaigning spreads as a practice in national and European Union (EU) elections, the European Commission (2018) developed in 2018 the Code of Practice on Disinformation (CPD) by involving and engaging most of the largest social media and digital platform companies.

While initially recognized as a positive direction within the digital sphere of electoral politics (Galais and Cardenal 2017), scholarly literature observed the negative effects of online campaigning due to fake news and computational propaganda which undermine democratic principles (Bayer 2020). The regulation of digital campaigning in particular has been approached from various angles. The normative approach emphasizes the principles to ensure good democratic governance (Gasser and Schultz 2015; Helberger, Pierson, and Poell 2018). Advocates of regulation urge states to adopt measures which address the risk of microtargeting, the lack of transparency in campaign spending, and the insufficient public scrutiny of the digital campaign content (Jaurisch 2020). Another approach emphasizes the need for regulation to focus on communication rights, which should not be solely individual rights but should be linked to the principles of equality and justice (Padovani and Calabrese 2014; Siaperra and Kirk 2022). Finally, the self-regulation through guidance approach considers the lack of hard governance the key to ensure the effective use of digital media within campaigns (Williamson, Miller, and Fallon 2010). We contribute to these strands of literature by developing an analytical framework of company responses to soft regulation.

We focus on the EU's code of practice that can be considered as a new mode of regulatory governance based on co-regulation and self-regulation here defined as a process in which "rules that govern market behaviour are developed and enforced by the governed themselves" (Latzer, Just, and Saurwein 2013, 376) often identified with the term of soft law (Andone and Coman-Kund 2022). Codes of practice provide detailed practical guidance on how to comply with obligations that companies agree to report, leading to the question of whether this type of instrument is sufficient for facing emerging issues (Heldt 2019).

*This article evaluates the effectiveness of EU soft regulation of digital campaigning by investigating how on-line platforms respond to the EU code of practice on disinformation.* Specifically, we analyse variations in the way online platforms commit, act and change their company practices in order to comply with the code of practice. In a positive framework, we understand effectiveness as compliance that is at least partly observable (Karlsson-Vinkhuyzen and Vihma 2009) through the reporting measures (i.e. actual manifestation of the main regulatory output) associated with soft law. We hence focus on behavioural effectiveness (and not outcome effectiveness) by analysing the content of the on-line platforms' reports to the CPD. In other words, in this paper we are interested in the mechanisms of compliance based on the logic of appropriateness. In absence of an independent verification process of the responses to the CPD (ERGA 2019), compliance with the CPD establishes a dialogue between the EU Commission and online platforms which, in turn, constitutes normative commitments as indicated by online platforms. We hence focus on behavioural effectiveness as a proxy of motivation to comply (Karlsson-Vinkhuyzen and Vihma 2009) by analysing the content of the on-line platforms' reports to the CPD.

We argue that in this policy field (digital political campaigning), the EU soft regulation can be effective in areas where there is a match between the priorities of the regulator and those of the addressees of regulation (in this case digital platforms). Our analysis contributes to the literature on EU soft regulation and its effectiveness (Andone and Coman-Kund 2022; Karlsson-Vinkhuyzen and Vihma 2009), to corporate governance and compliance scholarship (Sandholtz 2012) and to an emerging strand of literature on the necessity and challenges faced by states or international organizations when regulating the area of digital campaigning in particular (Baldwin-Philippi 2019; Celeste, Heldt, and Keller 2022; Dommett 2019; Shiner 2019; Siaperra and Kirk 2022) due to the mismatch between the technological knowledge of regulators and technology advances in the field of digital campaigning.

The next section reviews the rapidly emerging literature on digital campaigning, focusing especially on the European context. We then provide a systematic framework for understanding the corporate responses to EU's soft regulatory intervention in digital campaigning and more specifically to the European Commission's CPD. After describing the data and method, we show variation in the social media and digital platform responses. Finally, we conclude by assessing the effectiveness of EU's soft regulation in this policy area.

### ***What we know about the regulation of digital campaigning and its effectiveness***

Regulating the link between elements of on-line communication, the political actors which use them and the implications for citizen's behaviour in a democracy has become a challenge. There is a mismatch between the technological knowledge of regulators and the available methods for online platforms. Additionally the issues caused by micro-targeted campaigns or online marketing techniques seem to be ahead of data protection regulation (Shiner 2019).

To start tackling these issues, the CPD (European Commission 2019) is a 2018 initiative that has a more comprehensive and specific goal to address all the relevant risks of digital campaigning by seeking the voluntary collaboration of the major social media and digital platform transnational companies such as Facebook, Google and Twitter. CPD's main focus is on disinformation more broadly perceived and not exclusively related to elections. The European Commission has initiated and promoted this self-regulation with the goal of getting digital platforms to sign on its content. In line with the concepts of self-regulation, co-regulation and soft governance, the signatories have a large extent of flexibility choosing *if* and *to* achieve compliance with the commitments of the CPD (Heldt 2019, 347). The CPD contains 16 commitments across 5 sections (scrutiny of ad placement, political and issue based advertising, integrity of services, empowering consumers and empowering the research community). The monitoring functions through an annual report submitted by the signatories. Furthermore, since the 2003 Inter-Institutional Agreement on Better Law-Making which proposes the use of alternative regulatory mechanisms, the European Union institutions, and the Commission in particular, have increased the reliance on code of practice for self or co-regulation (Vander Maelen 2022) through non-legislative or private acts. In September 2023, the Database on Self- and Co-Regulation Initiatives listed 89 (out of 100) non-obsolete acts. The choice of soft law is especially common in the information and communications

technologies sector. Either as a temporary or as a permanent alternative to legislation, codes of practice/conduct are “steering instruments” adopted to achieve specific EU policy objectives (Vander Maelen 2022). In June 2022, the European Commission released an updated “Strengthened Code of Practice on Disinformation”. Hard governance in this area followed in 2022 in the form of the Digital Services Act, Digital Market Act and proposals for a Regulation on the transparency and targeting of political advertising (European Commission 2021).

### ***Regulatory frameworks for digital campaigning and their effectiveness***

A growing body of literature focuses on the regulatory models of on-line platforms with regards to digital campaigning. One approach concentrates on the themes (Gasser and Schultz 2015); that regulation of digital campaigning should follow: understanding the function and economics of on-line platforms in the process; the normative dimension of regulation; the evaluation of regulatory mechanisms; the cost of regulation (and over-regulation) and ways to improve the mechanisms of mutual learning. Increasingly, attention is given to regulation in line with public values resulted from an interaction between on-line platforms, users and public institutions (Helberger, Pierson, and Poell 2018).

With regards to the effectiveness of regulatory models, self-regulation through guidance is usually presented as an effective way of using of digital media within campaign (Williamson, Miller, and Fallon 2010). Specifically, according to this perspective, candidates and parties need guidelines on how to use and report their use of digital media. For example in the United Kingdom, regulatory agencies concerned with digital campaigning have proposed regulatory measures to enhance the financial transparency, source transparency, data transparency, and targeting transparency (Dommett 2020). Research into the Facebook Ads library shows that the Ad Library does not provide complete access to all data available. Facebook controls what data is or is not available and this limits the usage of the Ad Library to scrutinize the adverts Facebook allows (Leerssen et al. 2023).

We posit that, especially in this policy field, an institutional regulatory response is triggered by a problem or failure of the Internet and social media environment. The regulatory regimes about digital campaigning proposed in the political science literature are about *risks to democracy and democratic rights* (Bayer 2020; Bene 2017; Howard, Woolley, and Calo 2018) and the policy responses to reduce such risks. Specifically, the *risk of targeting* which has the potential to deteriorate societal debates (Jaursch 2020) and to magnify *the risk of political polarization* (Lewandowsky et al. 2020) could be reduced through regulating transparency. In this context information disclosure is about money spent to target the electorate on-line, advertising transparency on who was targeted, government reports on the extent of voter targeting, and platforms providing expert advice to parties on how data is used to target voters (Dommett 2020). The *risk of unequal access for political parties*, whereby only well-financed political parties can *access digital campaign* allowing them to overflow these information channels, reduces through financial transparency and mechanisms for campaign finance oversight (Jaursch 2020). The *risk of lack of public scrutiny* can be reduced through source transparency. In this case, public repositories/archives of political campaign advertisement become a necessity in order for digital campaign messages to be legally accessed and researched.

The main principles tackled by the EU's CPD largely address the problems and the risks for citizens as identified by the literature discussed above. The EU Commission has addressed the risk of online and social media disinformation and microtargeting of voters through the illegal processing of personal data by regulating the transparency of on-line political advertising. Specifically, the EU regulatory landscape is composed of the General Data Protection Regulation (GDPR), the European Commission's initiative for self-regulation of social media and internet platforms through the CPD, and non-binding European Commission's recommendations to the member states (Nenadić 2019). In this emerging composite regulatory regime and rapidly evolving digital market environments, we start by assessing the effectiveness of soft regulation in the form of CPD.

As a clear example of soft regulation which entails the sharing of best practices, guidelines, benchmarks or recommendations, CPD lacks of an enforcement mechanism for compliance. This is also why a large body of literature considers the EU soft governance of various policies largely ineffective when assessing compliance by member states (Mungiu-Pipidi 2015; Sedelmeier 2012). Contrary to this, we align with the literature which argues that soft regulation could work well for policy areas in which agreement is hard to achieve given the diversity of regulatory subjects (Borz 2019; Buonanno and Nugent 2020; Terpan and Saurugger 2021). This is further substantiated by the fact that in digital campaigning, where the subjects of EU regulation are global corporations and not member states, a soft approach to policy instruments can be an effective way to start addressing EU legitimacy questions (Borrás and Jacobsson 2004). As a self-regulatory tool from the side of corporations, CPD is more flexible than command-and-control regulation to respond to risks associated to disinformation, facilitating private companies to take proactive measures. An additional reason for the adoption of CPD rather than harder modes of governance based on traditional regulatory regimes and sanction is related to the complexity to hold digital companies liable and accountable for the creation of disinformation (for an overview of the European Commission's motivations to self-regulate digital information see Wolfs and Veldhuis 2023). Global corporations will be more willing to comply as they have more room for manoeuvre in designing and reporting actions they could realistically implement. We posit that effectiveness (types of compliance) depends on the priority assigned to the regulatory themes by co-regulators (EU and on-line companies).

### ***Argument and theory***

In a policy field where the addressees of regulation are not individuals or states but companies, the risks identified by the main regulator (the EU Commission) and the addressees of regulation (on-line platforms) may not coincide. This will further influence the level of compliance and henceforth effectiveness of regulation. Companies identify and prioritize profit, reputation and liability risks (Arjoon 2000). Overall, the business risks relate to companies' operational processes (Rosemann and zur Muehlen 2005) in terms of design (goal risk and structural risk) and the execution of companies' processes (data, technology, operational risks). Companies' voluntary compliance is likely to depend on the identification and prioritization of corporate risks (Rosemann and zur Muehlen 2005; Yu, Hwang, and Huang 1999). In what follows, we develop an argument for companies' varied responses to soft regulation.

We argue that the effectiveness of EU soft regulation in the area of digital campaigning depends on the salience of various regulatory themes for the EU as a governing body and for the on-line platforms as global corporations and signatories of such regulation. As the main regulator is a public body and the private bodies are global corporations, we expect discrepancies between their priorities in addressing the risks encountered by citizens during digital political campaigning. Overall, we expect an asymmetrical responsiveness from the side of on-line companies in regulatory areas where there is a mismatch of priorities.

As corporations aim to minimize the risk of losing consumers and the threat of future hard law regulation (which was already announced by the European Commission (2021)), they will invest in their public image, and attempt to alleviate any negative implications of digital campaigning for their users. One option is to show only symbolic compliance or ceremonial commitment (Lim and Tsutsui 2011) and low willingness or capacity for change and improvement of practices in digital political campaigning. The other options are to show strong commitment, targeted actions, and ultimately, implementation.

Most literature on corporate governance focuses on a binary conceptualization of compliance: either coupled or decoupled compliance (when practices follow formally designed organizational processes or not) (MacLean and Behnam 2010; Sandholtz 2012), or ceremonial vs substantive commitment (Meyer and Rowan 1977). We build on these approaches and advance a framework, which considers various stages in the compliance continuum and the priority attributed to regulatory themes. We also separate types of commitment from implementation as they all might be influenced by intervening variables such as the salience of the regulatory issue. Companies will make use of these stages depending on the priority assigned to specific regulatory issues. More specifically, we expect formal commitment and implementation to be strong in regulatory areas prioritized by individual corporations. Conversely, we anticipate symbolic commitment and cost-effective corporate changes to be high in less prioritized areas. Additionally, given the non-binding nature of soft law, we do not expect high levels of formal commitment (on paper) to be followed by high levels of implementation in less salient areas.

We advance a framework for assessing the effectiveness of EU soft regulation along several dimensions with application to companies' behaviour. The indicators correspond to the possible company responses in terms of their narrative (i.e. dialogue with the public authorities and other stakeholders) about internal rules, procedures and actions. Consequently, we examine the platforms' behaviour by analysing: (1) *symbolic commitment* (written *agreement* to regulatory principles, no clear commitment taken), (2) *formal commitment* (written *pledge* to implement principles and actions: new procedures and policies), (3) *the implementation* of EU's soft law (reported actions aligned with commitments taken); (4) *corporate governance changes* (reported organizational and procedural changes as a response to soft regulation).

### **Platform responsiveness to EU regulation**

Being the signatory to a code of practice initiated by an international organization (see Kolk and Tulder 2005), can be the first step in showing minimal intention to comply. Codes of conduct are an emerging governance mechanisms within the public and



private spheres used by the European Commission in disparate policy sectors such as arm sale, food, nanotechnology and illegal hate speech. As a form of self-regulation codes of conducts or practice are “mechanisms within the public and private spheres with the goals of managing potential risks while promoting development” (Bowman and Hodge 2009, 147). These codes are essentially based on agreed principles and standards providing guidelines on how firms should change in order to tackle market failures and environmental or societal risks.

Codes of conduct are based on commitment to follow non-mandatory standards resulting in the adoption of internal policy at the firm level (Gunningham and Rees 1997). The EU’s CPD is a co-regulatory instrument based on a set of principles and commitments. Consequently, when developing their own policies to comply with best practices, firms replicate a normative template. This replication process is facilitated by the annual reporting and accounting process embedded in the agreement with the code. However, there is evidence of firms’ substantial deviations from a normative template. Companies can select the issues to address and decide to what extent the selected issues are taken into consideration (Okhmatovskiy 2017, 501–505). This discretion is magnified by the editing process that is inherent in the companies’ compliance reports. Because of the voluntary nature of the CPD, which is as other codes based on the “comply-or-explain” principle (Shrives and Brennan 2017), companies have a certain level of discretion on deciding what constitutes good corporate governance for developing their own internal policies.

As we expect a mismatch between the priorities attributed to various risks of digital campaigning by corporations and by EU institutions, the level of corporate responsiveness to EU soft regulation should vary across regulatory themes. First, we expect the EU as a multilevel government to prioritize addressing the risks of digital campaigning to democracy and to citizen’s democratic rights and values. Companies may prioritize profit before public good (Haenschen and Wolf 2019). Hence, we expect global platforms to give more attention to their customers/consumers experience and ultimately their positive image. Although platforms’ reports may address all themes as per regulatory document (EU’s CPD), the specific salience of regulatory themes is expected to vary, especially in situations of mismatching priorities.

Proposition 1. EU and digital platforms have asymmetric priorities in the area of digital campaigning.

### ***The choice between symbolic and formal commitment***

Companies may edit the content of their annual report in a way of signalling agreement with the soft regulation principles without expressing any specific commitment. Organizational behaviour under this “ceremonial” compliance (Lim and Tsutsui 2011) would allow companies to stay under the “shadow of hierarchy” (Börzel 2010). This way they can postpone or avoid the adoption of hard law by public institutions promoting the standard (i.e. the European Commission) and subsequently avoid additional compliance costs (Okhmatovskiy 2017).

This choice of explaining to agree in principle but not to comply with the CPD commitments would undermine the “industrial morality”, necessary for challenging companies’ profit orientation and act for the common good (Gunningham and Rees 1997, 376). Only a general assent to commitments would ensure the legitimacy and

effectiveness of codes of conduct as a normative framework. We posit that this is the first and fundamental element for assessing the effectiveness of a soft-regulation regime applied to corporations and not member states.

Increasingly, companies face a multiplicity of standards set by national governments or international organizations (Fransen, Kolk, and Rivera-Santos 2019). The multiplicity of standards can be at times conflicting. As a result, companies may make use of rhetorical strategies in non-compliance explanations, whereby they attempt to disguise non-compliance through the use of “weasel words” (Shrives and Brennan 2017, 23). In our context, companies that would report non-commitment to the CPD are symbolically participating in the co-regulation regime. They will use the CPD annual reports for framing a “pleasant-sounding corporate rhetoric” (Rees 1997, 448), not contesting the principles and content of the code and showcasing agreement with the CPD’s principles without any clear (formal) commitment to policies and actions. Consequently, our second proposition on the effectiveness of EU soft regulation of digital campaigning posits that:

Proposition 2: The symbolic commitment of on-line platforms is higher than their formal commitment in non-priority regulatory themes.

### ***From formal commitment to actions***

We argue that, in a policy area such as digital campaigning there is a strong link between the type of commitment taken (formal or symbolic) and the level of implementation by the on-line platforms. First, companies show symbolic commitment to soft regulation by adhering to it and by participating in the process of developing the regulation. After the symbolic agreement, the attainment of voluntary objectives entails the adoption of various actions in order to implement the EU soft regulation. In the case of digital campaigning, the CPD is composed of requirements to take specific actions such as for instance closing bot accounts. As this formal adherence to commitment is the first step towards companies’ institutionalization of CPD normative principles and practices into the operative structure of the industry (Gunningham and Rees 1997), we expect a positive correlation between level of formal commitment and the extent of action taken.

Conversely, the implementation of actions should be low for corporations with a high level of symbolic commitment. Hence, they will only symbolically agree to the code of practice principles, when they do not have a clear plan for implementing concrete actions or lack sources and administrative capacity to do so. They may also face internal opposition to new standards (Sandholtz 2012), especially from those professionals who perceive themselves as “innovative and different” who are likely to avoid the application of new standards (Brunsson and Jacobsson 2000). This apparent contradiction is evident amongst tech professionals who are usually shaking the consolidation of the market but do not want to be under control as regulation will restrict their capacity to innovate (Thierer 2016). Consequently, corporations may commit formally to actions they are more likely to implement.

Proposition 3: The implementation of the EU’s soft regulation is higher for platforms with high level of formal commitment.

### ***Changes in corporate governance***

The way companies respond to the CPD can include organizational and procedural change. Thus, in the internationalization of CPD, companies have the choice to design



policies concerning their own procedures rather than specific actions required by the CPD. As the relationship between organizational procedures and actions are “loosely coupled” (Orton and Weick 1990), the choice to respond to CPD by adopting procedures allows companies to demonstrate compliance and avoid the adoption of practices with an immediate impact on their core activities (Okhmatovskiy 2017, 504). This would also allow them to avoid compliance costs as setting up administrative compliance structure requires marginal organizational adjustments. Contrarily to the previous proposition on code effectiveness, we expect that companies with a low level of commitment to CPD have reputational benefits by strongly signalling to external audiences and social stakeholders this type of symbolic compliance. This company behaviour would limit the effectiveness of the CPD as companies will perceive this form of compliance as a substitute to policy inherently based on actions downplaying the implementation of standards.

Proposition 4: Corporate governance changes more for platforms with high level of symbolic commitment.

### **Data and empirical strategy**

Our focus is the platform response to the EU soft regulation of digital campaigning, namely the CPD. By focusing on the regulatory output and more specifically on the motivation to comply by establishing a dialogue that has the potential to trigger processes of learning and internalization of standards (rather than coercion Braithwaite and Drahos 2000) through reporting, we assess the effectiveness through the type and level of platform commitment and implementation of the EU code of practice against disinformation. The global digital platforms included in the study are Facebook/Meta, Google, Twitter/X, Microsoft and Mozilla, which at different stages signed the EU code of practice against disinformation and issued yearly company responses in the form of annual reports.

We analyse the content of the EU code of practice against disinformation) and the annual platforms reports. We focus our analysis on the 2018 CPD as the 2019 reporting relates closely to the 2019 European elections. Companies’ annual reports were submitted towards the end of 2019 after several monthly interim reports. The monthly reports submitted by Facebook, Google and Twitter however are not part of the main analysis due to significant repetition of actions and policies discussed in their monthly reports appearing again in their annual reports. Mozilla and Microsoft did not submit any interim reports.

In assessing the effectiveness of EU’s soft regulation of digital campaigning, our starting premise is that reporting is the core instrument of soft governance. Reporting has the potential to trigger dialogue between the EU Commission and the digital platforms and learning processes on how to solve the unintended consequences of digital political campaigning. To facilitate this dialogue and adhere to the logic of appropriateness, we then assume that normally digital platforms accurately report rather than underreport on their activities.

Firstly, we conduct a thematic analysis of the CPD which uses a six-phase guide (c.f. Braun and Clarke (2006)) that assists with systematically evaluating qualitative data: familiarization with the data, generating initial codes, finding themes, reviewing themes, naming and defining themes, and writing up the report. Hence our themes do not entirely identify with the pre-defined sections of CPD but revolve around most

recurring themes associated with digital campaigning and disinformation. Table 1 (on-line Appendix) outlines the main themes of the CPD document, the intensity with which each theme is discussed by the EU's CPD and by each platform in their annual reports. Secondly, through content analysis, we measure each company's level of compliance across these themes through various indicators: *overall responsiveness*, *symbolic commitment*, *formal commitment*, *corporate governance changes*, *implementation*. We describe the main indicators below and provide details of the coding scheme and examples in Table 2 (on-line appendix). We check effectiveness in a compliance sequence and expect implementation to represent the highest level of compliance. We show an example from the same company on the same issue in Table 4 (on-line appendix).

**Responsiveness** refers to the degree to which companies align or deviate their formal responses (annual reports), from the main components (themes) of the EU regulatory document, the 2018 CPD.

We ascertain the degree of *priority* (intensity, word frequency) with which each theme is discussed in the regulatory document and in the company's annual report. Responsiveness is measured by the percentage difference with which each theme is discussed in the EU document and the corporation report. Negative values represent low responsiveness. The degree of responsiveness shows us the corporate overall position towards each theme outlined in the CPD. However, it does not tell us how strongly committed each on-line platform is to implement the necessary regulatory aspects. In order to gauge this, we have developed a series of additional indicators (from low to high effectiveness). Below we define and describe each indicator in turn.

**Symbolic commitment:** Companies *agree* with the principles outlined in the EU regulation but take no actual commitment to those principles or outline specific actions in the company response. Facebook's symbolic commitment to freedom of expression: "we reiterate our belief in freedom of expression" (Facebook 2019, 1), but do not provide any formal commitments/implementation relating to this symbolic commitment. Our analysis presents a *count* of this symbolic compliance for each company document per each theme of the CPD.

**Corporate governance changes** relate to modifications in platform self-governance. *We count the organizational and operational changes* mentioned by companies in their annual reports (new departments created, budget changes across departments, etc.).

**Formal Commitment:** A company pledges to implement various principles (as stated in the regulatory document it signs adherence to) and various policies/procedures. We analysed each company response per paragraph and counted how many times the company uses phrasing to reflect commitment. For example, platforms such as Google mention "we commit to" various actions in line with the CPD. We have also taken into account other phrasing which reflects commitment such as "we will ..." or "we are taking several steps towards" etc. (Google 2019). *We count the number of such commitments in line with the CPD principles and also count the change of policies* or new policies adopted by each company as a response to the CPD. As an illustrative example of the two different indicators, a symbolic commitment to "tackle disinformation by limiting the abuse of the platform by inauthentic users" could be followed by a formal commitment to policies related to spam or impersonation (European Commission 2018).

**Implementation:** *This indicator presents the specific actions taken by each platform as a response to implementing the principles outlined in the soft regulatory document, in this case the EU code of practice against disinformation. The actions should relate to the commitments outlined by each platform (i.e. closure of Facebook or Twitter accounts etc.) in their official reports. We do not expect the actions taken to be similar across on-line platforms but to create a bridge between the CPD principles and their main field of activity.*

### **Empirical findings**

We proceed with our analysis in two stages. Firstly, we present the main themes identified in the EU CPD regulatory document as described in the next section. Subsequently we conduct a content analysis of the way on-line platforms address each theme in their annual response.

#### **Results on asymmetric reporting (P1)**

We expect various degrees of responsiveness per theme across all companies and overall an asymmetric responsiveness. In order to visualize how closely each company prioritizes each theme, [Figure 1](#) presents the levels of responsiveness across themes and across signatories. Bars at or above the line show that each company is approximating or goes beyond the EU's emphasis on each theme, while bars below the line show that the company is not prioritizing the theme to the same extent as the EU's CPD.

With the exception of Google which either approximates or exceeds the EU's emphasis on most themes but one (rights and freedoms), the other three platforms' response is below the EU's emphasis per each theme (see [Figure 1](#)). Google and Microsoft performed best in terms of overall responsiveness, while most other companies have a very low responsiveness level providing support for our first proposition (P1). All companies fail to discuss the theme of democratic rights and freedom of expression to the same (or similar) extent as the EU's CPD. Instead, most companies devote a large part of their annual reports to integrity of services, empowerment of users and coordinated responsibility. The level of asymmetry between EU' priorities and those of each signatory can be observed across most themes (see [Figure 1](#)).

### **Transparency**

Each of the EU Code of Practice signatories sought to advance the importance of transparency when addressing disinformation online, though the degree to which each signatory discussed transparency in their annual reports varied. By transparency, this refers to the promotion of responsibility and accountability within each Code of Practice commitment, and an understanding that consumers and advertisers should be made aware of the adopted policies implemented by the online platform (European Commission 2019, 3). Two of the signatories, Google and Mozilla, discussed transparency in their reports the most frequently with 18 and 16 percent, respectively, suggesting that these platforms recognized the importance of being transparent with their users and advertisers when countering instances of disinformation and misrepresentation online. Twitter and Facebook discussed transparency slightly less in their annual reports when compared to Google and Mozilla, with 14

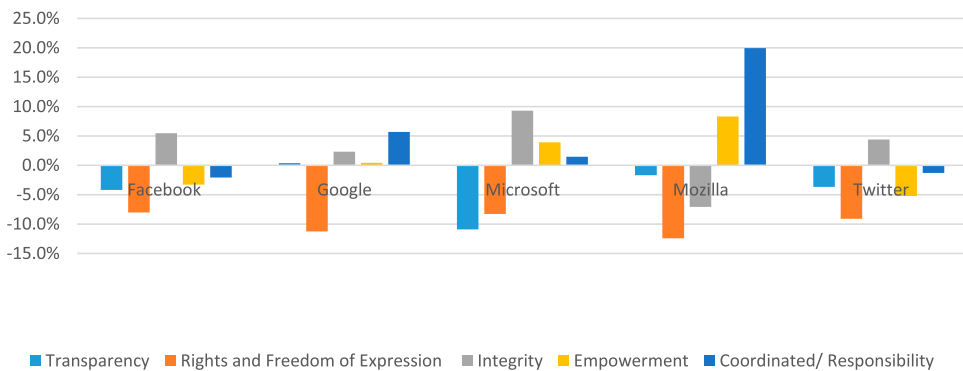
and 13 percent, respectively. Microsoft, however, discussed transparency the least frequently with only 6 percent of their report referencing transparency in their various policy responses and commitments. This indicates that Microsoft placed less importance on being responsible for sharing why changes to address disinformation were implemented on their platform with users and advertisers when contrasted with the other signatories.

### **Fundamental rights and freedom of expression**

Despite the EU Code of Practice making several references to the importance of upholding EU citizens' right of opinion, anonymity and pseudonymity when addressing disinformation online (European Commission 2019, 3), few of the signatories extensively discussed the importance of ensuring individuals' rights to express themselves freely online. Facebook and Microsoft discussed the theme most frequently around 4 percent, acknowledging the necessity of balancing freedom of expression of users with tackling disinformation. Twitter discussed freedom of expression in 3 percent of their report, while Google only recognized the importance of ensuring citizens' fundamental rights in 1 percent of their report, and Mozilla less still with 0 percent of their response discussing the theme. The high asymmetry as shown by the seldom recognition of this theme overall suggests the difficulties faced by online platforms to adequately strike the balance between addressing disinformation online and upholding EU citizens' right to freedom of expression and opinion.

### **Integrity of services**

The necessity for online platforms to implement policies that reduce instances of automated bots sharing disinformation to users (European Commission 2019, 6) is addressed by all the signatories, with the exception of Mozilla. Figure 1 shows the high priority given to these themes by four out of five signatories. Microsoft highlighted the importance of service integrity and related policies the most frequently with 17 percent, followed by Facebook, Twitter and Google with 13, 12 and 10 percent, respectively. Mozilla did not offer any actions taken to address automated bots that spread



**Figure 1.** Platform responsiveness across CPD themes.

Note: Bars reflect the percentage difference between EU's and platform emphasis of each theme in the annual report (raw percentage are reported in on-line appendix table 1).

disinformation on their platform. This suggests either that Mozilla does not value the integrity of services or lack the technological capacity to tackle automated bots, particularly when compared to the other signatories who both provided policy solutions and recognized the importance of addressing the misuse of automated bots that disseminate information on issue-based queries and electoral processes across Europe.

### ***Empowering users/consumers***

Empowering users to make informed decisions when locating useful information through the provision of effective products, programmes and tools (European Commission 2019, 3–4) is a major theme that is addressed in each of the signatories' reports. In stark contrast to their lacklustre response to bolstering their integrity of services, Mozilla in this instance discussed empowerment of consumers the most frequently, with 21 percent of their report providing ways in which their services can provide users with diverse perspectives on particular issues and assist users with understanding why they are targeted by specific advertisements. Microsoft and Google also discussed empowering users quite frequently, with 16 and 13 percent of their responses employing the theme, respectively. Facebook and Twitter meanwhile only discussed empowering consumers in 9 and 7 percent of their report, suggesting that these social media platforms have not taken as many additional steps to assist users with finding authentic and authoritative information. The comparatively infrequent discussion of empowering users in the social media platform responses may highlight again the difficulty in removing the sources of disinformation for users whilst providing an open platform to share ideas and opinions.

### ***Responsibility to coordinate and share information***

The responsibility to coordinate and share information with various stakeholders, such as policymakers, civil society and the research community, was very frequently cited in all the signatories' reports. Indeed, this theme was the most frequently identified across all the themes previously studied. Mozilla discussed the theme extensively with 37 percent of their response making direct reference to the importance of, and provision of policy initiatives to, working with educational institutions and governments to fulfil the commitments in the EU Code of Practice. Google and Microsoft also discussed this theme repeatedly, with 23 and 19 percent of their report acknowledging their responsibility to coordinate action with key stakeholders to tackle disinformation. Lastly, Facebook and Twitter discussed the responsibility to coordinate their endeavours to tackle disinformation the least frequently amongst all the signatories, with 15 and 16 percent, respectively, but considerably more frequently in comparison to the themes of transparency, upholding fundamental rights of individuals online and empowering users.

The comparison of platform responsiveness per theme shows a clear discrepancy between the EU and signatories' priorities, which confirms our P1. An additional longitudinal analysis which considers the importance accorded to each theme in the monthly reports, brings more robustness to our findings and confirms that platforms assigned the highest importance to integrity of services and the lowest to freedom of expression (see on-line appendix fig. 1a, b, c), which is in contrast with the EU priorities.

### ***The link between symbolic commitment and formal commitment (P2)***

A more nuanced analysis reveals different patterns across themes and indicators. Contrary to our expectations, the level of symbolic commitment is not significantly higher than platforms' formal commitment. Overall, across all themes, on-line platforms have a much higher level of formal commitment to principles and actions than symbolic commitment. A closer look at the themes less prioritized in the annual reports (transparency; rights and freedom of expression) also confirms that symbolic commitment is not significantly higher than formal commitment. Hence, our P2 does not find support across our data. Even Facebook/Meta, the platform with the highest level of symbolic commitment, has a comparatively high level of commitment to principles and actions. In the 2019 annual report, Facebook has a total of 29 symbolic commitments in relation to all themes of CPD but it also provides 31 instances of commitment to actions (see on-line appendix table 3). For example, in relation to transparency, they commit to advertising policy updates, labelling issue-based and political ads to improve transparency, reiterated commitment to the ad library and to sharing updates about inauthentic behaviour with the public.

Unsurprisingly, the level of formal commitment is highest for those themes where companies exhibit high responsiveness (as per [Figure 1](#)). [Figure 2](#) shows that, with the exception of rights and freedom of expression, formal commitments exceed symbolic commitments across most themes. For example, Facebook (2019: 1–11) expressed commitment to a large number of actions related to their *integrity of services* (i.e. invest in technology to detect and prevent fake accounts, improvements to hate speech detection, improvements in machine learning capabilities for finding and removing violating behaviour). Google expressed the highest number of commitments to *coordinated shared actions* with experts, researchers, stakeholders which related to initiatives such as the Global Media Literacy Summit, Youtube partner programme, FactCheckEU, CrossCheck tools training or the commitment to publish search ranking algorithms for researchers (Google 2019, 4–29). Likewise, Microsoft, Twitter and Mozilla report high formal commitment to *empower their users* through advertising features to show users why they are viewing certain adds, authorship information with Bing search ranking (Microsoft 2019, 9–10), or dedicated webpage with resources for addressing misinformation (Mozilla 2019, 4). This finding is further substantiated by a robustness analysis. We calculated the percentage of text attributed to formal and symbolic commitments by each corporation and we consistently found that formal commitment exceeds symbolic commitment by over 25 percent.

### ***Actions reflect formal commitment (P3)***

The analysis of actions implemented by signatories shows a level of commitment which goes hand in hand with the level of implementation, hence our P3 finds support. With the exception of Google, whose level of commitment is much higher than the actual implementation, most other platforms approximate or exceed in their implementations the actions they committed to.

As expected, with regards to specific actions, companies found it much easier to tackle the theme about their integrity of services and responsibility to share/coordinate action with governments, universities, non-governmental organizations (see [Figure 3](#) where 3 out of 5 companies show grey bars above the zero line, indicating that the actions implemented were exceeding the number of commitments). For



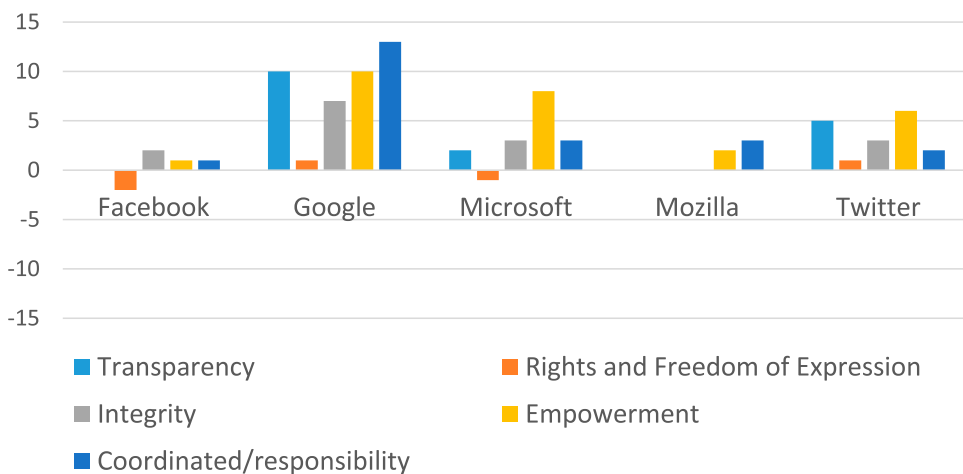
example, Facebook, Microsoft and Twitter report a large number of actions implemented with regards to their integrity of services. Facebook reported the closure of 2 billion fake accounts created in 2019, 1 billion in 2018 and the removal a large part of hate speech posts (65%) before reported by users in the first three months of 2019 (Facebook 2019, 10–11). Google reported 7,8 million YouTube videos flagged by automated systems and over 9 million videos removed by June 2019. Likewise, Microsoft informed about a large number of related actions such as the creation of a LinkedIn anti-abuse team tool creation to protect against bots, the improvement of Bing’s ranking process to identify high-quality sites (Microsoft 2019, 8–10). In addition to the suspension of abusive account, Twitter (2019, 14–21) reported a 60 percent faster response time to appeals. The latter also coordinated action with UNESCO and #EU media literacy campaign.

On the other hand, rights and freedoms is the theme with the highest underrepresentation in terms of implementation across companies. Facebook, Google and Mozilla did not implement any actions in relation to this theme (see Figure 3). Their level of commitment in relation to this theme was also minimal or non-existent. With regards to transparency, only Facebook and Twitter matched their formal commitment with actions and implemented for example the certification process for political advertisements and rejected over 600 political ads across EU states between March and May 2019 in line with their EU political campaigning policy (Twitter 2019, 2).

To summarize, actions reflect formal commitment in less salient areas (transparency and rights and freedom of expression) for very few companies. Instead, actions implemented exceed commitment for themes salient for platforms (integrity of services and coordinated responsibility to share action).

#### *Corporate governance changes go hand in hand with symbolic commitment (P4)*

As a further action following the adherence to the CPD, corporate governance changes are expected but they are the least reported in platform’s annual reports. Whilst these



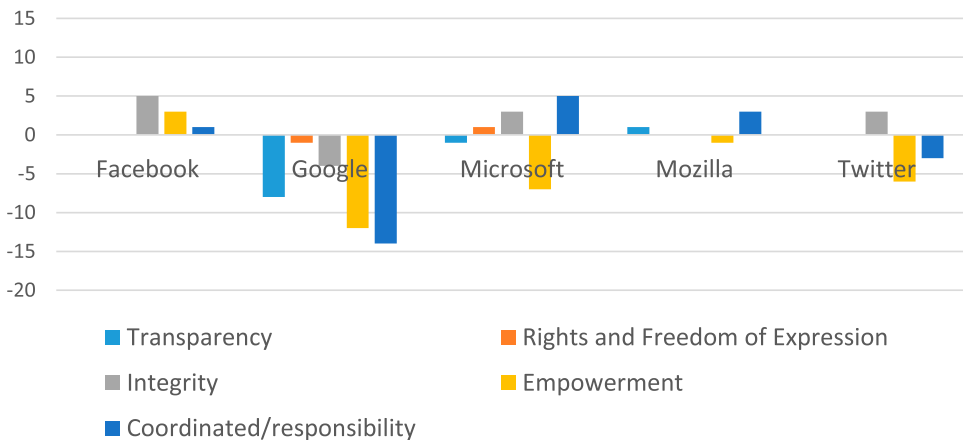
**Figure 2.** Formal commitments minus symbolic commitment across themes and platforms.

Note: Bar lines above zero indicate the number by which formal commitments exceed symbolic commitments.

changes were not formally requested by the CPD, they nevertheless transpire across themes. We could trace corporate governance changes in the reports of Facebook and Twitter only. The latter reported very few initiatives: the creation of a “High-level internal election group” (Twitter 2019, 15, 25) and the allocation of various grants in relation to the ads featured on the platform. Facebook has the highest number of governance changes in the report. Data transparency advisory groups with Yale Law School, the Election security escalation channel, forums, fellowship programmes and prizes (Facebook 2019, 8–34) are present in the report and they are also in line with the company’s highest number of symbolic commitments. Henceforth we can provide partial evidence for our P4, which suggests that corporate governance changes go hand in hand with symbolic commitment. Not all companies reported this in detail and hence further tests are required.

### Robustness analysis

In order to improve the robustness of our results we repeated the same analysis for the 2022 Strengthened Code against Disinformation (European Commission 2022). Compared to the 2018 CPD, the new 2022 CPD contains more reporting instruments (44 commitments and 128 specific measures). We followed the same thematic analysis method and identified the same themes within the new CPD (transparency; empowering users; responsibility to share/coordinate action, rights and freedom of expression, integrity of services). We then coded the platforms’ 2023 responses to the 2022 CPD following our analytical framework across these themes and re-tested our propositions. Our main findings maintain with the exception of P3 (we find low implementation, actions did not exceed commitments) which is due to the extensive list of commitments and specific measures requested to be reported by platforms within a year. Figure 2(a,b,c) and Table 5 in the on-line appendix (robustness section B) illustrate the results.



**Figure 3.** Actions minus formal commitments across themes and platforms.

Note: Bars above the zero line indicate that a larger number of actions followed from formal commitments taken.

## Conclusion

In this paper we advance a framework for the analysis of compliance and apply it to digital platforms. We hence offer an evaluation of EU's soft regulation of digital campaigning by assessing the 2019 on-line digital platforms response to the CPD. Our analysis of reports submitted by Twitter, Facebook, Microsoft, Google and Mozilla to EU's Code of Practice on Disinformation provides a first step towards empirically measuring the effectiveness of soft law. Specifically, we measure the platforms' level of responsiveness to soft law, their symbolic commitment, formal commitment and further implementation.

Our results suggest that, in line with our argument, the effectiveness of EU soft regulation in the area of digital campaigning depends on the priority attributed to various issues by the EU and the on-line companies. As expected, on one hand, companies' responsiveness was higher for themes such as integrity of services, user empowerment and coordinated actions with third parties, as their annual reports show. On the other hand, the EU's CPD emphasized more the themes of transparency and rights and freedoms. This asymmetric responsiveness in 2019 gives us an indication of priorities attributed to various themes by the EU on one side and by on-line platforms on the other side.

Against our expectations, companies' formal commitment to actions and principles is higher than their symbolic commitment. Specifically, we find that formal commitments exceed symbolic commitments by a larger margin in areas with high responsiveness. Companies prioritize and devote higher attention in the annual reports to the empowerment of users, coordinated actions with third parties and their integrity of services in their annual reports. Additionally, the implementation of actions promised is in line with the companies' formal commitment, especially in their highly prioritized themes. We also find some evidence that corporate governance changes in companies with a high level of symbolic commitment. This suggests that soft governance permits companies to window dress low compliance by reporting cost effective operational changes. Future research should enquire into whether hard governance brings more corporate changes.

We acknowledge the limitations of our study in terms of causal mechanisms that drive compliance at the level of individual companies. This would have required in depth analysis of the motivations to be explored through interviews of companies' compliance officers. Further, because of our reliance on companies' compliance reports, in this analysis we could not discern the veracity of companies' reporting and assess whether policies and practices were adopted prior to the "enactment" of the CPD. This approach would have required an analysis of the organizational chances and ergo de facto compliance either by a survey of signatories, or by an extensive content analysis of firms' documents and webpages. We already show that compliance to the new more rigid 2022 CPD suffers at the implementation stage. Future research shall also discuss whether the introduction of hard governance based on enforcement and sanctions or an independent verification process as suggested by the European Regulators Group for Audiovisual Media Service ERGA (2019) would enhance the overall compliance of digital platforms.

Overall, our study contributes to the debate about the effectiveness of EU soft regulation. We find that corporations comply with the soft regulation of digital campaigning when the regulatory themes are also a priority for the addressees of regulation. While our analysis focuses only on behaviour effectiveness understood as reported compliance of on-

line platforms, further research should focus on the policy effectiveness for citizens. We need a more detailed understanding of whether the policy meets its goals (reducing disinformation) for citizens. Additional research should enquire into what the actual users (citizens) think about platforms' actions as a response to the EU regulation and about the political information provided on-line. Further analysis is also required to ascertain the commitment to various types of transparency by the EU and the online platforms.

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