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MASTER THESIS

Breaking the Commission's legislative monopoly?

Examining the influence of EP own-initiative reports: A case study on the DSA and its regulation on algorithms

by

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Abstract

Questions over the democratic legitimacy of the EU have been as old as the institution itself. This criticism has often been tied to the inability of the EP, as the only directly elected body, to propose legislation. However, scholars have been starting to put this notion into question by highlighting the growing significance of own-initiative reports, published by EP Committees ahead of the Commission's legislative proposals. Building on existing studies by Kreppel & Webb as well as Maurer & Wolf, which have proven a growing significance of the reports, the research question *To what extent did the EP's INI/INL reports on the DSA influence the agenda of EC-legislative proposal of December 2020 (specifically its regulation of algorithms) and does this constitute an erosion of the legislative monopoly of the EC?* will be tackled from multiple angles. Using the recently presented Commission proposal on the Digital Services Act (DSA) as a case study, the research applies George Tsebeli's agenda setting theory to the pre-stages of legislation-making and focusses on how the reports can exert influence on the Commission proposal and what role cooperation between the Commission and Parliament might play. The analysis reveals influence can be measured both on an institutional level as well as on a content basis. By examining the content of both the reports and the proposal, this research furthermore contributes to understanding of digital policy making, specifically shaping of the agenda on the use of algorithms. Despite the fact that the EP has always been a frequently studied object in European integration research, this results of this examination present a fresh look into the legislative procedure in the European Union by covering a stage that has been overlooked by scholars so far.

Keywords: European Parliament, European Commission, EU law, agenda setting theory, democratic legitimacy, Digital Services Act

Table of Contents

Chapter 1.

Introduction

For decades researchers have been arguing over the European Union's democratic legitimacy and what role the European Parliament (EP), as the only directly elected body, might play in it[1]. One major point of criticism in this debate has been the monopoly of the Commission over legislation-making (Article 17(2) TEU), which leaves the EP "weak", as it is unable to propose laws[2] and thereby influence the legislative agenda of the EU (aside from its role in the "Ordinary Legislative Procedure").

But a growing number of academics has been debating this notion, highlighting the EP's growing influence on the "pre-stages" of legislation-making through the use of "own-initiative reports", which are presented ahead of the Commission proposal. And even the Commission itself, notably under the leadership of Jean-Claude Juncker[3] and Ursula von der Leyen[4], has been openly stressing its interest to enhance cooperation with the EP on legislation-making. Despite the fact that the EU is a well-researched field, this possible institutional shift seems to have been overlooked so far, as only a few studies can be found on this topic. In the course of my research, I therefore want to explore this knowledge gap and look into the supposed increasing power of the Parliament. By analyzing the process around reports put forward before the release of the Commission proposal on the Digital Services Act (DSA) in December 2020, I want to examine if the Parliament has managed to increase its influence on legislation-making, despite the fact that this was traditionally unintended by European Treaty law.

[1] Andreas Maurer and Michael C. Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', in *The European Commission in Turbulent Times: Assessing Organizational Change and Policy Impact*, vol. 105 (Schriftenreihe des Arbeitskreises Europäische Integration e.V., Nomos Verlagsgesellschaft mbH & Co. KG, 2018), 54.

[2] Westlake 1994 in Amie Kreppel and Michael Webb, 'European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind?', Journal of European Integration 41, no. 3 (3 April 2019): 383–404, https://doi.org/10.1080/07036337.2019.1599880.

[3] Michael Shackleton, 'Transforming Representative Democracy in the EU? The Role of the European Parliament', *Journal of European Integration* 39, no. 2 (23 February 2017): 198, https://doi.org/10.1080/07036337.2016.1277713.

[4] Silvia Kotanidis, 'Parliament's Right of Legislative Initiative. EPRS | European Parliamentary Research Service' (EPRS | European Parliamentary Research Service, February 2020), 1.

1.1. The role of own-initiative reports in EU law

Before addressing the reasons for the change of dynamics in EU legislation-making and the evident lack of academic interest on the gradual growth of influence through the own-initiative reports,I first want to take a brief look at the underlying legal aspects and the recent political developments.

In theory, there is a clear institutional power-dynamic when it comes to legislation-making in the EU, which is inscribed in European Treaty law as the "Ordinary Legislative Procedure" (OLP). In this process, which I will later also refer to as "post proposal stage", the roles are clearly distributed: first the Commission proposes a law, after which the Parliament and the Council take over. In general, this procedure consists of three readings during which the two co-legislators, Parliament and Council, analyze the text proposed by the Commission and, if necessary, present amendments[5]. However, as scholars Kreppel & Webb[6] as well as Maurer & Wolf[7] highlight (see section 1.3), the EP has started to show tendencies since the last Treaty changes in 2007 not only to participate in EU-lawmaking through the OLP – but to influence the legislative proposals by the Commission in advance. One of the tools used for the purpose of this are the so-called "Non-Legislative Own-Initiative Reports" (INI) and "Legislative Own-Initiative Reports" (INL, based on Art. 225 TFEU), which are issued by different Committees in the EP ahead of the publication of legislative proposals (see Figure 1).

[5] European Parliament, 'Ordinary Legislative Procedure. Overview', https://www.europarl.europa.eu/, accessed 18 April 2021, https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview.
[6] Kreppel and Webb, 'European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind?'
[7] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative'.

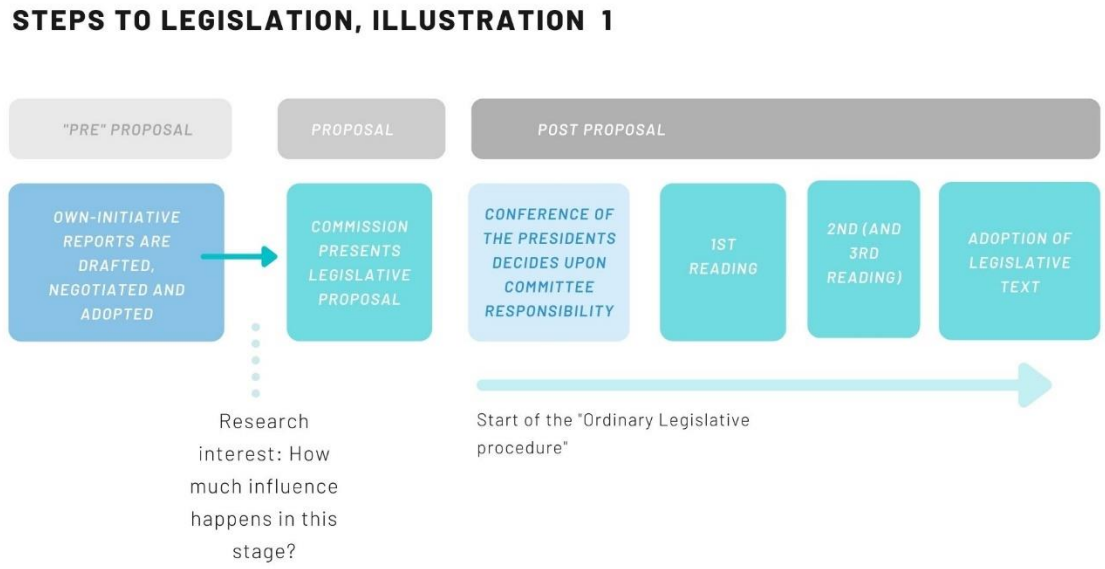

Figure 1 Steps to Legislation (Version 1)

While officially part of EU law, the reports are therefore not part of the "Ordinary Legislative Procedure" as such. The own-initiative reports have their institutional basis in the Treaty on the Functioning of the European Union (TFEU), which was introduced in the Treaty of Lisbon in 2007 that established the Parliament's "right to request the Commission to submit a legislative proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties" (Article 225 TFEU).

In recent years there has been proof for a growing confidence among EP officials to use these reports as a tool in legislation making (see chapter 2.2.). And also the Commission has been starting to prominently back the role of the EP in this regard: The current Head of the EU-Commission, Ursula von der Leyen, confirmed her support for the EP's legislative empowerment during her opening speech in front the Parliament right after her election in July 2019, stating that she was committed to "a right of initiative for the European Parliament" and as Head of Commission respond "with a legislative act in full respect of the proportionality, subsidiarity, and better law-making principles" [8].

[8] European Commission, 'Opening Statement Ursula von Der Leyen European Parliament', 16 July 2019, https://ec.europa.eu/commission/presscorner/detail/it/speech_19_4230.

1.2. Issues of democratic legitimacy and the Parliament's role in it

The outlined development puts primarily one question into focus: why does the Commission have an interest in giving up its legislative monopoly in the first place? According to scholar Mark Dawson, the shifts in legislative authority can be seen as an attempt to "recognize the difficulties in anchoring the legitimacy of EU law" [9], which is why the recent developments in legislation-making can only be understood in the context of democratic accountability and the EU's struggle to achieve democratic legitimacy[10]. Academics have therefore linked the increasing power of the EP to, *one*, the attempt to reduce the view on the EU as a market-place for national bargaining power exerted through the Council, and, *two*, the increasing understanding among EU officials that "Commission activities of initiative and enforcement in EU law cannot simply depend on an uncontested body of 'neutral' expert knowledge, but involves political choices" [11].

As a result, the Commission has been willingly giving up its legislative authority by making its actions accountable to the EP. By putting more emphasis on elections, the EU also seeked to act on "extensive value disagreements" among its Member States, "drawing its legitimacy from direct links to citizens" in order to receive a clear political agenda and mandate to work on[12]. As a result, the EP gained a say in the leadership of the Commission in the Lisbon Treaty of 2007, meaning that European elections for the first time not only influenced the election of a representative Parliament but also an executive body[13]. The events after the EP-elections in 2014 (to the detriment of the Council) manifested an even stronger bond between the EP and the Commission, leading to a close cooperation on the work of the EC policy work program together with the EP[14]. EC's former leader, Jean-Claude Juncker, commented that these developments had "the potential to insert a very necessary additional dose of

[9] Mark Dawson, 'The Lost Spitzenkandidaten and the Future of European Democracy', *Maastricht Journal of European and Comparative Law* 26, no. 6 (1 December 2019): 732, https://doi.org/10.1177/1023263X19884434.
[10] Andreas Dür and Hubert Zimmermann, 'How Democratic Is the EU?', in *Key Controversies in European Integration*, 2nd ed. (Palgrave Macmillan UK, 2016), 64.
[11] Dawson, 'The Lost Spitzenkandidaten and the Future of European Democracy', 732.
[12] Dawson, 732.
[13] Shackleton, 'Transforming Representative Democracy in the EU?', 196.
[14] Shackleton, 197–98.

democratic legitimacy into the European decision-making process, in line with the rules and practices of parliamentary democracy"[15].

Despite the evident growth of influence for the EP throughout the years, there are also scholars who question whether democratic legitimacy can be achieved through the sole empowerment of the Parliament. Follesdal and Hix are among the most prominent representatives of this criticism, questioning whether "democratic polity requires contestation for political leadership and argument over the direction of the policy agenda" [16]. They point out that there is still a lack between the EP's political action and its views to the public, "without an electoral contest connected to political behaviour in these EU institutions it is impossible for voters to punish MEPs or governments for voting the 'wrong way'"[17]. Furthermore, they hint to a lack of transparency in the work of the Council[18] or the "uncontested" role of the Commission[19] as further reasons for lack of democratic legitimacy in the EU. However, even among the critics, the development of the EP did not go unnoticed: Follesdal and Hix noted that powers of EP parties have grown, especially in terms of "their control of resources inside the European Parliament (such as committee and rapporteurship assignments)"[20]. According to the two scholars, change in the European Union towards more democratic legitimacy is possible, even without further Treaty changes. Rather, the existing rules can be used to "open the door to more politicization of the EU agenda, for example via a battle for the Commission President, with governments and national and European parties backing different candidates and policy platforms" [21]. In a sense, Follesdal and Hix' demands are therefore not too far removed from what the European Union is doing today: actively pursuing a more popular election system, ie. by putting the "Spitzenkandidaten" of each party further into the spotlight and giving the Parliament say over leadership. However, the evolution of the European Union is not linear but marked by ups and downs: In contrast to 2014 [22], the EU has missed out on strengthening democratic accountability in its latest

[15] European Commission, 'Ten Priorities for Europe. A New Start for Europe: An EU Agenda for Jobs, Growth, Fairness and Democratic Change' (Series Entitled "The European Union Explained"., 2015).
[16] Andreas Follesdal and Simon Hix, 'Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', *JCMS: Journal of Common Market Studies* 44, no. 3 (2006): 534.
[17] Follesdal and Hix, 553.
[18] Follesdal and Hix, 553.
[19] Follesdal and Hix, 554.
[20] Follesdal and Hix, 552–53.
[21] Follesdal and Hix, 557.
[22] Koert DeBeuf, '[Analysis] What Did We Learn from the von Der Leyen Vote?', EUobserver, 17 July 2019, https://euobserver.com/political/145484.

elections. Instead of choosing – or even taking into account – one of the Spitzenkandidaten of the political groups, the Commission President ended up being an entirely different person[23][24].

In the following section I will tie the developments around democratic legitimacy and its results for the role of the Parliament to my case study in order to introduce my research question.

1.3. Problem statement and research question

So far, I have established that there is a growing interest of the Parliament and the Commission to cooperate further, which can be tied to issues of democratic legitimacy of the EU. In addition, there is evidence for a growing interest of the EP in law-making, which can be performed through the earlier mentioned own-initiative reports. Yet, even though there is evidence that own-initiative reports are being used as such instruments, there is hardly any scholarly work on how this form of agenda setting is performed and what influence it has. In my research, I therefore want to build on the existing studies of Mauer & Wolf and Kreppel & Webb, who both concluded that own-initiative reports (INI and INL) are effective in influencing the Commission's agenda and that the EP can indeed be viewed as *informal* - yet - important agenda setter[25]. One reason for the low interest of academia in the reports so far can be explained through the fact that own-initiative reports do not formally influence legislation[26]. But, as Follesdal & Hix rightly pointed out[27], it does not need a Treaty change for powers to shift in the European Union. Dynamics in EU institutions can lead to developments that might run under the radar: Own-initiative reports have been overlooked so far because of their informality, even though there is evidence that the influence of the EP has risen through the

[23] Dawson, 'The Lost Spitzenkandidaten and the Future of European Democracy', 732.
[24] Due to the lack of a clear winner in the 2019 elections, Ursula von der Leyen's election as Commission President was rather the result of a compromise between the parties. Dawson criticizes this missed opportunity arguing that "[b]y proposing a President who was neither a Spitzenkandidat nor the focus of political attention of any kind during the campaign, it is not clear that this minimal duty has been met". Even though far from perfect, the changes in the EP-election system did have promising outcomes: the EP-elections of 2019 showed a record number of participants, with 60 percent voter turn-out on average, and an "unusual level of coherence in the range and urgency of issues discussed in the campaign across EU states" (see Dawson, 732).
[25] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', 80–81.
[26] Kreppel and Webb, 'European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind?', 386–87.
[27] Follesdal and Hix, 'Why There Is a Democratic Deficit in the EU', 557.

use of the reports - especially after the Lisbon Treaty - and that informal agenda setting/shaping has increased in the course of this [28].

While the results of Kreppel & Webb's and Maurer & Wolf's analyses show the own-initiative reports' potential, they miss out on results on a content basis. Their large-scale analyses confirm the influence of the reports (and therefore form a promising basis for my research) but they present limited results in terms of the concrete agenda setting practices of the EP, ie. showing concrete EP policy suggestions that made it into the EC's proposal. I therefore want to expand the research by looking at the own-initiative reports with qualitative research methods. By focusing on a specified set of reports and including amendments and an expert interview into my research, I aim to address the work processes of the Committees in more detail.

For the purpose of my research, I will use the recently presented EU "Digital Services Act" (DSA) as my case study. This regulation presents to be particularly interesting for two reasons. Firstly, there was substantial activity in the EP ahead of the publication of the EC-legislative proposal in December 2020. In the course of 2019 and 2020, the DSA was discussed in multiple EP Committees and finally three of them published own-initiative-Committee-reports (IMCO, JURI, LIBE) in October of the same year. Secondly, the DSA is located in a field, digital regulation, that the current Commission has named as its top priorities for its current mandate (2019-2024). In addition to that, questions of digital governance have been receiving growing attention in academia[29]. With Europe as a trailblazing force in this area[30], recently

[28] Kreppel and Webb, 'European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind?', 385.

[29] Luciano Floridi, 'Soft Ethics and the Governance of the Digital', SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 18 February 2018), https://doi.org/10.2139/ssrn.3125685; Jaron Harambam, Natali Helberger, and Joris van Hoboken, 'Democratizing Algorithmic News Recommenders: How to Materialize Voice in a Technologically Saturated Media Ecosystem', *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 376, no. 2133 (28 November 2018): 20180088, https://doi.org/10.1098/rsta.2018.0088; Farid Gueham, 'Digital Sovereignty - Steps Towards a New System of Internet Governance' (Fondapol, 2017), fondapol.org/wp-content/uploads/2017/02/097-F.GUEHAM_Vang_2017-02-01_1.pdf; Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (New Haven, UNITED STATES: Yale University Press, 2018), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=5431574.

[30] Andrew Puddephatt, 'Governing the Internet: The Makings of an EU Model', Europe's digital sovereignty: From rulemaker to superpower in the age of US-China rivalry, 2020, https://ecfr.eu/publication/europe_digital_sovereignty_rulemaker_superpower_age_us_china_rivalry/; Paola Inverardi, 'The European Perspective on Responsible Computing', Communications of the ACM, April 2019, Vol. 62 No. 4, 2019, 64, https://cacm.acm.org/magazines/2019/4/235599-the-european-perspective-on-responsible-computing/fulltext.

adopting one of the (globally) most influential pieces of legislation on data protection (GDPR) in 2018, this case study thus proves to be particularly innovative and topical.

To limit my analysis, I would like to focus on the DSA and its references on the use of algorithms and find out to what extent the EC's proposal is shaped by the EP's ideas (put on the agenda through the legislative initiatives). I therefore aim to answer the following research- and sub-questions:

To what extent did the EP's INI/INL reports on the DSA influence the agenda of EC-legislative proposal of December 2020 (specifically its regulation of algorithms) and does this constitute an erosion of the legislative monopoly of the EC?

> *SQ1 What are the stages in a process of writing an own-initiative report and what are the main influences in this process?*
>
> *SQ2 To what extent can the DSA be considered as the result of cooperation between Commission and the Parliament? What are the indications for this?*
>
> *SQ3 To what extent does the Commission proposal show influence of the EP INI/INL reports? Looking at the regulation towards algorithms: where does the EC incorporate the EP's agenda, where does it disagree?*

For the structure of my research, this means that I will first address the theoretical implications, in particular I will focus on agenda setting theory. The past years show that the EP has been successful in expanding its influence through the own-initiative reports in the "pre-stages of legislation-making", thereby unlocking "unintended potentials" (in terms of institutional power) in the legislative process which provides the possibility to "influence the agenda of the Commission" [31]. This will help me in developing a framework that guides me in mapping how agenda setting is performed by the EP in the Committee reports. In the following chapter, "Methodology", I will present how I aim to use these theoretical ideas and put them into practice through my analysis. This will lead me to my main part of this thesis, the "Case Study", where I will show the results of my analysis. Here I will first present the EU's path to digital legislation, before diving into the EP's own-initiative reports. I have chosen to analyze

[31] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', 57.

their process and influences by recreating their process on a chronological basis. With the help of witness accounts gathered through an expert interview and an analysis of the amendments and the final text, I will depict both the procedure and results of the reports. In the course of this, I will examine when impact on the agenda is possible, and by comparing the reports to the final Commission proposal, where the EP Committees have succeeded to cooperate with the EC or even influenced its agenda. Finally, the Conclusion-chapter will reflect on the research question and briefly summarize the results, placing them in a wider academic debate on the democratic legitimacy of the European Union.

Chapter 2.

Theoretical framework

In order to answer my research question, my analysis will be guided by agenda setting theory[32], which aims to investigate how parliaments can exercise agenda setting in a political system. In particular, I want to focus on the idea of "unintended potentials" that the EP has been performing, meaning political areas that the EP has been tapping into, despite other initial intentions by Treaty-makers.

2.1 What is agenda setting?

As Princen explains, agenda setting is more about the attention given to certain political issues rather than the actual process of putting something on/off an agenda. The "agenda" can refer to different meanings, depending on how the concept is used (ie on the public agenda or the agenda of the media). In context of European integration, agenda setting is about EU's political agenda and the factor which determines which issues are given attention in policy-making processes [33].

Institutional constraints play an important part in agenda setting on an EU level[34]. In the case of this thesis, the Parliament's agenda setting possibilities are limited to legislative and non-legislative reports (which are further limited in the way they can be issued to the Commission) in the stages before the EC puts a proposal forward. Once the EC has presented a proposal, the EP has the above-mentioned co-decision power over it. The EP Committee rapporteurs (which I will present in detail during the analysis) serve as agenda setters, the reports as content to be put on the agenda (the proposal).

2.2 Agenda Setting: EP's power on the rise

Academic scholar George Tsebelis has been researching the agenda-setting abilities of the EP since the 1990s[35]. Since then, the EP's legislative role has been strengthened through Treaty

[32] George Tsebelis, 'The Power of the European Parliament as a Conditional Agenda Setter', *American Political Science Review* 88, no. 1 (1994): 128–42; Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative'.
[33] Sebastiaan Princen, 'Agenda-Setting in the European Union: A Theoretical Exploration and Agenda for Research', *Journal of European Public Policy* 14, no. 1 (1 January 2007): 28–29, https://doi.org/10.1080/13501760601071539.
[34] Princen, 33.
[35] Tsebelis, 'The Power of the European Parliament as a Conditional Agenda Setter', 131.

changes, latest through the Lisbon Treaty of 2007 (specifically Art. 225, TFEU). In order to make the theory fit to these reports, Maurer and Wolf widened Tsebeli's parliamentary agenda setting theory by applying his theory on the pre-stages of legislation-making[36]. Here, they refer specifically to Krumm, who argues that Tsebelis' theory on agenda setting is not necessarily limited to those who initiate legislation – much more, an agenda setter can be characterized as someone who is willing to change the status quo[37]. As a result the EP is confronted with "unintended potentials" which could "influence the agenda of the Commission"[38]. Interestingly, this is not the first time that the EP exercised powers that were not specifically foreseen by the Treaties. Already in 1994, Tsebelis acknowledged that the Parliament performed unintended "conditional agenda-setting powers" in respect to the cooperation procedure, and thereby influenced the process of EU-legislation, thus gaining advantage against Commission and the Council [39]. Similar proceedings were observed by Simon Hix, when in 1999 the EP cleverly used a knowledge-gap among the EU governments to interpret Treaty rules in a favorable way. According to Hix, the EP thereby enhanced its powers substantially by forcing governments to consent to its interpretations [40].

Now, with the own-initiative reports subject to this research, the EP is not acting much differently. By publishing the reports, the EP Committees are actively addressing issues that its MEPs deem important with the intention of being included in the Commission proposals. The EP is thereby widening its authority from a post-proposal-influencer (through OLP), to a pre-proposal one. A practice that the European Parliament has been addressing more and more confidently over the years, as evidence shows. As early as 2007, historic accounts from EP staff testified to the growing importance of the reports. David Harley, Deputy Secretary General of the European Parliament, who spoke during a "witness-examination" in the UK House of Lords on the Initiation of EU Legislation, stated that: "I think the answer to the

[36] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', 57.
[37] Thomas Krumm, *Föderale Staaten Im Vergleich: Eine Einführung* (Springer-Verlag, 2015), 65.
[38] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', 57.
[39] Tsebelis, 'The Power of the European Parliament as a Conditional Agenda Setter', 128–31.
[40] Simon Hix, 'Constitutional Agenda-Setting through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam', *British Journal of Political Science* 32, no. 2 (2002): 259.

question as to whether the content of Commission proposals have been affected or take account of the Parliament's wishes in the general sense has to be yes." [41]

Further, there can be found multiple communications by the EP on the use of the reports. In 2012, the EP issued a guidances to its MEPs, stating that own-initiative reports constituted "a real opportunity to influence Union legislation and to incorporate a given proposal into the work of Parliament's committees" [42]. In 2016, the Secretary-General of the European Parliament, Klaus Welle, noted in an official strategy report the growing significance of the own-initiative reports, calling them "important tools in the early phase of the legislative cycle when trying to shape the agenda"[43]. This is in line with a publication by the Parliament's Research Service EDPS, which notes that despite the lack of formal changes to the Commission's power to initiative legislation, the widened use of the ordinary legislative procedure has led to a "gradual erosion of the Commission's monopoly of initiative"[44].

However, the Commission's willingness to act upon the Parliament's request was not always evident. In 2000, the Parliament voiced its dissatisfaction on the Commission's lack of diligence to react to its initiatives[45]. It was only a legislature later (2004-2009) that scholars and EU officials noticed a "revival of Parliamentary legislative initiatives", correlating with the Commission's growing willingness to respond[46]. Due to these developments, the Parliament became not only more confident in pro-actively publishing initiatives but also influencing the Commission's legislative planning[47].

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[41] UK House of Lords, 'Initiation of EU Legislation: Report with Evidence', 22nd Report of Session 2007–08 (London: The Stationery Office Limited: European Union Committee. Published by the Authority of the House of Lords, 5 August 2008), 100. *Please see the annex for the full transcript of this historic primary source.*

[42] European Parliament, 'EP Rules of Procedure: Amendment of Rule 123 on Written Declarations and Rule 42 on Legislative Initiatives', 13 December 2012, https://www.europarl.europa.eu/doceo/document/TA-7-2012-0502_EN.html.

[43] Klaus Welle, 'Strategic Planning 2014-16 for the Secretariat-General of the European Parliament' (The Secretary–General. European Parliament, December 2016), 47, https://www.europarl.europa.eu/RegData/publications/2016/0003/P8_PUB%282016%290003_XL.pdf.

[44] Kotanidis, 'Parliament's Right of Legislative Initiative. EPRS | European Parliamentary Research Service', 4.

[45] European Parliament, 'JOINT MOTION FOR A RESOLUTION on the Commission's Annual Legislative Programme for 2000 - RC-B5-0228/2000', 14 March 2000, https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P5-RC-2000-0228+0+DOC+XML+V0//EN .

[46] Sara Hagemann, 'Strength in Numbers? An Evaluation of the 2004-2009 European Parliament', *European Policy Centre (EPC)*, no. Issue Paper No.58 (15 May 2009): 15.

[47] Eva-Maria Poptcheva, 'Parliament's Legislative Initiative' (Library of the European Parliament, 24 October 2013), 5, https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI(2013)130619_REV2_EN.pdf.

Evidently, the Commission's view has changed, leading to a gradual erosion of its legislative monopoly. A briefing by the European Parliamentary Research Service (EPRS) suggests further that due to a growing tendency for institutional balance, "many expect Parliament's role in the EU's political and legislative agenda setting procedures to develop further in the coming years" [48].

2.3. Measuring agenda setting and "unintended influence"

While having established that agenda setting theory provides an interesting point of entry for the use of own-initiative reports, by looking at them as a tool to unlock "unintended potentials", it remains unclear how the agenda setting influence on the Commission proposal can be examined. I therefore want to explore the idea of "unintended potential" in the final section of this chapter:

While there is not much to be found on exactly how this kind of influence can be measured, the research on agenda setting does provide some interesting points of entry: According to Art. 225 TFEU, the Commission is required to report on the implementation of the EP-INL-reports[49], thereby holding the EC accountable to a certain degree. Technically, the European Commission can reject the Parliament's call to initiate legislation – but only while providing a reason for it[50]. However, according to Maurer and Wolf, the "vast majority" of INI-reports show a positive response rate by the Commission, which is seen as "an indicator that INI reports operate as an effective instrument for influencing the EU's legislative agenda"[51]. As Poptcheva suggests, the Commission has been supportive in doing so by referencing in the initiative proposals to what extent the EP's report calls have been implemented[52].

"Unintended potentials" of the EP in terms of legislative proposals could hint to the fact that, while receiving more importance, they are not codified in the Treaties the same way the EP's co-decisive power or the Commission's right to initiate legislation is. Any deviation of the Commission's monopoly to legislate (towards the EP) could therefore be interpreted as *unintended* by law. This does not, however, mean that the practice of initiative reports does

[48] Kotanidis, 'Parliament's Right of Legislative Initiative. EPRS | European Parliamentary Research Service', 2.
[49] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', 73.
[50] Kotanidis, 'Parliament's Right of Legislative Initiative. EPRS | European Parliamentary Research Service'.
[51] Maurer and Wolf, 'Agenda-Shaping in the European Parliament and the European Commission's Right of Legislative Initiative', 70–71.
[52] Poptcheva, 'Parliament's Legislative Initiative', 5.

not have an institutional path. To the contrary, since the Treaty changes in 2007, the procedure was further codified with the "EP-Commission Interinstitutional Framework Agreement" in 2010, when the Commission committed to address any EP legislative initiative within three months, consider the priorities expressed by Parliament and refer to any departure of proposals that were listed in the Commission Work Program (CWP) [53]. The CWP, now part of *the Compendium of the main legal acts related to Parliament's Rules of Procedure*, sets out a dialogue between the Parliament Committees and Commission. Once the Conference of Presidents have presented their summary report on the implementation of the CWP, the Parliament adopts a resolution outlining its political agenda. Part of this are any requests based on legislative initiative reports. Based on dialogue between EP and Commission, the annual legislative planning furthermore guarantees that future planning is based on a mutual understanding between both institutions[54].

Given this close cooperation, it can be interpreted that the own-initiative reports are not necessarily introducing new legislative ideas as such but rather put into writing how the parliamentary Committees envision the law to look like. Given the lack of research in this area, one can find potentials of the own-initiative reports by analyzing to what extent the political ideas voiced have been taken into account in the Commission proposal and how cooperation between the EC and EP looks like.

[53] Kotanidis, 'Parliament's Right of Legislative Initiative. EPRS | European Parliamentary Research Service', 3–4.
[54] Kotanidis, 4.

Chapter 3.

Methodology

In the following chapter I want to explain how I aim to conduct my research in order to answer my research questions. I will show which documents will aid my research and how the theory presented in the previous chapter will help me to answer my sub-questions (and research question[55]).

As established in the previous chapter, the focal point of my analysis are the own-initiative reports and their procedures in relation to the Commission. In the case of my research subject, the DSA, three own-initiative reports are of interest for my analysis. Two of them are so-called legislative initiative reports (short INL), which originated from the Internal Market and Consumer Protection Committee (IMCO) and Legal Affairs Committee (JURI) (both reports were subject to Article 225 TFEU, which is why they classify as "INL"). The third report is a non-legislative own-initiative report, short INI, published by the Civil Liberties Committee (LIBE) [56].

In order to understand how the agenda was potentially shaped through the own-iniative reports and answer my first sub-question[57], I want to take a closer look at the procedures that lead to the establishment of such reports. In this step I will assess through a historic recreation of the events[58], who the key players in the process are, which influences occur at what stage and how the different actors can intervene to make an influence on the outcome of the reports. As the INL/INI reports are only the final product of the Committee work, I will also include the submitted amendments by the political groups in my analysis. With the help of an expert witness interview, conducted with an APA (Accredited Parliamentary Assistant) who has worked with a shadow rapporteur on the IMCO INL, I want to gain further insight for the political dynamics in this process.

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[55] *RQ: To what extent did the EP's INI/INL reports influence EC-legislative proposal on the DSA (specifically its regulation of algorithms) ahead of its publication in December 2020?*

[56] European Parliament, 'Legislative Train Schedule: A Europe Fit for the Digital Age', European Parliament, 2020, https://www.europarl.europa.eu/legislative-train.

[57] *SQ1 What are the stages in a process of writing an own-initiative report and what are the main influences in this process?*

[58] In total I will reflect on a timeframe reaching from end of 2019, when the reports first were discussed in the Committees, to 15th December 2020, when the proposal by the Commission was presented.

The theory on agenda setting, and specifically the research on the INL/INI reports, suggests, that the EC is taking the EP reports more and more into account, which can be considered as the result of growing cooperation between the two bodies (SQ2[59]). I argue that as a result of the cooperation, the potential (which is – by law - unintended) of the Parliament to influence legislation has been growing over the course of the last years. Given that, according to Poptcheva, the Commission has been showing tendencies to indicate their acknowledgment of the Parliamentary reports in the final text (see chapter 2.3), I therefore assume that proof for the influence of the EP can be found on different levels, such as an *institutional*, as well as *content* level. For the technical level, I will therefore look for any references to the reports that have been included in the final legislative text of the Commission. In addition to that, I will use the results of my witness interview on the process to deduct possible implications on the cooperation between Commission and Parliament in the time frame of my research.

Finally, in order to find out if the parliamentary reports have an influence on the *content* of the Commission's proposal (SQ3[60]), I will filter my primary sources (reports, amendments and proposal) on any indications for my topic of interest, the use of algorithms. Concretely, I filter the text for mentions of algorithms and related terms, such as "AI", "artificial intelligence", "automated/automation", "content curation/ moderation", "recommendation system", and "filter". By comparing the reports and the proposal, I aim to uncover how much of the political ideas of the parliamentary report reoccur in the Commission's legislative product.

Having presented the structure, method and actors of my analysis, I will now move to the presentation and discussion of my results.

[59] *SQ2 To what extent can the DSA be considered as the result of cooperation between Commission and the Parliament? What are the indications for this?*

[60] *SQ3 To what extent does the Commission proposal show influence of the EP INI/INL reports? Looking at the regulation towards algorithms: where does the EC incorporate the EP's agenda, where does it disagree?*

Chapter 4.

A Case study on the INI/INL reports and the DSA

As introduced in the previous chapters, I have chosen the Digital Services Act, short DSA, as the case study for my research on the influence of the own-initiative reports. In the following chapter, I will present the background of this regulation, its content and, in order to receive an answer to my research question, show the results of my analysis by discussing how the own-initiative reports may exert influence on the Commission.

4.1. The EU's objectives in digital governance

In recent years, European Union politicians and diplomats have increasingly called for a stronger EU agency when it comes to digital technologies, often framed under the goal of achieving "digital sovereignty". In an EU context, digital sovereignty "refers to Europe's ability to act independently in the digital world and should be understood in terms of both protective mechanisms and offensive tools to foster digital innovation"[61]. Overall, the goal of digital sovereignty can be traced back to three areas of concern which have become dominant in European politics recent years: First, the domination of a few powerful (foreign) Big Tech companies that leads to an overdependence on their services, competition issues and market concentration (to the detriment of European businesses). Second, the lack of a harmonized digital single market that would allow for innovation and help promising start-ups and digital companies to compete with such powerful companies. And third, the struggle within the EU to "protect" European citizens from harms, meaning systems that work contrary to European values and law (ie. data protection, freedom of expression)[62]. From a technological perspective, Europe's position in the digital market has been weak in recent years, and digital innovation "massively underestimated"[63]. For a long time, the EU preferred to react with soft-law, such as self-regulation incentives or Code-of-Conducts to digital innovation, instead of coming up with a harmonized "rule book" (as the DSA is aiming for today), which would have given European businesses security to conduct and innovate and ingrain European values in emerging technologies of the dominant tech companies. As a result, the European Union failed

[61] Tambiama Madiega, 'Digital Sovereignty for Europe', *Briefing. EPRS Ideas Paper Towards a More Resilient EU* PE 651.992 (July 2020): 1.
[62] Madiega, 'Digital Sovereignty for Europe'.
[63] Puddephatt, 'Europe's Digital Sovereignty'.

to systematically tackle arising issues that gradually entered the European market[64]. It was only when Edward Snowden revealed the US-American tactics of data gathering that politicians in the EU started to question their "soft" approach[65]. As a result, during the last three years the EU has transformed its stand on digital policy from soft law to interventionism and regulation and thereby established a growing influence on digital technologies[66].

From an international relations perspective this subject is particularly interesting because the EU is framing its efforts in digital policy also under "geopolitical implications". According to Burwell and Propp, the current focus on digital policy and autonomy also stems from the overarching European principle to "protect citizens from harmful outside threats" – a political agenda that was created in the aftermath of the financial crisis in 2008 and was further fueled by tensions in foreign policy such as the recent war between Ukraine and Russia, as well as the refugee crisis in 2015 [67]. On top of that, China and the US have been increasingly viewed as threat towards this geopolitical stand of the EU, with new digital technologies disrupting the European Market[68]. As a result, the EU's External Action Service, the EU's diplomatic and foreign policy body, called for a turn towards a more "strategic autonomy"[69] and Commission President Ursula von der Leyen promoted in her opening speech the idea of a "geopolitical Commission"[70] in this context.[71]

In this debate, the digital agenda was named as one of the top priorities, especially at the start of the new Commission's mandate in 2019 [72]. The Digital Services Act therefore needs to be understood as more than just a regulation of digital technologies. Its outcome has (geo)political implications and is clearly aimed to readjust the power-imbalance between

[64] Puddephatt.
[65] Falk Steiner and Victoria Grzymek, 'Digital Sovereignty in the EU', *Bertelsmann Stiftung (Ed.)*, 2020, 4, https://www.bertelsmann-stiftung.de/en/publications/publication/did/digital-sovereignty-in-the-eu-en.
[66] Puddephatt, 'Europe's Digital Sovereignty'.
[67] Frances Burwell and Kenneth Propp, 'The European Union and the Search for Digital Sovereignty: Building "Fortress Europe" or Preparing for a New World?', Issue Brief (Atlantic Council FUTURE EUROPE INITIATIVE, June 2020), 3.
[68] Madiega, 'Digital Sovereignty for Europe', 2.
[69] European Union External Action Service, 'Shared Vision, Common Action : A Stronger Europe : A Global Strategy for the European Union's Foreign and Security Policy.', Website, 2016, 4, https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf.
[70] European Commission, 'Opening Statement Ursula von Der Leyen European Parliament'.
[71] For transparency reasons, I would like to mention that some parts of this chapter have been used from my essay on the concept of sovereignty in the EU's digital sovereignty agenda, written in course "Modern World and States Systems".
[72] European Commission, 'Communication on "Shaping Europe's Digital Future"', 19 February 2020, https://www.europeansources.info/record/communication-on-shaping-europes-digital-future/.

Europe and other global players. Any influence the Parliament might play in the establishment of new rules inscribed in the DSA therefore not only show the Parliament's empowerment within EU's institutionalism but also on the world stage.

In the context of this, the EU's new approach has opened an exciting new environment for research on digital governance and also led to increasing public debates on the EU's handling of internet law (such as the Article 13/17 debate on upload filters in the Copyright Directive). Despite such controversial regulatory approaches, the EU is considered as the leading force in digital policy making today[73]. Among the most prominent are the EU regulation on data protection ("GDPR"), which was the first EU law to include rules on the application of AI[74]. This was followed by many more EU regulations and directives, touching on different aspects of digital technologies, such as the Copyright Directive (specifically Article 13/17, calling for "upload filters"), the e-privacy Regulation (ePR, aiming for "chat control" through automated content detection), EU regulation against 'terrorist' content online (TERREG), and most recently, the Regulation on "artificial intelligence systems" in April 2021.

4.1.1. The Digital Services Act (DSA)

The DSA was certainly one of the biggest "files" in the area of digital policy in recent years. Created as an update to the the outdated 20-year-old E-Commerce Directive, the DSA and Digital Markets Act (DMA) package aimed to "to create a safer digital space in which the fundamental rights of all users of digital services are protected" and "establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally" [75]. The key goal of the Digital Services Act was to establish a horizontal regulation equipped to the digital standards of today and the future, while maintaining the key elements of the E-Commerce Directive, such as exemptions from liability for platforms hosting content. In a total of five chapters[76], the DSA set out provisions for different kinds of platforms, ranging

[73] Puddephatt, 'Europe's Digital Sovereignty'.
[74] Inverardi, 'The European Perspective on Responsible Computing', 66.
[75] European Commission, 'The Digital Services Act Package | Shaping Europe's Digital Future', 2020, https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package.
[76] The proposal is separated in five chapters: Chapter I concerns general provisions, including the subject matter and scope (legal basis (Art.1) for the proposal is Article 114 TFEU), Chapter 2 addresses provisions on the exemption of liability of providers of intermediary services. In Chapter III the proposal foresees a categorization for due diligence obligations, depending on the size of platforms: the bigger the platform, the more obligations it has to fulfill (such as additional transparency obligations, audits and mandatory self-assessments). Chapter IV concerns the implementation and enforcement of the regulation. Contrary to the idea of a European agency, as suggested in the JURI-INL, the Commission strives for a cooperation among "Digital

from Intermediary services to "Very Large Platforms (VLOPs)", including big social media companies such as Facebook and YouTube [77].

4.2. The INL/INI reports

Now that I have briefly outlined the background of the regulation and the EU's interest in updating rules in the digital sector, I would like to present the results of my analysis. As outlined before, I framed my research under the research question: *To what extent did the EP's INI/INL reports influence the EC-legislative proposal on the DSA (specifically its regulation of algorithms) ahead of its publication in December 2020 and does this constitute an erosion of the Commission legislative monopoly*? in order to analyze how much influence the Parliament, through their reports, has on the Commission's legislative proposal. In the previous chapter, methodology, I have presented how the analysis of INL/INI documents concerning the DSA can show these potentials. I will now continue with a comprehensive illustration of the process and dive into the most important policy suggestions of the reports.

4.2.1. The Process

In order to gain a deeper insight into the procedure of the own-initiative reports, how they are set-up and influenced over the time of their creation (SQ1[78]), I have structured the entire INI/INL-process chronologically into four steps (see Figure 2). With the help of this sectioned procedure, I aim to recreate the most important events in this process starting from the initiation of the reports in late 2019 to their adoption in October 2020. After each step I will reflect on my second sub-question[79] to illustrate how much cooperation between the Commission and the EP can be observed in every step in these "pre-stages" of legislation-making. Once this chapter is finalized, I will continue to the "proposal-stage", in my case the publication of the proposal on the DSA on December 15th 2020. The transition into the new

Services Coordinators" with a right to intervene as regulator itself (if the Coordinators fail to do so). Finally, Chapter V addresses final provisions.

[77] European Commission, 'Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and Amending Directive 2000/31/EC', 15 December 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0825&from=en.

[78] SQ1 What are the stages in a process of writing an own-initiative report and what are the main influences in this process?

[79] SQ2 To what extent the DSA can be considered as the result of cooperation between Commission and the Parliament?

chapter symbolizes the transition from the pre-proposal phase to the proposal- (and post-proposal-) stage (also “Ordinary Legislative Procedure”, short OLP).

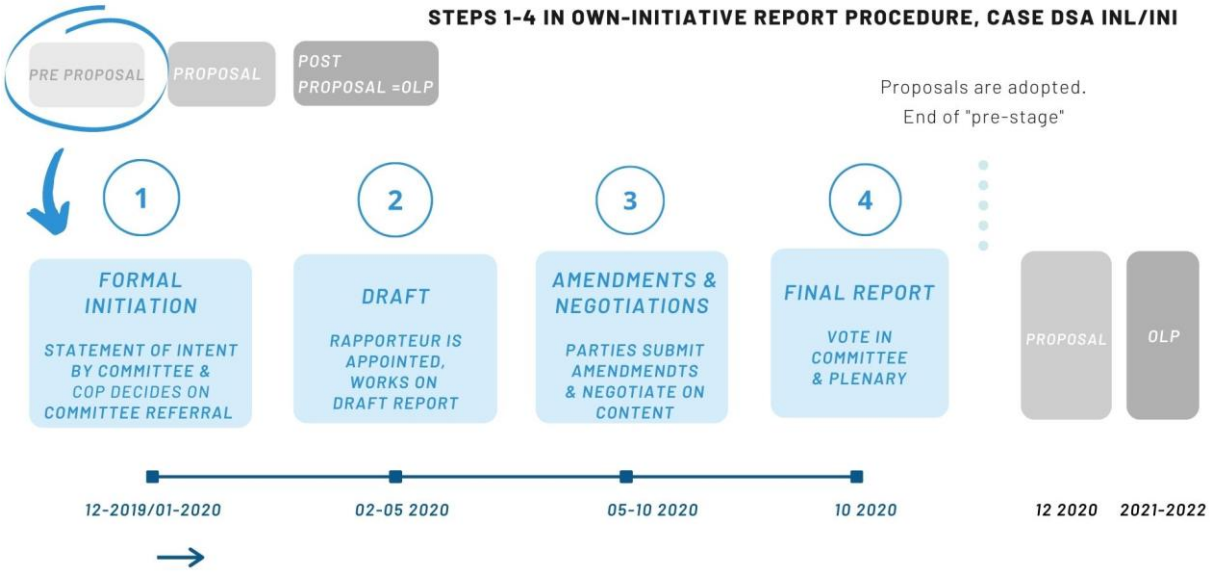

Figure 2 Steps in pre-proposal stages (own-initiative reports)

Sequencing this process serves three goals: a) a better understanding for the creation of the reports, which are still understudied, b) a clearer view on the actors and where influences on the reports occur, which also informs possible impact on the agenda of the proposals and c) a more nuanced look on the cooperation between the Commission and the Parliament, which is crucial in understanding the entire dynamics in legislation-making.

I will now step back in time and enter the **first stage** of the own-initiative reports on the DSA. January 2020 was the first mile-stone in this process, when the Conference of Presidents (short “COP”, composed of the President of the Parliament and the Chairs of the political groups) decided on the competence of Committees. The COP represents head of the Parliament, which is called upon whenever questions over Committee competence over a file is contested[80]. This decision followed an official “statement of intent” from Committees, which were anticipating in writing such a report, in late 2019. Finally, the COP decided to allocate a legislative own-initiative report to two Committees, the internal market (IMCO) and legal

[80] Overall, there are 20 Committees in the EP, each covering different areas of expertise. Given that the DSA reaches into different fields of Committee expertise, it was necessary for the COP to determine which Committees had the highest competence to work on the own-initiative reports.

affairs (JURI) Committee. In addition, the Committee on fundamental rights (LIBE) was granted to set-up a non-legislative own-iniative report.

During this first step, cooperation between the Commission and the Parliament is already in place, however only on an informal level. For the purpose of recreating the events aside official lines, I conducted an expert interview with an APA (Accredited Parliamentary Assistant) who had worked on the creation and negotiations of the IMCO INL. The APA confirmed that there was exchange on a high-level between her and senior staff Members of the Commission on the DSA, already in late 2019. The communication, which was initiated mutually, was specifically set to receive information over each party's plans on the DSA:

"*We've been in touch with the Commission from very early on. Before even the work on the initiative report started because it was pretty clear, I think the entire digital bubble and Brussels knew that the review of the E commerce Directive would be coming soon. (…) We were having meetings with W, who is now in Vestagers Cabinet (…) We've been meeting a couple of times, but exchanging on a very high level or just the, you know, the rather big ideas, what should be in the DSA which what should not (…)*"[81].

Once the formal questions over the competencies had been settled, the work in the chosen Committees started in February 2020[82]. This symbolizes the transition from step one to step two in this process. **Step two** focusses on the "rapporteurs" of the reports. The rapporteur of each own-iniative report is not only the lead negotiator for the file but also responsible to draw up a "draft report" on the INI/INL, meaning s/he can set the initial agenda for the reports. Appointing the rapporteur on important files is crucial for political parties as they are able to exert a significant amount of influence in this position[83]. Which party gets to represent the rapporteur is usually the result of a bargaining game among the bigger parties in the EP. In most Committees, political groups receive a certain amount of points according to the group size, which they can use to bid in an auctioning system in order to receive the

[81] Anonymous APA. Anonymized Online-Interview by Author. July 05 2021. Full Transcript in Annex

[82] n.A. Internal Timeline on the DSA INL. Source known (anonymous). 2020.

[83] Rory Costello and Robert Thomson, 'The Policy Impact of Leadership in Committees: Rapporteurs' Influence on the European Parliament's Opinions', *European Union Politics* 11, no. 2 (June 2010): 219–40, https://doi.org/10.1177/1465116510353459.

award of rapporteurship[84]. In the case of the DSA own-initiative reports, the bargaining game was won twice by S&D (Alex Agius Saliba was named rapporteur of IMCO, Tiemo Wölken was appointed rapporteur to JURI) and once by EPP (Kris Peeters in LIBE). After some initial exchange over possible content of the report with the other shadow rapporteurs, ie. through workshops[85], in early spring, the rapporteurs prepared their report, which were presented in spring of 2020 (April, May 2020) to the Committees. While it was known that the Commission had the intent to review the e-Commerce Directive and present the DSA for a while[86], the draft reports represented the first time that ideas of future digital regulation were put into words. In a sense, this fact alone can be considered as agenda setting practice, given that the rapporteur was thereby anticipating the Commission proposal months before its actual publication.

In terms of cooperation between the Commission and the actors in this second step it can therefore be supposed that there was at least exchange on an informal level in order to achieve a certain level of harmonization between the Parliament and what the Commission may decide[87]. However, there is no formal cooperation between Parliament and Commission, given that the Commission is not allowed to interfere in the work of the Parliament during the writing of an own-initiative report.

The publication of the draft report indicates the transition to the **third step** in this process. This is particularly crucial for the groups as this is the only step where they can insert their ideas, priorities and ideologies into the report and thereby also possibly impact the Commission's proposal. For the DSA own-initiative reports, this phase was kicked off in April/May 2020. Once the other "shadow rapporteurs" (one MEP for each political group) had read the file, they discussed the document internally and worked on amendments, meaning that they proposed changes to the submitted draft in order to shape it according to their own

[84] Lukas Obholzer, Steffen Hurka, and Michael Kaeding, 'Party Group Coordinators and Rapporteurs: Discretion and Agency Loss along the European Parliament's Chains of Delegation', *European Union Politics* 20, no. 2 (1 June 2019): 242, https://doi.org/10.1177/1465116519827383.

[85] n.A. Internal Timetable on the DSA INL. Source known (anonymous). 2020. Obtained through expert witness working on the INL report.

[86] Anonymous APA Interview. 2021.

[87] I suppose so, given that there was clear evidence from the expert witness interview that the Commission reached out as soon at it was known that the APA's MEP was appointed shadow rapporteur. It is only logical that the Commission would do the same with rapporteur, most likely with a higher frequency.

party's political line. The amendments[88] offer a closer look into the priorities or "red lines" of each party and are therefore an interesting research subject. In order to better understand the different political forces in this process, I have analyzed the amendments of each report (specifically towards their suggestions over the use of algorithms). To provide context, I will briefly present the amendments together with the political background of each party, specifically on digital topics. (*Please see explanation in the footnotes for a detailed description of the policy suggestions.)*[89]

In total, there are six to seven parties that played a role in this part of the process. First, **the EPP,** which is currently the biggest group within the EP and is representing a number of European conservative parties. With a focus on protecting European values and businesses, the EPP has been known to advocate for more responsibility of platforms when it comes to the moderation of hate speech content (ie. through content moderation) and the policing of anonymous profiles[90]. The amendments submitted in this case, show similar tendencies among conservative ranks: Members of the PPE party, as well as a Members of the Hungarian Fidesz-party (formerly EPP) showed skepticism towards human review in content moderation (due to the high amount of content to be reviewed) in their amendments. They advocated for more responsibility of platforms to use of automated tools against both, harmful and illegal, content – which can be understood as a more techno-deterministic approach[91].

[88] The amendments have been gathered using the open-source tool "ParlTrack", which retrieves data of political developments from official EU sites and displays them in an easily readable format on its website. While this website is a non-for-profit project and not official instrument of the EU, it is commonly used by staff within the EP. See ParlTrack. 2020. Amendments. Dossier IMCO INL. https://parltrack.org/dossier/2020/2018(INL)#/ams Accessed 25 May 2021; ParlTrack 2020. Amendments. Dossier JURI., https://parltrack.org/dossier/2020/2019(INL)#/ams Accessed 25 May 2021; ParlTrack. 2020. Amendments. Dossier LIEBE INI. https://parltrack.org/dossier/2020/2022(INI)#/ams Accessed 25 May 2021

[89] In order to provide clarity, I have provided an explanation on the most important policy demands in the footnotes. The descriptions are based on my own understanding of the topics, having worked and researched digital policy for almost two years.

[90] EPP Group, 'EPP Group Position on the Digital Services Act (DSA)', www.eppgroup.eu, 20 January 2021, https://www.eppgroup.eu/newsroom/publications/epp-group-position-on-the-digital-services-act-dsa.

[91] The practice of content moderation addresses the take-down of content by platforms due to the illegality of content or the violation of the terms of services of the platforms. The practice is still very untransparent, which is why it is not clear to what extent platforms use algorithms to delete content and how much of the content is taken-down by humans. Due to the number of errors in content-moderation, often prominently discussed in the media, there is a high interest of regulators to intervene here. Even though there is significant evidence that algorithms do not understand context-sensitive content such as speech, there are politicians who call for more algorithm-based content moderation or no human intervention (industry-friendly/techno-deterministic view). On the other side of this discourse are those who promote a user-friendly or socio-cultural view, advocating for a mandatory human oversight in cases were algorithms are error-prone, but also explicit workers' rights (ie. fair working conditions and proper education) for content moderators

The second biggest party in the EP, the coalition of socialist and social-democrats, **S&D** (also called "the Progressives"), is known to stand for a regulatory-friendly approach in this field. In terms of digital politics, the party has been vocal both inside and outside the EP, running multiple campaigns on topics such as digital tax and targeted advertisement[92].The amendments in the reports illustrated a rather clear language towards user-empowerment: Members advocated for stronger language in the area of human oversight when using algorithms and stronger consumer protection when AI was used, ie. also in combination with their use in search engines (JURI). Members also proposed an extensive number of amendments for stricter handling of algorithms and AI, such as additional responsibility for platforms on algorithms, more transparency on algorithms in targeted advertising[93], more information on data-sets[94], and additional rules for algorithms that are used for political campaigns.

The third important party in the process was the **Renew** group. Driven by liberal values, Members of the Renew party often advocate for less regulatory intervention and the freedom for companies to conduct their business (in order to enable innovation). These priorities sometimes also correlate with the digital industry's goals, which is why some of the amendments submitted can be therefore labelled as "industry-friendly". For instance, Renew MEPs advocated for a restriction of transparency obligations for algorithms, arguing in favor of denying such transparency in relation to trade secrets in the amendments to IMCO Committee report. Particularly interesting were some of the proposed changes by Renew in the JURI report: Stronger language on the accountability of algorithms and human-intervention was traded off for mere obligation to inform if algorithms had been used by platforms (similar language can be found in the Commission proposal). One amendment by a MEP of the Renew party, Stéphane Sejourné from the French *Republique En Marche* party,

[92] Socialists & Democrats, 'What We Stand for -Our Progressive Vision', https://www.socialistsanddemocrats.eu/, 7 July 2021, https://www.socialistsanddemocrats.eu/what-we-stand-for/our-progressive-vision/our-campaigns.

[93] Targeted online advertising – Questions over the functioning of advertising systems have only recently been surfacing in relation to digital governance. For one, this is due to the fact that "political advertising" has been impacted by algorithms which can target users based on sensitive data. Furthermore, the business models of many big tech companies such as Facebook and YouTube are built on advertising revenue, which made these companies build interfaces that lead to a high retention-time of users in order to display more ads. This form of algorithmic content curation is therefore inevitably linked to question of online-advertising.

[94] The opaqueness of algorithms leads to growing concern among regulators about the data-set that is used to train them. This is why the transparency of algorithms (their structure), but also their data-sets (their content) is crucial in order to examine possible bias and impact of algorithms on society and fundamental rights (ie free speech).

even called for the outright possibility for platforms to use algorithms for content moderation, claiming that content moderation was "becoming increasingly effective and precise"[95].

Though one of the smaller parties in the EP, the **Greens/EFA**, a coalition of European Green MEPs, the Pirates and Volt, can be often found among the key players in digital policy. The group is running on a bottom-up, user-centric and intervention-friendly approach. Often a fierce critic of the big tech industry, they are regularly at odds with some of the positions from the Renew party (even though in other political areas the two parties are working more closely together) and more aligned with the S&D party in terms of user-empowerment. The amendments in IMCO show that the Greens advocated for full transparency on both data sets and algorithms themselves, as well as explicit rights to redress when dealing with algorithms. The party was also in favor of an opt-out of algorithm-driven recommender systems[96] and an EU body for stress tests and audits (LIBE) as well as mechanism against amplifications of illegal content through algorithms through an opt-in (JURI). The same goes for **the Left party** (GUE) which is often arguing in a similar way as Greens/EFA when it comes to digital policy. In this case, the Left also rooted for more transparency on data sets and algorithms, as well as rights to redress (IMCO). In addition, the Left was the only party to explicitly mention issues of discrimination in data sets which could be caused by the reproduction of bias (LIBE).

Finally, there are a number of right-wing parties which have gained significant power in the EP over the last years. Among them are **ECR and ID**, which are often harder to codify in their party line because of their general skepticism over the EU as an institution. While being less active in some political areas, the parties are generally advocating in favor of protecting free speech and less intervention from platforms. The amendments here showed proposals in

[95] This is particularly interesting because it goes directly against the general tone of all final reports (JURI, LIBE, INI), which emphasizes the inability of algorithms to perform content moderation in a reliable way. In my last Master Thesis (MA New Media & Digital Culture) I conducted a discourse analysis on Facebook's arguments in this area and found that Facebook and its CEO Mark Zuckerberg have been known to prominently advocate for the "freedom to use algorithms" in content moderation, claiming that "they are getting more and more reliable" in detecting context-sensitive content (much to the contrary of the current state of research, which claims that AI is not able to understand content like hate-speech that depends on context).

[96] Recommender systems and content curation – Both of these terms reference the distribution of content on platforms which are enabled by algorithms. Concern in these areas mainly occur in reference to the opaque use of algorithms in such systems which are known to spread of hate speech or disinformation. Possible regulatory interventions for instance an opt-out (users have the possibility to stop algorithmic curation, however often these options are 'hidden' by providers) or opt-in (users have to explicitly consent to algorithmic curation).

favor of industry, ie. restricting transparency obligations for algorithms in relation to trade secrets (same as Renew) (IMCO).

As mentioned previously, the process of submitting amendments is one of the few possibilities for parties to put their agenda into the report. This is also crucial for outside stakeholders, such as lobby groups, who have only limited possibilities to impact the reports (meaning: only *before* the publication of the draft report or the submission of amendments). Therefore, it needs to be kept in mind that the amendments of each group might also be influenced by lobbying beforehand. According to my expert witness, there was also lobbying during the creation of the reports and she confirmed that in fact there is frequent lobbying in this stage in general[97]. Since lobby practices are rather opaque and often informal, their influence is very hard to measure. However, it is a known fact that the DSA was one of the regulations that is subject to the highest lobbying efforts in the EU[98]. While this was not the first time the EU attempted to interfere with the practices of big tech companies, it is certainly one of the most intrusive and potentially harmful (for the companies). While lobbying efforts certainly need to be viewed from a critical perspective, they do allow one important conclusion for this research: The more importance lobbyists ascribe towards the reports, the more seriously their agenda setting capabilities are taken, which might add to their popularity as a result.

Coming back to my procedural analysis, the **third phase continues** once the amendments have been submitted, the rapporteur reviews the suggestions and offers "compromise" texts, which are discussed among the parties (respectively, the shadow rapporteurs) in the negotiation phase. In this case, the negotiations started in May, were ongoing until the summer break (Mid July) and were resumed in September to finalize the text by the end of the month[99]. In terms of cooperation between the Commission and the Parliament, there was no formal procedure set, however there is proof (see next chapter) that the Commission was monitoring the creation. Asked, whether she believes the Commission was observing the own-initiative reports on the DSA, my expert witness replied, "*absolutely".* And elaborated further: *"We had calls with P (…) he confirmed to us that the Commission was*

[97] Anonymous APA Interview. 2021.
[98] Raphaël Kergueno, 'Deep Pockets, Open Doors' (Amnesty International, 2021), 7; Eurointelligence n.A., 'Mark as Spam: Google's EU Lobbying Campaign', Eurointelligence, 29 October 2020, https://www.eurointelligence.com/page-3.
[99] Anonymous APA Interview 2021

monitoring the three reports and the Parliament. (…) The Commission is formally not obliged at all to take anything on board. (...) I guess it's also a question of political will".

In a final step, what I refer to as **stage 4,** the reports were first put to a vote in the Committee and later put on the agenda of the plenary, which led to their final adoption on October 20th 2020. For this phase there is a formal requirement for the Commission to at least acknowledge the reports and, if not taken into account, provide a justification (see detailed explanation on this in the Theory chapter). The adoption of the reports was met with little to no attention in the media, hinting to the fact that despite their growth in influence inside the EU, there is no understanding in the public eye for the complicated procedures within the Parliament (that, as explained in the introduction, have run under the radar even in academia so far).

To summarize, the creation of own-initiative reports follows a formalized procedure that is impacted by the rapporteur and, to some extent, by the parties, their political agenda (voiced through amendments) and their negotiation skills. Cooperation between the Commission and the Parliament during the actual procedure of the own-initiative reports is existent, however only informal or of observing character. This however does not mean that the agenda of the reports is not taken into account by the Commission. Before I elaborate further on the possible impact of the reports on the Commission proposal, I will present the final reports in the next section.

4.2.2. The Content

I will now present the content and emphasis of each report, giving special attention to the sections that mentions the use of algorithms. I will do so in order to offer a basis for my comparison with the Commission proposal in the next chapter.

Overall, all reports showed an interest in the use of algorithms: The IMCO Committee INL-report contained the most mentions on algorithms, followed by the JURI and LIBE report. This also corresponds with the overall volume of the respective reports.[100] Every report had its focus on different aspects of algorithms in the use of digital services, depending on each of the Committees respective responsibilities:

[100] Please see the annex of this thesis for the complete list and categorization on the sections concerning algorithms.

The IMCO report had its focus on "the functioning of the Single Market" and the protection of "consumers", therefore containing extensive contributions in the areas of e-commerce and business, or fair market concerns. One key terminological difference to the other reports was that recipients of digital services were addressed as "consumers" (and not ie. "users" or "civil society") and civil/human rights were addressed as "consumer rights"[101]. In terms of algorithms, the IMCO report extensively addressed the topic in a chapter dedicated to "artificial intelligence and machine learning". There, the report called for non-discrimination in algorithms, including the monitoring of possible bias in data-sets (which shall be available to competent authorities). Also, the section specifically mentioned the intersection between AI and workers rights, and the necessity for human control in decision-making. Requirements for virtual assistance and chatbots were also specifically set out, as well as an opt-out of content curation and targeted advertising[102].

The JURI-report had its aim in "adapting commercial and civil law rules for commercial entities operating online", therefore dealt primarily with matters such as law enforcement and the protection of fundamental and civil rights. The JURI report was the only one that called for a definitive phase-out of targeted advertising, which is based on the extensive data-mining of users and distribution of advertisements via algorithms. Furthermore, it called for regular monitoring of algorithms, unambiguous consent to content curation and qualified staff for content moderation, in order to achieve proper human review[103].

The report of the LIBE Committee was dedicated to "fundamental rights issues" and therefore strongly concerned with matters of data protection, freedom of expression as well as negative effects of digital services on society such as through the spread of hate speech and disinformation. The sections concerning algorithms focused on their role in distribution of content, erroneous content removal and the necessity for human review and oversight when

[101] It should be noted that the Committees can only publish within their respective Committee's competencies. So while consumer and citizen rights often refer to the same topics, they show a difference in terminology due to the competence of the Committee.

[102] Committee on the Internal Market and Consumer Protection, '"Digital Services Act - Improving the Functioning of the Single Market" IMCO Report 2020/2018 (INL)' (European Parliament, 2020), https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/IMCO/DV/2020/09-28/p.4_CAs_Saliba_DSA_EN.pdf.

[103] Committee on Legal Affairs (JURI), 'REPORT with Recommendations to the Commission on a Digital Services Act: Adapting Commercial and Civil Law Rules for Commercial Entities Operating Online' (European Parliament, 1 October 2020), https://www.europarl.europa.eu/doceo/document/A-9-2020-0177_EN.html.

using algorithms in content moderation. In addition, the report called for transparency and explainability of algorithms, an opt-out of content curation and rules for data sharing[104].

4.3. The proposal stage: Finding the influence of the reports

4.3.1. Influence on an institutional level

The own-initiative reports are finalized after the adoption in the Committees, which ends what I call the "pre-stages of legislation-making" (or "pre-proposal phase"). The next stage in the legislative process is the publication of the Commission proposal, which formally kickstarts lawmaking in the Parliament. In the case of the DSA this happened on the December 15th 2020, roughly one year after the Committees had first indicated their interest in writing an own-initiative report and only two months after the publication of the final reports. For my research, the proposal stage is of crucial relevance, as I was aiming to find out to what extent the events before this exerted influence. Partly, I have been trying to find hints in the previous chapter, by looking at possible cooperation between EP and EC (SQ2). The same way I have been looking for cooperation in the process of the own-initiative reports, I also have examined the Commission proposal on the DSA:

As explained in the theoretical part of this thesis, one way to examine the cooperation between the Commission and the Parliament's reports is by looking at the proposal for explicit references on the reports [105]. Indeed, the proposal of the DSA mentions the three INI/INL reports in context and content extensively on the first page. The reports are discussed in terms of their suggestions and identified problems. Finally, the proposal states that "(…) the Commission has taken account of the issues identified in the European Parliament's own initiative reports and analysed the proposals therein" [106]. Other than that, the Commission does not indicate any explicit references to the own-initiative reports in the proposal itself.

This opens the question whether there are any other points of reference to the reports, that are less explicit? Indeed, there is another, frequently mentioned source in the proposal, that has not received much attention in relation to the Commission's work so far: the impact

[104] Committee on Civil Liberties (LIBE), 'Digital Services Act and Fundamental Rights Issues Posed', 20 October 2020, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0274_EN.pdf.
[105] Poptcheva, 'Parliament's Legislative Initiative', 5.
[106] European Commission, 'Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and Amending Directive 2000/31/EC', 1.

assessments[107] (IA), which lawmakers have been using as tools of legitimacy for new policies[108]. The impact assessment on the DSA was published parallel to the proposal and lays out the reasoning for the Commission's decisions in the proposal. The IA clearly refers to the own-initiative reports and states that the "longer list of issues flagged" was taken into account by the analysts [109] and that "European Parliament has invested considerable political resources to discuss and put forward views on the upcoming Digital Services Act" [110]. What follows is a detailed listing of issues flagged in each report and evidence which of these issues made it into the impact assessment's recommendations. This means that the own-initiative reports are not just "acknowledged" by the Commission but meticulously analyzed, categorized and implemented into the decision-making. The fact that the IA even justifies its reasons and references the section where the own-initiative reports were taken into account, shows the importance of the reports in astonishing clarity. Given that the proposal itself references the IA in its text multiple times, it can be assumed that the suggestions have been thoroughly studied and considered.

Informal exchanges on staff level between Commission and Parliament also proved that the Commission has taken the work of the own-initiative reports into account, as my expert witness confirms: "The Commission is pretty much free to do anything, but if you read the introduction of the proposal it makes reference to all of the reports, (…) we know that it's been really closely monitored"[111]. Apart from these anecdotes, the cooperation between the Parliament and the Commission can, as this section shows, be clearly confirmed on a technical level, implicitly and explicitly. Are the results on a content level, especially regarding the section on algorithms, also this unambiguous? This is what I will to examine in the next section.

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[107] In context of the European Commission's "Better Lawmaking" Strategy, the Commission has introduced Ex-ante Impact Assessment (IA) in 2002. Their goal is to examine possible effects of new regulatory efforts before their publication, see Karen Tscherning et al., 'Ex-Ante Impact Assessments (IA) in the European Commission — an Overview', in *Sustainability Impact Assessment of Land Use Changes*, ed. Katharina Helming, Marta Pérez-Soba, and Paul Tabbush (Berlin, Heidelberg: Springer, 2008), 17–33, https://doi.org/10.1007/978-3-540-78648-1_3.

[108] Ann-Katrin Bäcklund, 'Impact Assessment in the European Commission – a System with Multiple Objectives', *Environmental Science & Policy*, Sustainability impact assessment and land-use policies for sensitive regions, 12, no. 8 (1 December 2009): 1077, https://doi.org/10.1016/j.envsci.2009.04.003.

[109] European Commission, 'Impact Assessment of the Digital Services Act - Commission Staff Working Document', 15 December 2020, 39, https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-services-act.

[110] European Commission, 'Impact Assessment of the Digital Services Act Annexes - Commission Staff Working Document', 15 December 2020, 208, https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-services-act.

[111] Anonymous APA Interview 2021

4.3.2. Influence on a content level: Commission proposal on the DSA and its relation to the INL/INI reports

Now that the question over potential influence and interplay on a technical level have been addressed, I will focus on the content part. This will aid me in answering my last sub-question[112].

Overall, in the realm of algorithms, the DSA lacks teeth[113] in a lot of areas which had been covered by the parliamentary reports[114]. Compared to the ideas voiced in the own-initiative reports, many points had been dismissed by the Commission proposal. This also becomes visible through the impact assessment, which includes a transparent lists of areas and shows how many of the ideas on algorithms, which had been prominently mentioned in the reports, had been left out by the analysts in their interpretations[115]. It is therefore not surprising that the proposal does not reach into further areas than the IA indicated (as the IA provides the justification for the agenda put in the proposal).

Comparing the reports and the proposal[116], also taking into account the amendments and their political tendencies, reveals two general tendencies: firstly, the Commission went for a more industry- instead of user-centric option (providing less intrusive provisions, often in favor of transparency rather than clear regulation of certain issues, in fact similar to the own-initiative report's amendments by Renew). Secondly, the reports are substantially more critical towards algorithms than the Commission and down-sides of the use of algorithms are addressed in a more explicit way and met with harsher restrictions. I briefly will use one example in order to illustrate my observations regarding the use of algorithms: One of the

[112] *SQ3: To what extent does the Commission proposal show influence of the EP INI/INL reports on a content level? Looking at the regulation towards algorithms: where does the EC incorporate the EP's agenda, where does it disagree?*

[113] In a document of 114 pages the term "algorithm" occurs only 4 times and only in relation to oversight, the term "automated" is mentioned 14 times and mainly in relation to information obligation when an automated tool has been used by a platform and transparency requirements in the same context. "Algorithmic" (in combination with "system", "transparency" and "decision making") is mentioned 5 times in the main text of the regulation. Other terms like "artificial intelligence" are only mentioned 3 times in the annex of the regulation, the term "recommender systems" 15 times mainly in relation to the related Article (29, aiming for transparency and understandability) and risk mitigation by platforms.

[114] One might claim that this has to do with the fact that a few months later, in April 2021, the Commission presented another, additional legislation on the regulation of artificial intelligence, however that legislation did not address many of the issues raised regarding the topic of algorithms in digital services covered under the DSA.

[115] Algorithms are only mentioned in context of risk assessment (performed by platforms themselves) as possible risk factor, and transparency obligations in advertising and content moderation.

[116] Please see the annex for a comparison of the reports in more detail.

most obvious lacks of the proposal is the failure to account for humans when calling or mentioning the use of algorithms. Every parliamentary report mentions extensively and clearly the necessity of a human-in-the-loop if digital services make use of automated means to moderate content. In terms of freedom of expression, which the DSA is committed to, this is specifically crucial in moderation of contextual content[117]. Yet, the Commission does not address the necessity of this issue, merely states that if a platform decides to remove content through automated means, the affected user needs to be informed about it.

Overall, to answer SQ3, it is to be concluded that there are some ("weaker", less intrusive) ideas that have made it into the DSA, which were also voiced in the own-initiative reports. Naturally, it is not possible to say for sure whether these ideas were taken directly from the reports or whether outside-influence, through the contributions of lobbies or civic actors, played a role. The authors of an Amnesty International report on lobbying[118] claim that Big Tech companies subject to the DSA, among them Google, Facebook and Microsoft, spend the highest amount of money on lobbying (in 2020 their spendings increased considerably to a combined 19 mio. Euros[119]), and with 3,363 high-level Commission meetings, digital policy was by far the most lobbied policy area in the analysis[120]. Their conclusion: "it should come as no surprise that the tech titans of Silicon Valley take a keen interest in monitoring, and where possible shaping, the development of these policies [DSA, DMA], which have potentially major implications for their activities, business models, and ultimately bottom lines"[121].

[117] The LIBE Committee report "(…) warns that current automated tools are not capable of critical analysis and of adequately grasping the importance of context for specific pieces of content, which could lead to unnecessary takedowns and harm the freedom of expression and the access to diverse information, including on political views, thus resulting in censorship; highlights that human review of automated reports by service providers or their contractors does fully not solve this problem, especially if it is outsourced to private staff that lack sufficient independence, qualification and accountability" Committee on Civil Liberties (LIBE), 'Digital Services Act and Fundamental Rights Issues Posed', 12..

[118] Kergueno, 'Deep Pockets, Open Doors', 7.

[119] Aside from that, big tech has been massively investing into academic institutions. Even though they claim to have no direct influence on the studies conducted with the help of their donations, questionable to what extent the researchers, who rely on such funding, can be critical on big tech's practices. Similar "distortions of academic integrities" have been documented in the case of the tobacco industry, as Abdalla & Abdalla conclude in their paper on the topic, warning that such "strategies enable either industry to sway and influence academic and public discourse. See Mohamed Abdalla and Moustafa Abdalla, 'The Grey Hoodie Project: Big Tobacco, Big Tech, and the Threat on Academic Integrity', *ArXiv:2009.13676 [Cs]*, 27 April 2021, 1, https://doi.org/10.1145/3461702.3462563.

[120] Kergueno, 'Deep Pockets, Open Doors', 9.

[121] Kergueno, 'Deep Pockets, Open Doors', 9.

However, the clear reporting in the IA does strongly suggest that there is correlation between reports and proposal. Overall, when analyzing the number of suggestions on algorithms and each of their occurrence in the Commission text, the IMCO report emerged as most-successful in terms of its agenda-setting ability (see graph below), followed by the LIBE INI and the JURI INL[122].

Sections re. algorithms	IMCO INL	JURI INL	LIBE INI
Total	32	22	14
Included	10 *(31%)*	5 *(22%)*	4 *(28%)*
Not included	18 *(56%)*	10 *(45%)*	9 *(64%)*
Inconclusive	4 *(12,5%)*	7 *(31%)*	1 *(7%)*
Amendments (total)	1275	615	397

Table 1 Fact and Figures, by: author

4.4. Role of INL/INIs in the Ordinary Legislative Procedure

Finally, in order to understand to what extent the Commission might have an interest in incorporating the own-initiative reports into the proposal, it is also necessary to review what happens once the proposal has been submitted. Going back to my initial reference to legislative stages, this would be the "post-proposal stage", formally known as the stage where Parliament (and Council) receive a formal mandate to negotiate on the file as part of the Ordinary Legislative Procedure (OLP) [123]. Same as for the own-initiative report, this phase is kicked off by the allocation of the file to a "lead Committee"[124]. Once decided, the rapporteur starts working on issuing a "draft report", which includes amendments to the Commission proposal[125]. At this stage, the own-initiative reports posed the only officially adopted text by the EP on the topic of the DSA, meaning that if the rapporteur wanted to anticipate

[122] This also corresponds with the decision of the Conference of Presidents, which allocated the DSA for the negotiations of the Ordinary Legislative Procedure to the IMCO-Committee, thereby placing it in an internal market context, rather than a fundamental rights or data-protection one.
[123] Legislative Affairs Unit (LEGI), 'Handbook on the Ordinary Legislative Procedure', ordinary-legislative-procedure, 2019, 13, http://www.epgenpre.europarl.europa.eu/static/ordinary-legislative-procedure/en/ordinary-legislative-procedure/handbook-on-the-ordinary-legislative-procedure.html.
[124] Legislative Affairs Unit (LEGI), 14.
[125] Legislative Affairs Unit (LEGI), 16.

amendments of the other groups, s/he had to take own-initiative reports into account[126]. Keeping this in mind, the own-initiative reports unfold even more possible potentials of influence than initially assumed (and covered by current status of academic research). By creating the reports, the EP (and its responsible Committees) are forming a basis of their agenda which is also agreed upon among the parties within the Committees. This means that any idea manifested in the reports (which is not included in the Commission's proposal) can be used as leverage in the negotiation process during the Ordinary Legislative Procedure. During the expert interview the APA confirmed that this is in practice one of the main benefits for parties to contribute to the creation of own-initiative reports: "Politically if we see that ideas have not been picked up by the Commission into the legislation, like interoperability, like stricter limits on targeted advertising, then we can just very easily point to those reports"[127].

Figure 3 Steps to Legislation (Version 2)

While the Commission is not legally bound to incorporate any ideas of the Parliament, it is therefore politically wise to be aware of the Parliament's position when drafting legislative proposals. At least for my case study, it was confirmed that this was indeed the case[128]. This

[126] This is of course only the case, if the lead Committee chose to submit an own-initiative report before the proposal publication (this was the case for the IMCO Committee).
[127] Anonymous APA Interview. 2021
[128] Anonymous APA Interview. 2021

dynamic is certainly not inscribed by the Treaties but rather a result of the strengthening of the right to initiative by the Parliament and furthermore implicitly produces a stronger cooperation between the Commission and Parliament during the drafting of laws by the Commission (see Figure 3 for an illustration of these dynamics).

To finalize this chapter, I would like to use the insights and results gathered throughout the analysis of my corpus and interview and answer my research question[129]. While explicit references in terms of incorporated content were harder to find, the analysis showed a strong tendency of the Commission to monitor and analyze the content of the INI/INLs. The amount of evidence found for the interest of the Commission in the reports was indeed surprising in its clarity: especially the impact assessments showed in how much detail the reports were studied and in what way they were taken into account. Consequently, this development does suggest that the Commission is no longer just relying on its own ideas to draft laws but takes the Parliament into account. The analysis furthermore revealed that the reports have another overlooked effect in terms of agenda setting: as adopted text their existence can be used as leverage in the negotiations as their adoption constitutes a valid justification when submitting amendments. The agenda setting therefore does not only occur in a linear way from the report to the proposal but extends into the Ordinary Legislative Procedure. For this reason alone, it is surprising with how little academic interest the reports have been met so far. This is why, I aimed to provide a clear procedural outline for the processes leading to the final reports, hoping to contribute to a better understanding of these documents in future research.

[129] To what extent did the EP's INI/INL reports on the DSA influence the agenda of EC-legislative proposal of December 2020 (specifically its regulation of algorithms) and does this constitute an erosion of the legislative monopoly of the EC?

Chapter 5.

Conclusion

Over decades the European Parliament has faced criticism over its inability to influence the legislative agenda in the European Union. The aim of my study was to find out whether, keeping the most recent developments in mind, the critics were still right or if there was proof for a gradual erosion of the Commission's monopoly. Starting with the promising results of Kreppel & Webb's and Maurer & Wolf's analyses, I wanted to explore further on the potential of the own-initiative reports and reveal their procedures, process and possibly influential outcomes. Alongside my research I found statements from high-ranking parliament officials, former staff of Parliament, and Commission representatives, all testifying to the growing importance of the reports.

By looking at the research in the area of agenda setting, I was able to identify how unintended potential was created within the European institutions and how the cooperation between the Parliament and the Commission had an impact on its agenda setting ability. Through the analysis of primary sources and the help of witness accounts I was able to reveal how the own-initiative reports are made, how parties influence them and what impact they might have in the legislative process (SQ1). It became evident how crucial the role of the rapporteur can be and where political parties in this procedure have the potential to insert their political agenda into the final text. Even though not officially involved, witness accounts and primary sources helped me recover how the Commission is cooperating with the Parliament on an informal level in this stage (SQ2). By analyzing the reports content and comparing them to the proposal I furthermore examined in detail how the EP is trying to exert influence on the Commission through the report and established that while some ideas were taken into account in the areas of algorithms, the proposal often went a less explicit, sometimes industry-friendly way (SQ3). In analyzing the procedures of the reports and the cooperation with the Commission, I became aware of another dynamic, which had not been observed before: the reports do not only try to exert direct influence on the proposal but are also used indirectly for agenda setting in order to use the ideas voiced in the reports (pre-stages) as leverage in the Ordinary Legislative Procedure (post-proposal stage). For future research, I would therefore suggest to explore the influence of the IAs further, also in their

relation to the reports in order to gain a more nuanced understanding, which this thesis was not able to cover. In addition, by studying both the pre- as well as post stages of the proposal, as well as lobbying efforts in these phases in more detail, researchers might gain a more holistic and accurate view on the legislative power of the EP.

I hope that my analysis was able to demystify some of the notions around algorithms and provide some clarity as to where the European Union is heading. Even though "algorithms" often seem complex and opaque, questions over the use of automation, especially in digital services, are relevant and reach into our everyday lives: chatbots, automated content moderation or curated social media feeds have become part of many European citizens reality and therefore also need to be addressed by regulators. While the geopolitical implications of digital technologies are a driving force for this regulation - especially for the Commission, there is also a citizen-perspective which needs to be taken into account.

Finally, to answer my research question[130] I would argue that the reports show a high tendency to influence the agenda of the Commission in different ways. Agenda setting occurs on different levels, not always directly visible in the proposal but also later in the OLP. The question over the impact of the EP on legislation cannot only be answered by looking at the proposal alone. Yet, because the Commission is not formally required to take into account any of the ideas voiced in the reports, the EP is still depending on the goodwill of the EC. While the evidence presented suggests a gradual erosion of the EC's monopoly, this notion can only be proved if the EP indeed manages to manifest its influences further in the future. Critics on the democratic deficiency of the EU are manifold and not all of them see the culprit of the lack of accountability in the inability of the EP to initiate laws. Those who do, should be monitoring the developments EP closely- changes in the system are happening gradually rather than abruptly and it does not always need a Treaty change for powers to shift in the European Union.

[130] To what extent did the EP's INI/INL reports on the DSA influence the agenda of EC-legislative proposal of December 2020 (specifically its regulation of algorithms) and does this constitute an erosion of the legislative monopoly of the EC?

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ANNEX

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Documents

UK House of Lords. 'Initiation of EU Legislation: Report with Evidence'. 22nd Report of Session 2007–08. London: The Stationery Office Limited: European Union Committee. Published by the Authority of the House of Lords, 5 August 2008.

Chairman: "The increase in the application of the co-decision procedure has obviously changed the Parliament's role and increased its influence over the content of legislation once a proposal has formally been made. Has there been any effect on the Parliament's ability to bring about the initiation of proposals? ***Has there been any effect on the context of Commission proposals, in other words are they tailored in a way which in your experience anticipates the views of the European Parliament?****"*

Mr Harley: (…) ***To set the context somewhat, we have seen in the European Parliament over the last two or three years, roughly since the last European elections in 2004, a considerable increase, as we see it anyway, in the European Parliament's involvement throughout the legislative process of the EU institutions****. It is not just about co-decision or the very significant extension of areas to be covered by co-decision that comes with the Lisbon Treaty, it is also the beginning of attempts to improve co-ordination with the Commission and to some extent as well with the Council on legislative programming. It is an increased use, I would say, of initiative reports within the Parliament, often reports on Commission White Papers or Green Papers. Indeed, there is discussion beginning now about a possible role for the European Parliament in transposition and enforcement, in other words at the end of the process. Because of this increasing involvement of the Parliament at the different stages of the process as a whole,* ***I think the answer to the question as to whether the content of Commission proposals have been affected or take account of the Parliament's wishes in the general sense has to be yes****."*

Interviews

Anonymous APA. Anonymized Online-Interview by Author. July 05 2021. Full Transcript in Annex

Staff names have been codified in order to ensure anonymity but are known to the author.

Q: From the top of your head, can you walk me through the steps of writing the DSA INL in IMCO?

A: Oh God can't remember so much anymore because so many things happened since then. So yeah, I mean, we've been in touch with the Commission from very early on. Before even the work on the initiative report started because it was pretty clear to I think the entire digital

bubble and Brussels that the review of the E commerce Directive would be coming soon. So we have been in touch mostly with… well we all were having meetings with the previous head of unit W, who is now in Vestagers Cabinet, at the time he was P's boss. Uh, so we've been meeting a couple of times, but exchanging on a very high level or just the, you know, the rather big ideas, what what should be in the DSA which what should not and it's been pretty clear from super early on that it's a mantra for almost everybody who was planning to work on it, that the big pillars of the E-commerce directive should be maintained. So the liability exemptions, the general monitoring prohibition, and so on so. It's been a thing that's been repeated over and over and over again. So yes and then the European Commission had its public consultation, and in the Parliament we started working on the own initiative report. Um, I think. I can't remember super well the timelines, but I think it's written somewhere I don't know you. You found it now that you've got the the time that.

Q: Well, the official timelines that I've found word that the file was allocated in January 2020, but then the only other official time that I found was when it was voted in in the committee.

A: Yeah, so A was appointed shadow for the Own initiative report end of December, so just before we went off on the winter break. And then we drafted amendments. Oh God. I had just found it somewhere, I think until until May or so. And started negotiating really intensely in like we started mid end of May until July. Then we went off on them on the summer break and then we started again in September. I think the vote was initially planned on the 28th of September or so, like end of end of September, but. Like I think it was postponed like a week or so? Already at the time it was the big big project because the report was so long and we coordinated our amendments also already internally with other people in the group. Had lots of feedback on draft amendments also from other stakeholders.

Q: Is the procedure the same as it is when the proposal is negotiated in a committee? So is their first draft from the rapporteur, and then you start negotiating. You start submitting amendments and negotiating it's the same.

A: Yeah, in terms of process... Let me think, I think for the initiative report, because there is no first, like there's no proposal from the Commission, our amendments had to be based on the rapporteurs first draft, so we had to wait for the Agius Saliba report in order to like drafting our amendments. And for now, for the legislation, it's a bit different because we are amending the Commission proposal and could start thinking about amendments and prepare amendments in parallel to the rapporteurs draft report. But then in terms of process, yes, it's it's more or less always the same. You write your amendments. You submit the amendments before the deadline, ideally, and then yeah, the rapporteurs job is to review everything, propose compromises together with the secretariat and then you start negotiating. That's more less the same. There was already last year in terms of procedure, bigger involvement of some of the opinion committees, so for example P was involved in negotiating some of the compromises. But in the last years procedure, the other committee rapporteurs came in only later, so they did not participate in negotiating the legislative annex. But only the the resolution for it, which was a bit weird. But. Yeah, so they came in very late and I think now. With this is bizarre new procedure, they will be sitting in the negotiating rounds from the very beginning.

Q: you mentioned in the beginning that you already, because you you kind of all knew that there's going to be a revision of the E commerce directive you were in touch with the

Commission. But was that more of an informal process? Or is there any kind of institutionalized process to have?

A: No.

Q: OK, and was that you reaching out to the Commission or them reaching out to you?

A: I think it was a bit of both. Um, because, I knew S from my previous jobs. So I suggested that we could meet and in order to help us in the in A's office prepare better for what would be coming. And then I think once she was appointed the official shadow for the legislative report, maybe they asked us again for a meeting, but it's it's guessing now. Anyway, so it's been mutual outreach.

Q: Yeah, OK, and during the time when you were officially working on the INL, was there any exchange with the Commission? Also on an official basis?

A: No no.

Q: Do you think to To what extent do you think that the Commission once the report was look what you were actually working on?

A: Yeah, yeah, yeah, yeah so. Absolutely. We had calls with P, who came after W, he confirmed to us that the Commission was monitoring the three reports and the Parliament. And, um. the Commission is formally not obliged at all to take anything on board. But so yeah, so I. I guess it's it's also a question of political will and what they are taking on board in the end and what not, but what they've been ignoring. The Commission is pretty much free to do anything, but if you read the introduction of the proposal it makes reference to all of the reports, yeah, so we know that it's been really closely monitored. At that stage it is delicate because the Commission cannot get involved in and interfere on what the Parliament is doing.

Q: You said it's more of kind of a political will, that who in the Commission is responsible determines how much the INIs are taken into account..?

A: Yeah, absolutely. I mean, of course the staff members of the Commission, they are not neutral - well they should be. But they of course have an opinion on how the legislation should be drafted when they are drafting it, and then once they made a choice or they are laying out the options for their hierarchy, then it becomes a very highly politicized discussion inside of the Commission what in the end is getting proposed or not. There is just before the proposal comes out, there's this entire consultation phase in the Commission, and of course, all of the other DGs also have a chance to give input and say yes or no to some of the things so. I'm sure that DG Home had a different opinions from DG Connect on some of the issues. And then the most clear example is that ad tech prohibition, which was on the table and which was, I think, politically not accepted on the highest levels of the Commission.

Q: Maybe you can just briefly say a few words to how the negotiations went. So how was your cooperation with the with the other parties and then also if you think whether in the reports have become more important in recent years. If you have any thoughts on that?

A: You mean generally initiative report? Yeah, I think there's been a change because a couple of years back we didn't have the legislative initiative reports where the Parliament can actually start laying out the very concrete wording the Parliament wants to see in a proposal. So yes, since the Commission is not obliged to take anything on board, and the Parliament needs to be remembered on what it voted on…This initiative records have traditionally been more of a

useful tool to the industry lobbyists who have more resources to then follow up. Because they have more human power and. Yeah so. If there's good things, initiative reports that the Parliament needs to be reminded of then usually it's industry who picks up those things that are favorable to them. So that has not really changed. From the negotiations... The other parties... I had the impression that the EPP was not so much involved and that they were a bit laid back and just observing what was happening because it's it has been a super tiring and well, it's it's always such a such a huge lot of work to draft a report over I don't know 60 pages. How much was it in the end? And we had to provide feedback and important on every single line. Our impression was that the EP has been. Yeah. They were good with their resources, not trying to put too much work into the initiative reports because in the end it's not that decisive, so I expect to change now for the legislation. I think that the EPP will get much more involved than they have been in the initiative reports. Other than that, I mean at the technical level it's been really good collaboration with all of the group. So very good exchanges with the rapporteurs office or Renew.. Then towards the very end or when it was like hot or delicate questions exchanging messages even after work hours on the weekends with the other assistants in order to finalize and try to agree on things that were but. Really good.

Q: So because it just said that it's a really very resource intensive process. Why do you and there is? You don't really know if the Commission is taking anything into account. Why do you still? Why do parties still do this themselves, basically?

A: Why?

Q: What is the benefit? What is the possible outcome?

A: The the big benefit is of course that now when we have drafted our amendments for the legislation we can put into the justification of an amendment. So here we can say “This has already been voted on by the European Parliament”. We requested interoperability in the initiative reports, and “here's the reference to what we asked for”, and we can also just take over already the exact language. So for example, from the initiative report into recitals because we know this has potentially a majority. So that's that's the biggest benefit. So politically if we see that ideas have not been picked up by the Commission into the legislation like interoperability, like stricter limits on targeted advertising, then we can just very easily point to those reports and that's yeah. And we already have all our ideas in there of course, I mean last year's preparation… We knew we knew we wanted this and this in th DSA and now we just had to replicate.. And for this report, since it was a new mandate, this was also very, very good practicing exercise, so we found out how the whole thing works from the inside and now we have accounted for. Things that we know will be coming in the negotiations that we can prepare for that answer better.

Analysis Material

Topic	Report(s)	Proposal
Recommender system	unambiguous consent to content curation (JURI), opt-out (IMCO/LIBE)	transparency, possibility to modify, offer at least one non-profiled option (Article 29 recommender systems)
Content moderation	Automation possible, human review explicitly mentioned as necessity (all reports)	Automation and human moderation possible, no mandatory human review (only transparency if automated) Article 14-16
Targeted advertising	Ban on targeting (JURI), transparency and opt-in/opt-out (IMCO/LIBE)	Mere transparency ob-ligations and possibility of opt-out (Article 24, 30 online advertising tran-sparency)
Bias in algorithms	non-discrimination in algorithms, including the monitoring of possible bias in data-sets (which shall be available to competent authorities) (IMCO)	Not mentioned
Workers & AI	Workers rights (IMCO), qualified staff when interacting with automated decision making (JURI/ IMCO)	Not mentioned

Overview on topics covered by INI/INL reports and COM-proposal (re: algorithms)

Next page: All sections covering algorithms in the own-initiative reports (raw)

Report	Content	Reflected in the DSA	Comments
LIBE INI	I. whereas **the automated algorithms that decide how to handle, prioritise, distribute and delete third-party content on online platforms, including during political and electoral campaigns, often reproduce existing discriminatory patterns in society,** thereby leading to a high risk of discrimination for persons already affected; whereas the widespread use of al**gorithms for content removal or blocking also raises concerns over the rule of law and questions related to legality, legitimacy and proportionality;** (p 3)	not included	
LIBE INI	O. whereas the lack of robust, comparable public data on the prevalence of illegal and harmful content online, on notices and the court-mandated and self-regulatory removal thereof, and on the follow-up by competent authorities creates a deficit of transparency and	not included	

	accountability, both in the private and public sector; **whereas there is a lack of information regarding the algorithms used by platforms and websites and the way platforms address the erroneous removal of content**	
LIBE INI	Q. whereas according to the Court of Justice of the European Union (CJEU) jurisprudence, content should be removed following a court order from a Member State; whereas host providers may have recourse to **automated search tools and technologies to detect and remove content that is equivalent to content previously declared unlawful,** but should not be obliged to monitor generally the information that it stores, or to actively seek facts or circumstances	inconclusive

	indicating illegal activity, as provided for in Article 15(1) of Directive 2000/31/EC (p 4)	
LIBE INI	1. (…) recalls that **content removal mechanisms used outside the guarantees of a due process contravene Article 10 of the European Convention on Human Rights**;	not included
LIBE INI	6. recalls that c**ontent removal mechanisms used outside the guarantees of a due process contravene Article 10 of the European Convention on Human Rights;**	not included

LIBE INI	10. (…) calls, therefore, on digital service providers to take the necessary measures to identify and label content uploaded by **social bots** and expects the Commission to provide guidelines on the use of such persuasive digital technologies in electoral campaigns and political advertising policy; calls, in this regard, for the establishment of strict transparency requirements for the display of paid political advertisement;	not included

LIBE INI	12. Acknowledges the fact that, while the illegal nature of certain types of content can be easily established, the decision is more difficult for other types of content as it requires contextualisation; **warns that current automated tools are not capable of critical analysis and of adequately grasping the importance of context for specific pieces of content**, which could lead to unnecessary takedowns and harm the freedom of expression and the access to diverse information, including on political views, thus resulting in censorship; highlights that **human review of automated reports by service providers or their contractors does fully not solve this problem, especially if it is outsourced to private staff that lack sufficient independence,**	not included

	qualification and accountability	
LIBE INI	13. Notes with concern that illegal content online can easily and quickly be multiplied and its negative impact therefore amplified within a very short period of time; nevertheless believes that the **Digital Services Act should not contain any obligation for hosting service providers or other technical intermediaries to**	included (Art. 7 no general monitoring)

	use automated tools in content moderation	
LIBE INI	17. Strongly believes that the current EU legal framework governing digital services should be updated with a view to addressing the challenges posed by the fragmentation between the Member States and new technologies, such as the **prevalence of profiling and algorithmic decision-making that permeates all areas of life**, as well as ensuring legal clarity and respect for fundamental rights, in particular the freedom of expression and the right to privacy in a futureproof manner given the rapid development of technology	included, see recital 58, 62

LIBE INI	21. Insists that the Digital Services Act must aim to ensure a high level of **transparency** as regards the functioning of online services and a digital environment free of discrimination; stresses that, besides the existing strong regulatory framework that protects privacy and personal data, an obligation for online platforms is needed to ensure the **legitimate use of algorithms**; calls, therefore, on the Commission to develop a regime based on the e-Commerce Directive that clearly frames the responsibility of service providers to address the risks faced by their users and to protect their rights and to provide for an obligation of **transparency and explainability of algorithms**, penalties to enforce such	included (Art 23)

	obligations, **the possibility of human intervention** and other measures such as annual independent audits and specific stress tests to assist and enforce compliance;		
LIBE INI	29. Stresses the need for appropriate safeguards and due process obligations, including a **requirement for human oversight and verification**, in addition to counter notice procedures, to allow content owners and uploaders to defend their rights adequately and in a timely manner, and to	not included	platforms need to indicate that algorithms have been used in content moderation but they do not have to use human verification

	ensure that removal or blocking decisions are legal, accurate, well-founded, protect users and respect fundamental rights;	
LIBE INI	35. Emphasises, moreover, that users should be given more choice and control with regard to the content that they see, including more options on the way content is ranked to them and the possibility to **opt-out from any content curation**; strongly believes that the design and performance of **recommendation systems should be user-friendly and subject to full transparenc**y;	included (Art 29)

LIBE INI	36. Deems that accountability, both in the private and public sector, and evidence-based policy making **require robust data on the incidence and the tackling of illegal activity and the removal of illegal content online, as well as robust data on the content curation algorithms of online platforms;**	not included	23 (1) mentions transparency obligations which however will only be published after the regzlation comes into effect, there is therefore not robust data on removal of content that the Commission is basing their regulation on
LIBE INI	37. Calls, in this regard, for an annual, comprehensive and consistent public reporting obligation for platforms, proportionate to their scale of reach and operational capacities, more specifically on their content moderation procedures, including information on a**dopted measures against illegal activities online** and standardised data on the amount of content removed and the underlying legal	included (Art 23)	

	reasons and bases, the type and justification of removal requests received, the number of requests whose execution was refused and the reasons therefore; stresses that such reports, covering actions taken in a given year, should be submitted by the end of the first quarter of the following year;	
LIBE INI	41. Stresses the need for appropriate safeguards and due process obligations, **including a requirement for human oversight and verification**, in addition to counter notice procedures, to allow content owners and uploaders to defend their rights adequately and in a timely manner, and to ensure that removal or blocking decisions are legal, accurate, well-founded,	not included

	protect users and respect fundamental rights;	
IMCO INL	X. whereas the DSA should guarantee the right for consumers to be informed if a service is enabled by **artificial intelligence ("AI"), makes use of automated decision-making or machine learning tools or automated content recognition tools;** whereas the DSA should offer the possibility to **opt-out, limit or personalise the use of any automated personalisation features especially in view of rankings and more specifically,** offer the possibility to see content in a non-curated order, give	both included (Art 14) and (Art. 29)

	more control to users on the way content is ranked;	
IMCO INL	Y. whereas the protection of **personal data, subject to automated decision-making processes, is already covered, among others, by the GDPR and the DSA should not seek to repeat or amend such measures**;	included (p 5): This proposal is without prejudice to the Regulation (EU) 2016/679 (the General Data Protection Regulation) and other Union rules on protection of personal data and privacy of communications. For example, the measures concerning advertising on online platforms complement but do not amend existing rules on consent and the right to object to processing of personal data

IMCO INL	Z. whereas the Commission should ensure that the DSA preserves the **human centric approach to AI, in line with the existing rules on free movement of AI enabled services, while respecting the fundamental values and rights as enshrined in the Treaties;**	unclear
IMCO INL	AA. whereas the **national supervisory authorities, where allowed by Union law, should have access to the software documentation and data sets of algorithms under review**;	included (Art 41, 54)
IMCO INL	AB. whereas the concepts of **transparency and explainability of algorithms should be understood as requiring that the information provided for the user is presented in a concise, transparent, intelligible and easily**	included (Art 29)

	accessible form, using clear and plain language;	
IMCO INL	33. Stresses that online consumers find themselves in an unbalanced relation to service providers and traders offering services supported by a**dvertising revenue and advertisements that are directly targeting individual consumers, based on the information collected through big data and AI mechanisms**; **notes the potential negative impact of personalised advertising, in particular micro-targeted and behavioural advertisement; calls, therefore, on the Commission to introduce additional rules on targeted advertising and micro-targeting, based on the**	included partly, no rules but more transparency Art 24 and 30

	collection of personal data and to consider regulating micro- and behavioural targeted advertising more strictly in favour of less intrusive forms of advertising that do not require extensive tracking of user interaction with content; urges the Commission to also consider introducing legislative measures to make online advertising more transparent;		
IMCO INL	Chapter "AI and machine learning"	not included	IMCO reports includes an extensive chapter on the use of AI systems; while some of the ideas are mentioned in the DSA, it overall lacks specific provisions on the use of algorithms

IMCO INL	38. Stresses that while AI-driven services or services making use of automated decisionmaking tools or machine learning tools, currently governed by the E-Commerce Directive, have the enormous potential to deliver benefits to consumers and service providers, the **DSA should address the concrete challenges they pose in terms of ensuring non-discrimination, transparency, including on the datasets used and on targeted outputs, and understandable explanation of algorithms**, as well as liability, which are not addressed in existing legislation;	not included

IMCO INL	39. Stresses furthermore that **underlying algorithms need to fully comply with requirements on fundamental rights, especially privacy, the protection of personal data, the freedom of expression and information, the right to an effective judicial remedy, and the rights of the child, as enshrined in the Treaties and the Charter**;	Recital 105 does mention that regulation shall respect fundamental rights including freedom of expression, but this is not specifically mentioned in combination with algorithms

IMCO INL	41. Calls on the Commission to **introduce transparency and accountability requirements regarding automated decision-making processes, while ensuring compliance with requirements on user privacy and trade secrets**; points out the need to allow for external regulatory audits, case-by-case oversight and recurrent risk assessments by competent authorities and to assess associated risks, in particular risks to consumers or third parties, and considers that measures taken to prevent those risks should be justified and proportionate, and should not hamper innovation; believes that the **'human in command' principle must be respected, inter alia, to prevent the rise of health and safety risks, discrimination, undue**	included Art 24, 26, 27, 28

	surveillance, or abuses, or to prevent potential threats to fundamental rights and freedoms;	
IMCO INL	42. Considers that consumers and users should have the right to be properly informed in a timely, concise and easily understandable and accessible manner, and that their rights should be **effectively guaranteed when they interact with automated decision-making systems and other innovative digital services or applications; expresses**	not included

	concerns with regard to the existing lack of transparency as to the use of virtual assistants or chatbots, which may be particularly harmful to vulnerable consumers and underlines that **digital service providers should not exclusively use automated decision-making systems for consumer support;**	
IMCO INL	43. Believes, in that context, that it should be possible for consumers to be **clearly informed when interacting with automated decision-making**, and **about how to reach a human with decision-making powers**, how to request checks and corrections of possible mistakes resulting from automated decisions, as well as to **seek redress for any damage related to the use of automated decision-making systems;**	partly included in Art 14 but only in relation to notice&action

IMCO INL	44. Underlines the importance to strengthen consumer choice, consumer control and **consumer trust in AI services and applications; believes, therefore, that the set of rights of consumers should be expanded to better protect them in the digital world and calls on the Commission to consider in particular accountability and fairness criteria and control and the right to non-discrimination and unbiased AI datasets; considers that consumers and users should have more control on how AI is used and the possibility to refuse, limit or personalise the use of any AI-enabled personalisation features**	not included

IMCO INL	45. Notes that **automated content moderation tools are incapable of effectively understanding the subtlety of context and meaning in human communication, which is necessary to determine whether assessed content may be considered to violate the law or terms of service; stresses therefore that the use of such tools should not be imposed by the DSA;**	not included, rather the opposite
IMCO INL	49. Considers that voluntary actions and self-regulation by online platforms across Europe have brought some benefits, but a clear legal framework for the removal of illegal content and activities is needed in order to ensure the swift notification and removal of such content online; underlines the need to prevent imposing a general monitoring obligation on	included, general monitoring prohibition

	digital service providers to monitor the information which they transmit or store and to prevent actively seeking, moderating or **filtering** all content and activities, neither de jure nor de facto; underlines that illegal content should be removed where it is hosted, and that access providers shall not be required to block access to content;		
IMCO INL	50. Calls on the Commission to ensure that online intermediaries, who, on their own initiative, take allegedly illegal content offline, to do so in a diligent, proportionate and non-discriminatory manner, and with due regard in all circumstances to the fundamental rights and freedoms of the users; underlines that any such measures should be accompanied by robust	not included	human review in automated system is not mandatory but only needs to be disclosed

	procedural safeguard and meaningful transparency and accountability requirements; and asks, where any doubts exist as to a content's 'illegal' nature, that this content should be **subject to human review and not be removed without further investigation**	
IMCO INL	77. Calls on the Commission to analyse in particular the **lack of transparency for recommendation systems of systemic operators** including for the rules and criteria for the functioning of such systems and whether additional transparency obligations and information requirements need to be imposed;	included; 24, 29, 30

IMCO INL	**IV TRANSPARENCY 2. Fair contract terms and general conditions**: where automated systems are used, to **specify clearly and unambiguously in their contract terms and general conditions the inputs and targeted outputs of their automated systems**, and the main parameters determining ranking, as well as the reasons for the relative importance of those main parameters as compared to other parameters, while ensuring consistency with the Platforms-to-Business Regulation; (p 27)	not included

IMCO INL	**3. Transparency requirements on commercial communications**: - ensure compliance with the principle of non-discrimination and with minimum diversification requirements, and **identify practices constituting aggressive advertising, whilst encouraging consumer-friendly AI-technologies;** - **introduce accountability and fairness criteria for algorithms used for targeted advertising and advertisement optimisation, and allow for external regulatory audits by competent authorities and for the verification of algorithmic design choices that involve information about individuals**, without risk to violate user privacy and trade secrets;	not included

IMCO INL	**4. Artificial Intelligence and machine learning** The revised provisions should follow the principles listed below regarding the provision of information society services which are **enabled by AI or make use of automated decision making tools or machine learning tools, by:** · ensuring that consumers **have the right to be informed if a service is enabled by AI**, **makes use of automated decision-making or machine learning tools or automated content recognition tools, in addition to the right not to be subject to a decision based solely on automated processing and to the possibility to refuse, limit or personalise the use of any AI-enabled personalisation features, especially in view of ranking of services;**	not included
IMCO INL		not included

IMCO INL	· establishing **comprehensive rules on non-discrimination and transparency of algorithms and data sets**; ·	not included
IMCO INL	ensuring that **algorithms are explainable to competent authorities who can check when they have reasons to believe that there is an algorithmic bias**;	not included
IMCO INL	· providing for a **case-by-case oversight and recurrent risk assessment of algorithms by competent authorities, as well as human control over decision-making, in order to guarantee a higher level of consumer protection**; such requirements should be consistent with the human control mechanisms and risk assessment obligations for automating services set out in existing rules, such as Directive (EU) 2018/9581 (“the Proportionality Test	not included

	Directive"), and should not constitute an unjustified or disproportionate restriction to the free moment of services;	
IMCO INL	· **establishing clear accountability, liability and redress mechanisms to deal with potential harms resulting from the use of AI applications, automated decision-making and machine learning tools;**	not included
IMCO INL	· establishing the **principle of safety, security by design and by default and setting out effective and efficient rights and procedures for AI developers in instances where the algorithms produce sensitive decisions**	not included

	about individuals, and by properly addressing and exploiting the impact of upcoming technological developments;	
IMCO INL	· ensuring consistency **with confidentiality, user privacy and trade secrets;**	not included
IMCO INL	· ensuring that, when **AI technologies introduced at the workplace have direct impacts on employment conditions of workers using digital services, there needs to be an comprehensive information to workers**;	not included
IMCO INL	**V: MEASURES** · introduce new transparency and **independent oversight of the content moderation procedures and tools related to the removal of illegal content online;** such systems and procedures should be accompanied by robust safeguards for	not included

	transparency and accountability and be available for auditing and testing by competent authorities.	
IMCO INL	1. N&A · create an obligation for the online intermediaries to verify the notified content and reply in a timely manner to the notice provider and to the content uploader with a reasoned decision; such a requirement to reply should include the reasoning behind the decision, how the decision was made, if **the decision was made by a human or an automated decision agent,** and information about the possibility to appeal the decision by either party, with the intermediary, courts or other entities;	included Art 14

	· provide information and remedies to contest the decision via a counter-notice, including **if the content has been removed via automated solutions**, unless such a counter-notice would conflict with an ongoing investigation by law enforcement authorities;	
IMCO INL	3. Transparency N&A: the description of the content moderation model applied by the hosting intermediary, as well as of **any automated tools**, including meaningful information about the logic involved;	included Art 14
IMCO INL		included Art 14

JURI INL	H. whereas automated tools are currently **unable to reliably differentiate illegal content from content that is legal in a given context and that therefore mechanisms, for the automatic detection and removal of content can raise legitimate legal concerns,** in particular as regards possible restrictions of freedom of expression and information, protected under Article 11 of the Charter of Fundamental Rights of the European Union; whereas the use of automated mechanisms should, therefore, be proportionate, covering only justified cases, and following transparent procedures;	not included	even though explicitely mentioned in the impact assessment, the regulation fails to address the inability of algorithmic systems to moderate context-sensitive content

JURI INL	K. whereas the current business model of certain content hosting platforms is to promote content that is likely to attract the attention of users and therefore generate more profiling data in order to offer more effective **targeted advertisements** and thereby increase profit; whereas this profiling coupled with targeted advertisement can lead to the **amplification** of content geared towards exploiting emotions, often encouraging and facilitating sensationalism in news feed and **recommendation systems**, resulting in the possible manipulation of users;	inconclusive
JURI INL	L. whereas offering users **contextual advertisements requires less user data than targeted behavioural advertising and is thus less intrusive;**	not included

JURI INL	M. whereas the choice of **algorithmic logic behind recommendation systems, comparison services, content curation or advertisement placements remains at the discretion of the content hosting platforms with little possibility for public oversight, which raises accountability and transparency concerns;**	partly included, in Art 29, 30, 31, 33
JURI INL	N. whereas content hosting platforms with significant market power make it possible for their users to use their profiles to log into third-party websites, thereby allowing them to track their activities even outside their own platform environment, which constitutes a competitive advantage in access to **data for content curation algorithms;**	not included

JURI INL	12. Takes the firm position that the Digital Services Act must not oblige content hosting platforms to employ any form of **fully automated ex-ante controls of content unless otherwise specified in existing Union law,** and considers that mechanisms voluntarily employed by platforms must not lead to **ex-ante control measures based on automated tools or upload-filtering of content** and must be subject to audits by the European entity to ensure that there is compliance with the Digital Services Act;	partly included in Art 6+7, but fails to mention automation explicitly
JURI INL	13. Stresses that content hosting platforms must be transparent in the processing of algorithms and of the data **used to train them;**	partly included, in Art 29, 30, 31, 33

JURI INL	14. Considers that the user-targeted amplification of content based on the views or positions presented in such content is one of the most detrimental practices in the digital society, especially in cases where the visibility of such content is increased on the basis of previous user interaction with other amplified content and with the purpose of optimising user profiles for **targeted advertisements**; is concerned that such practices rely on **pervasive tracking** and data mining; calls on the Commission to analyse the impact of such practices and take appropriate legislative measures;	not included

JURI INL	ANNEX A I. (p 12): **The Commission should consider options for a European entity tasked with ensuring compliance with the provisions of the proposal through the following measures:** • regular monitoring of the **algorithms** employed by content hosting platforms for the purpose of content management;	included 54, 57
JURI INL	• imposing fines for non-compliance with the Digital Services Act. The fines should contribute to the special dedicated fund intended to assist the Member States in financing the operating costs of the dispute settlement bodies described in the regulation. Instances of non-compliance should include: o failure to implement the provisions of the regulation; o failure to	included 42, 58, 59

	provide transparent, accessible, fair and non-discriminatory terms and conditions; o failure to provide the **European entity with access to content management algorithms for review;**		
JURI INL	Transparency reports regarding content management should be established as follows: • **information on the number of staff employed for content moderation, their location, education and language skills, as well as any algorithms used to take decisions;**	not included	information on content moderators is left out of regulation
JURI INL	ANNEX B (7) (7) **Algorithms that decide on the ranking of search results influence individual and social communications and interactions and can be**	inconclusive	

	opinion-forming, especially in the case of media content.	
JURI INL	(8) In order to ensure, inter alia, that users can assert their rights, they should be given an **appropriate degree of transparency and influence over the curation of content made visible to them**, including the **possibility to opt out of any content curation other than chronological order altogether**. In particular, users should not be subject to curation without freely given, specific, informed and unambiguous prior consent. Consent to targeted advertising should not be considered as freely given and valid if access to the	included Art 29

	service is made conditional on data processing.	
JURI INL	(10) This Regulation does not oblige content hosting platforms to employ **any form of automated ex-ante control of content, unless otherwise specified in existing Union law, and provides that content moderation procedures used voluntarily by platforms are not to lead to ex-ante control measures based on automated tools or upload-filtering of** content	partly included in Art 6+7, but fails to mention automation explicitly

JURI INL	(23) Action at Union level as set out in this Regulation would be substantially enhanced by a European entity tasked with appropriate monitoring and ensuring compliance by content hosting platforms with the provisions of this Regulation. For this purpose, the Commission should consider the options of appointing an existing or new European Agency or European body or coordinating a network of national authorities, in order to review compliance with the standards laid down for content management on the basis of transparency reports and the **monitoring of algorithms employed by content hosting platforms for the purpose of content management** (hereinafter referred to as 'the European entity')	not included

JURI INL	REGULATION Article 3 (6) (6) **'content moderation' means the practice of monitoring and applying a pre-determined set of rules and guidelines to content generated, published or shared by users, in order to ensure that the content complies with legal and regulatory requirements, community guidelines and terms and conditions, as well as any resulting measure taken by the platform, such as removal of content or the deletion or suspension of the user's account, be it through automated means or human operators**	not included	definition is given in Art 2 (p) but the wording on automation is specifically left out
JURI INL	Article 4 (3) Content hosting platforms shall provide the users with sufficient information on their **content curation** profiles and the individual criteria according to which content hosting	partly in Art 29	

	platforms curate content for them, **including information as to whether algorithms are used and their objectives.**		
JURI INL	**Article 3** (4) Content hosting platforms shall provide users with an appropriate degree of influence over the curation of content made visible to them, **including the choice of opting out of content curation altogether**. In particular, users shall not be subject to content curation **without their freely given, specific, informed and unambiguous prior consent.**	not included	mentioned in Art 29 (?) but only as opt-out and not opt-in
JURI INL	**Article 11 Decisions on notices** (1) **Content hosting platforms shall ensure that decisions on notifications are taken by qualified staff without undue delay**	not included	qualified staff is not included

	following the necessary investigations.	
JURI INL	**Article 11** (2) Following a notice, content hosting platforms shall, without delay, decide whether to remove, take down or disable access to content that was the subject of a notice, if such content does not comply with legal requirements. Without prejudice to Article 14(2), the fact that a content hosting platform has deemed specific content to be non-compliant shall in no case **automatically** lead to content by another user being removed, taken down or being made inaccessible.	included Art 7

JURI INL	**Article 12 Information about decisions** Once a content hosting platform has taken a decision, it shall inform all parties involved in the notice procedure about the outcome of the decision, providing the following information in a clear and simple manner: (a) the reasons for the decision taken; (b) **whether the decision was made solely by a human or supported by an algorithm**; (c) information about the possibility for review as referred to in Article 13 and judicial redress for either party.	included Art 14	however in this automated content moderation can only be used in support and not in automony
JURI INL	**Article 13 Review of decisions** (..) (3) In all cases, the final decision of the **review shall be undertaken by a human**	not included	