

Democratic Reflexes (in the EU, Spain and Türkiye): How Defensive and Militant Logics Shape Anti-Disinformation Policies

Reflejos democráticos (en la UE, España y Turquía): cómo las lógicas defensivas y militantes configuran las políticas contra la desinformación

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ABSTRACT

This study comparatively analyzes the legal regulations regarding the fight against disinformation in the European Union, Spain, and Türkiye within the framework of militant and defensive democracy theories. It emphasizes that the legal approaches of each entity are shaped not only by normative preferences but also by their understandings of freedom of expression and strategies for protecting democratic institutions. The European Union and Spain consider disinformation as a systemic threat and follow a defensive democracy model based on preventive and proportionate measures. In contrast, Türkiye defines disinformation as an individual-based criminal offense and adopts a punitive, content-focused regulatory approach, which aligns more closely with the militant democracy model. The study demonstrates how different political and legal traditions shape approaches to combating disinformation and discusses, on a theoretical level, the balance between freedom of expression and public order.

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KEYWORDS

Disinformation, legal regulation, freedom of expression, militant democracy, defensive democracy, European Union, Spain, Türkiye

RESUMEN

Este estudio compara la regulación jurídica de la lucha contra la desinformación en la Unión Europea, España y Turquía, en el marco de las teorías de la democracia militante y defensiva. El estudio destaca que el enfoque jurídico no solo se basa en preferencias normativas, sino también en su concepción de la libertad de expresión y en sus estrategias para proteger las instituciones democráticas. La Unión Europea y España abordan la desinformación como una amenaza sistémica y adoptan un modelo de democracia defensiva basado en medidas preventivas y proporcionales. En cambio, Turquía define la desinformación como un delito centrado en el individuo y la regula mediante un enfoque punitivo basado en el contenido, lo que se asemeja más al modelo de democracia militante. El estudio muestra cómo diferentes tradiciones políticas y jurídicas configuran las estrategias frente a la desinformación, y discute, en un plano teórico, el equilibrio entre la libertad de expresión y el orden público.

PALABRAS CLAVE

Desinformación, regulación jurídica, libertad de expresión, democracia militante, democracia defensiva, Unión Europea, España, Turquía

Introduction¹

In the digital age, the accelerated flow of information has become both an opportunity and a significant risk for democratic societies. In particular, disinformation disseminated through social media and digital platforms misleads the public, weakens democratic decision-making processes, and poses a threat to electoral integrity and social stability (Bennett and Livingston, 2018; Ergüney, 2023; Ferrara, 2017; Tucker et al., 2018). This situation has made it necessary to redefine the delicate balance between

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freedom of expression and the protection of public order. The impact of disinformation on individuals and society concerns not only the right to access information but also the sustainability of democratic regimes (Bennett and Livingston, 2018). Many countries, including international institutions such as the European Union, have introduced various legal regulations to limit the destructive effects of disinformation on the public sphere. Legal and administrative interventions aimed at combating disinformation are not only technical responses, but also reflect political and normative choices. (Espaliú-Berdud, 2022). For this reason, the regulations adopted in different legal systems and political structures offer a valuable basis for comparison in understanding how the responses to disinformation are associated with democratic values and to what extent these values are upheld. Recent studies have further illuminated the political and electoral implications of disinformation within the European context. Casero-Ripollés et al. (2025) demonstrate that during the 2024 European Parliament elections, false information primarily targeted issues such as migration and electoral integrity, reinforcing far-right narratives and undermining trust in EU institutions. Similarly, Bennett and Livingston, (2025) argue that digital platforms have evolved into organizational infrastructures for illiberal politics, enabling «connective action» that mobilizes extremist networks and accelerates democratic backsliding. Taken together, these findings suggest that combating disinformation is not merely a matter of information regulation but appears to be a central element in safeguarding liberal democracy.

This study comparatively analyzes the European Union's disinformation regulatory framework and the national regulations adopted in Spain and Türkiye to combat disinformation, integrating these analyses within the theoretical framework of militant and defensive democracy. The reason for selecting these three cases—the European Union, Spain, and Türkiye—is rooted in their interconnected yet distinct positions within the European legal and political framework. The European Union represents a supranational regulatory authority that establishes the overarching normative and strategic framework for combating disinformation. Spain, as an EU member state, exemplifies how these supranational norms are incorporated into national law and adapted to domestic democratic contexts. Türkiye, as an EU candidate country, occupies a transitional position, seeking to harmonize its legal framework with EU standards while preserving its internal political and legal dynamics. Examining these three levels together—union, member state, and candidate country—provides a comprehensive and comparative understanding of how democratic

self-defense strategies against disinformation are formulated and implemented across varying governance structures.

This study differs from previous research that has examined disinformation policies at the European Union level from institutional or normative perspectives (Casero-Ripollés et al., 2023; Ó Fathaigh et al., 2025; Oleart and Rone, 2025) or focused on national regulations in individual countries (Espaliú-Berdud, 2022; Oymak, 2022; Torun and Şimşek, 2023; Sabater-Quinto et al., 2024). It offers a comparative analysis of the European Union, Spain, and Türkiye, revealing how democratic self-defense strategies against disinformation operate across different legal and political contexts.

Accordingly, the main research questions of this study are as follows:

1. How do the European Union, Spain, and Türkiye define and regulate disinformation?
2. What approach do these regulations adopt with respect to freedom of expression?
3. How can these approaches be positioned within the framework of militant and defensive democracy theories?

1. Conceptual and Theoretical Framework

1.1. The Concept of Disinformation

Disinformation is increasingly gaining importance as a structural problem that threatens democratic processes in digital communication environments (Bradshaw et al., 2021). Conceptually, disinformation is generally defined as verifiably false or misleading information that is intended to deliberately deceive the public (Fallis, 2015; Wardle and Derakhshan, 2017; Yayla, 2020; Sádaba and Salaverría, 2023). According to Wardle and Derakhshan (2017) the key element that distinguishes disinformation from other forms of information disorder is intentionality; while misinformation refers to false content spread unintentionally, and malinformation refers to true information used to cause harm, disinformation is characterized by verifiably false or misleading content shared with the intent to deceive.

The European Union first defined disinformation in the 2018 document titled *Tackling Online Disinformation: A European Approach*, and later reaffirmed this definition in the 2022 *Strengthened Code of Practice on Disinformation*. According to this definition, disinformation is described as «verifiably false or misleading information created, presented and disseminated for economic gain or to intentionally deceive the public, and that may cause public harm» (European Commission, 2018c).

Although the concept of disinformation is not explicitly defined as a criminal offense or legal term in Spanish legislation, it is indirectly referenced in Royal Decree PCM/1030/2020. The document addresses disinformation as a form of information manipulation intended to mislead the public and potentially affect the functioning of the democratic system (Orden PCM/1030/2020, 2020). This definition indicates that Spain adopts a more governance-oriented approach, focusing not on the content itself but on its effects.

In Turkish law, the concept of disinformation was explicitly defined for the first time with the inclusion of Article 217/A into the Turkish Penal Code (Law No. 5237), through the amendment introduced by Law No. 7418 in 2022. According to this provision, disinformation is defined as «the dissemination to the public of false information regarding the internal and external security of the country, public order, or general health, in a manner likely to disturb public peace» (Turkish Penal Code, Art. 217/A, added by Law No. 7418/2022). Although the definition is based on the criteria of ‘falsity’ and ‘likelihood of disturbing public peace’, its vague formulation and the potential for broad interpretation may pose challenges for the protection of freedom of expression.

1.2. Literature Review

The literature on the European Union’s (EU) disinformation regulations covers a range of themes, including the evolution of regulatory approaches, the shift from voluntary self-regulation to binding frameworks, the role of digital platforms, the balance between democratic values and security, and the geopolitical implications of policy choices. Casero-Ripollés et al. (2023) analyze the EU’s post-2018 disinformation policy through the lens of a tension between «soft law» and «securitization,» observing that while the EU initially relied on voluntary cooperation and self-regulation, crises such as the COVID-19 pandemic and the Russia–Ukraine war prompted a move toward more assertive and binding regulation. In this context, the revision of the 2018 Code of Practice on Disinformation and the adoption of the Digital Services Act (DSA) in 2022 mark a significant transformation in the EU’s policy architecture (Ó Fathaigh et al., 2025).

Oleart and Rone (2025) argue that the EU now frames disinformation not merely as an issue of information security but also as a broader geopolitical concern. They emphasize that this shift has been instrumental in imposing greater obligations on platforms. The authors describe the EU’s co-regulatory relationship with major digital platforms as a form of «outsourcing» regulatory authority, raising questions about its compatibility with the EU’s broader claims to digital sovereignty. Furthermore,

Casero-Ripollés et al. (2023) and Ó Fathaigh et al. (2025) note that despite the binding nature of the DSA, the absence of a precise legal definition of disinformation continues to generate regulatory ambiguity. Collectively, these studies show that the EU's approach to disinformation remains shaped by an inherent duality: striving to uphold democratic norms and freedom of expression while simultaneously responding to escalating threat perceptions through increasingly robust regulatory tools.

The literature on disinformation regulations in Spain since 2018 focuses on the country's efforts to align with European Union directives while maintaining a balance between freedom of expression and national security. Espaliú-Berdud (2022) notes that Spain has adopted «soft law» measures rather than criminal sanctions, establishing institutional coordination mechanisms through Decree PCM/1030/2020. Zafra Arroyo and Teruel Rodríguez, (2025) emphasize that, compared to Greece and Türkiye, Spain follows a more liberal and cybersecurity-based approach, while Sabater-Quinto et al. (2024) highlight that, beyond legal measures, ethical codes, media literacy policies, and private-sector collaboration contribute to a comprehensive model for combating disinformation. Overall, the literature shows that Spain has adopted a balanced regulatory framework that aims to counter disinformation without undermining democratic values.

The academic literature on Türkiye highlights the increasing formalization of disinformation regulation, particularly following the adoption of Law No. 7418 in 2022 (Aras, 2025; Dülger and Özkan, 2021; Oymak, 2022; Yayla, 2020). Scholars point out that the inclusion of Article 217/A in the Turkish Penal Code represents the first explicit criminalization of disinformation and raises concerns regarding its scope and implications for freedom of expression (Dülger and Özkan, 2021; Torun and Şimşek, 2023). Other analyses emphasize that disinformation is framed within the broader context of national security and public order (Yayla, 2020). Overall, the literature suggests that Türkiye's regulatory trajectory diverges from the EU's governance-based approach, emphasizing individual responsibility and punitive instruments rather than institutional coordination.

1.3. Theories of Militant and Defensive Democracy

The legal and political tools used in combating disinformation should not be evaluated solely as technical or administrative choices; rather, they must also be considered within the framework of theoretical assumptions about how democratic regimes protect themselves. In this context, the theories of militant and defensive democracy offer an explanatory theoretical basis for understanding how states respond to threats such as

disinformation and what kind of intervention frameworks they adopt to defend the democratic order.

The theory of militant democracy was developed by Karl Loewenstein in the 1930s in response to the rise of totalitarian regimes in Europe. According to this approach, democracy has the right to defend itself against actors who aim to abolish it by exploiting its own values. Within this framework, the restriction of certain fundamental rights and freedoms — such as freedom of expression — may be considered legitimate in order to ensure the continuity of the democratic regime. Militant democracy, therefore, advocates for a strong intervention model that is supported, when necessary, by punitive measures (Loewenstein, 1937a, 1937b). Recent interpretations emphasize that militant democracy functions as a preventive and exceptional mechanism of democratic self-defense. Sajó (2006) distinguishes it from emergency powers, noting that while emergency powers respond to direct and immediate threats, militant democracy seeks to prevent such threats before they materialize. Similarly, Tyulkina, (2015) argues that militant democracies act preemptively against those who misuse democratic rights such as free elections or freedom of speech to undermine democracy itself. In this respect, militant democracy is not purely repressive but protective in nature, aiming to preserve the institutional integrity of democratic systems.

In contrast, the theory of defensive democracy does not reject the goal of protecting the democratic order; however, it is based on the principles of proportionality, legal oversight, and constitutional limitation in achieving that goal (Kirshner, 2014). Kirshner, (2014) and Thiel (2016) define this model as an approach that seeks ethical and institutional ways to protect democracy without leading to authoritarianism. According to the theory of defensive democracy, the measures taken against threats such as disinformation should not undermine the open nature of democratic society; interventions must be limited, targeted, and subject to oversight.

Expanding on this framework, Rummens and Abts (2010) introduce the concept of «concentric containment,» suggesting that tolerance toward extremist or anti-democratic ideas should decrease as such actors move closer to the centers of political decision-making. This approach implies that democratic resilience must be strengthened not only through legal mechanisms but also via educational and institutional tools. Within this broader understanding of defensive democracy, militant measures represent only one component of a comprehensive defense strategy, which should remain proportionate, transparent, and consistent with liberal democratic values (Capoccia, 2001; Malkopoulou and Norman, 2018).

2. Methodology

This study adopts a comparative legal approach, examining how disinformation-related regulations are formulated and implemented across the European Union, Spain, and Türkiye. To interpret these regulatory frameworks within a broader democratic context, the study builds upon the theoretical distinction between militant and defensive democracy as formulated by Loewenstein (1937a, 1937b) and further elaborated by Tyul-kina (2015).

In this study, document analysis was used as the data collection method, and descriptive analysis was employed to interpret the data. Document analysis is a qualitative data collection method that aims to systematically and comprehensively examine existing written sources in order to answer the research questions (Bowen, 2009). Descriptive analysis is a type of analysis that enables the clear and direct presentation of the data, focusing on expressing the data in a meaningful way without restructuring it (Yıldırım and Şimşek, 2013). This study analyzes the legal regulations addressing disinformation in the contexts of the European Union, Spain, and Türkiye. Specifically, the analysis covers the *Digital Services Act* (Regulation 2022/2065) and the *Code of Practice on Disinformation* (2018, 2022) for the European Union; Royal Decree PCM/1030/2020, the Penal Code, and the Electoral Law for Spain; and Law No. 7418, the Turkish Penal Code, the Press Law, the Internet Law, and the Broadcasting Law for Türkiye. In addition, to reflect the European Union's multi-level regulatory approach, the study also considers major policy documents such as the *Action Plan Against Disinformation* (2018), *Tackling Online Disinformation: A European Approach* (2018), and the *Strengthened Code of Practice on Disinformation* (2022). The interpretation of regulatory approaches was guided by the theoretical lens of militant and defensive democracy.

3. Results

3.1. The European Union's Regulatory Framework on Disinformation

The European Union defines disinformation as a strategic risk to public security, democratic processes, and electoral integrity, and is building a comprehensive regulatory framework to address this threat (European Commission, 2018c). This framework has been shaped by normative policy documents since 2018 and acquired legal binding force with the adoption of the Digital Services Act (DSA) in 2022. The regulatory structure has evolved in three main stages: the establishment of a vision through policy documents, the promotion of platform cooperation via the Code of Practice, and the transition to binding rules through the DSA.

3.1.1. Policy Documents: Normative Ground

The European Commission set out its first comprehensive position on disinformation in the communication titled *Tackling Online Disinformation: A European Approach* (2018). It emphasized that disinformation constitutes a systemic threat, undermines democratic institutions, and jeopardizes the integrity of elections (European Commission, 2018c, pp. 4-5). The subsequent *Action Plan Against Disinformation* was prepared with the aim of strengthening institutional coordination against external interference (European Commission, 2018b). The document *Tackling COVID-19 Disinformation* (2020), published during the COVID-19 period, emphasized the effects of disinformation on public health and prioritized media literacy, fact-checking mechanisms, and public information policies (European Commission, 2020).

These policy documents show that the European Union's approach to combating disinformation goes beyond content-level regulation and highlights multi-layered elements such as institutional coordination, platform responsibility, and public information. The normative framework introduced in the 2018 communication has become increasingly institutionalized in subsequent documents, enriched with themes such as resilience against foreign interference, the security of public information during crises, and accountability of digital platforms. Each policy text, as part of the EU's gradual and holistic regulatory approach against disinformation, aims to respond to different contextual needs. This approach offers an important basis for understanding the EU's risk perception regarding the digital public sphere and its normative orientation in this area.

3.1.2. The Transformation of Platform Regulation in the European Union: Code of Practice and the Digital Services Act

Based on the policy documents, the European Commission published the Code of Practice on Disinformation in 2018, initiating a direct cooperation process with digital platforms. This step represents one of the first implementations of a governance model that does not focus on direct intervention over content, but rather on involving the private sector in the process through a shared responsibility framework. The document includes goals such as preventing the monetization of disinformation through advertising revenues, increasing transparency in political advertising, and institutionalizing cooperation with fact-checking organizations (European Commission, 2018a). These objectives can be considered part of a broader regulatory vision that aims not only for technical intervention, but also for restructuring the information ecosystem based on transparency and trust.

The updated 2022 version of the *Strengthened Code of Practice* included more concrete instruments such as key performance indicators (KPIs), external audits, measurable commitments, and user-centered reporting mechanisms (European Commission, 2022b). This evolution transformed the voluntary framework into a quasi-binding structure and institutionalized the accountability obligations of platforms. At the same time, this development can also be interpreted as a reflection of the European Commission's limited trust in platforms' self-regulation.

Indeed, on 13 February 2025, the European Commission integrated the *Strengthened Code of Practice* into the framework of the DSA, and as of 1 July 2025, compliance with these rules has become mandatory in terms of DSA conformity (European Commission, 2025). Article 34 of the DSA requires systemic risk assessments for Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), including disinformation. Within the scope of this article, it is necessary to evaluate potential negative effects on public discourse, electoral processes, and public security (European Parliament and Council, 2022).

Article 35 foresees structural measures such as content moderation, algorithmic changes, and reduction of visibility, enabling technical interventions to limit the effects of disinformation. In the explanatory recital of the regulation, it is emphasized that disinformation may pose systemic risks «through the rapid and widespread dissemination of information to the public» (European Parliament and Council, 2022, Recital 84).

The integration of the *Strengthened Code of Practice* into the DSA framework represents a significant turning point in the EU's regulatory strategy in terms of transitioning from soft law to binding legislation. In this way, the normative principles born from voluntary cooperation have now become legal obligations; platforms are no longer considered merely technical actors but are redefined as responsible agents in the regulation of the democratic sphere.

A concrete example of how this legislation is put into practice in civil society is the European strategy to combat disinformation, which includes the creation of the European Digital Media Observatory—a network of observatories co-funded through competitive European funding schemes. Its functions include monitoring platforms' compliance with the Code of Practice, contributing to early warning systems, conducting research, and promoting media literacy.

3.1.3. Theoretical Assessment

When all these regulations are evaluated, the European Union's approach to countering disinformation is based on preventive and proportional mechanisms aimed at eliminating systemic threats without undermining democratic values. Obligations imposed on platforms—such as transparency, algorithmic accountability, and institutional risk analysis—do not directly restrict individuals' freedom of expression; instead, they enhance the security of the digital public sphere. In this respect, the EU's model largely aligns with the theory of defensive democracy, and is distant from the punitive reflexes of militant democracy. However, the European Parliament has even considered certain disinformation campaigns as security threats, concluding that they constitute a serious threat to EU security and sovereignty (Espaliú Berdud, 2025).

In certain exceptional cases—particularly in response to disinformation threats originating from authoritarian regimes such as Russia—measures resembling a militant democracy approach have been adopted. This can be clearly observed in the broadcasting bans imposed on Russia Today and Sputnik (see also Juhász, 2024).

Beyond these exceptional measures, the EU's model of defensive democracy reflects a multi-layered understanding of democratic resilience. As Juhász (2024) notes, the EU integrates legal, political, and civic instruments that strengthen democratic immunity against manipulation. Instruments such as the DSA, the Code of Practice on Disinformation, and the EDMO illustrate how preventive regulation and civic participation operate in tandem. Within this structure, restrictive actions remain exceptional, while long-term strategies—such as transparency, accountability, and media literacy—constitute the core of democratic self-defence (Juhász, 2024; Espaliú-Berdud, 2022).

Therefore, the EU's regulatory model exemplifies a governance-oriented version of defensive democracy, in which resilience is built not through repression but through institutional and civic empowerment. This approach aligns with Capoccia's (2001a) and Malkopoulou and Norman's (2018) interpretations of democratic defence, emphasizing proportionality, transparency, and citizens' agency in safeguarding the democratic public sphere.

4. Regulatory Framework on Disinformation in Spain

In Spain, regulations aimed at combating disinformation are implemented not through direct criminal sanctions, but via indirect legal instruments and governance-based strategic measures, due to the constitutional priority given to freedom of expression. This approach takes a cautious

stance in protecting the freedom of information while also foreseeing the protection of public order against threats through flexible and multi-level mechanisms.

Although disinformation is not explicitly defined as a criminal offense in the Spanish Penal Code, certain existing provisions create thematic areas that indirectly overlap with disinformation content. Specifically, Article 282 addresses misleading commercial information that deceives consumers, Article 284 targets rumors that disrupt the market, Article 285 deals with financial manipulation, Articles 359 and subsequent ones address fake content that threatens public health, Article 510 covers hate speech, and Article 561 pertains to false alarms that disrupt public order. While the content is not directly defined as «disinformation,» it can lead to criminal liability due to its potential effects (Espaliú-Berdud, 2022). In this context, Spanish law seeks to maintain a balance between freedom of expression and public security, not by directly criminalizing disinformation, but through the flexible interpretation of existing legal norms.

This indirect and governance-oriented approach to combating disinformation is most clearly embodied in the 'Procedure for Combating Disinformation', established by Royal Decree PCM/1030/2020, which came into force in 2020. Rather than relying on punitive mechanisms based on content control, this procedure is built on structures such as early warning systems, threat level analysis, and inter-institutional coordination, in alignment with the European Union's hybrid threat strategy (Espaliú-Berdud, 2022; Orden PCM/1030/2020, 2020). Rather than directly restricting the flow of information, this model reflects a strategic governance approach aimed at identifying and managing threats in advance. Implemented under the leadership of the Ministry of the Interior, the mechanism operates through a multi-layered structure that facilitates data sharing between civilian and military institutions, thereby enabling a form of 'hybrid coordination' between security and communication policies.

Moreover, the Royal Decree encompasses not only security-focused institutions but also structures aimed at enhancing media literacy through public policy. In this regard, the Permanent Commission Against Disinformation serves as a structural example of an approach that frames the fight not solely in legal terms but also on the basis of societal resilience. This demonstrates that the Spanish model operates through preventive and holistic policy instruments. The constitutional priority given to freedom of expression has been decisive not only at the implementation level but also in the legislative process. A draft law submitted to Parliament in 2017, which proposed controlling fake news through direct criminal regulation, was rejected in 2018 on the grounds that such intervention posed serious

risks to press freedom and democratic participation. The rejection was influenced by the view that existing provisions within the Electoral Law (Ley Orgánica del Régimen Electoral General) and the Penal Code already provided a sufficient legal framework (Boletín Oficial del Congreso de los Diputados, 2018). This clearly demonstrates that Spain has adopted a model based not on direct prohibitions, but on balanced and strategic public policies. In doing so, the country has advanced toward developing an institutional architecture for combating disinformation that does not conflict with the principles of freedom of expression and constitutional protection.

4.1. Theoretical Assessment

Through all these structural choices, Spain has adopted a framework in the fight against disinformation that aligns more closely with the principles of defensive democracy rather than a militant democracy approach. Legal interventions are implemented not through direct content control but via the comprehensive and cautious application of existing laws. In this way, the security of public communication is sought without restricting fundamental rights and freedoms. The early warning and coordination system established by Royal Decree PCM/1030/2020 includes structural and administrative measures that do not directly threaten freedom of expression, but rather aim to safeguard the stability of democratic institutions. This indicates that Spain considers disinformation not as a «speech crime» but as a matter of governance and strategic communication (Espaliú-Berdud, 2022). This model is also consistent with the European Union's perspective on defensive democracy.

However, according to the analysis by (Osiewicz and Skrzypek, 2020), during periods of heightened political tension the public discourse of Spanish government officials has adopted a more securitized and confrontational tone as Tyulkina (2015) emphasizes, Spanish authorities «attempt to hide or mask their endorsement of the concept of militant democracy, as the idea is often seen as contrary to the very idea of a liberal democracy and can seem too aggressive to be employed in a true democracy». This idea is sometimes associated with the relatively recent establishment of democracy in Spain (Sádaba and Del Río, 2024). Nevertheless, despite these rhetorical deviations, Spain's official legal stance has remained unchanged and continues to align with the EU's understanding of defensive democracy.

Spain's decision to formalise a coordinated state architecture for disinformation response—first through the 2020 Royal Decree-Law and then via the 2021 national verification protocol—illustrates a deliberate shift

from ad hoc reactive measures toward a securitised and institutionally centralised governance model. Although explicitly framed as alignment with European co-regulatory principles, this approach raises ongoing questions about the balance between safeguarding democratic integrity and concentrating discretionary power in the executive branch, particularly in the absence of strong public accountability mechanisms. Spain's endorsement of the revised 2022 EU Code of Practice further confirms its preference for governance through collaborative regulation with platforms, yet it also underscores the enduring tension between efficiency in crisis management and the need for transparent, plural oversight in defining what counts as «disinformation» in the first place.

5. The Legal Framework on Disinformation in Türkiye

In Türkiye, the legal framework regarding disinformation became more explicit with the adoption of Law No. 7418 on October 13, 2022. For the first time, disinformation was clearly defined within the Turkish legal system and criminalized as a distinct offense. With this regulation, disinformation—previously addressed through indirect legal provisions—has now been established as an independent legal norm within criminal law.

According to Article 217/A, which was added to the Turkish Penal Code (TPC) through Article 29 of the Law, the public dissemination of false information concerning the country's internal and external security, public order, or general health—intended to provoke fear, anxiety, or panic among the public and in a manner that disrupts public peace—is punishable by imprisonment from one to three years. The provision defines the offense through elements such as «falsehood,» «public dissemination,» «intent,» and «capacity to disrupt public peace» (TPC Art. 217/A; Law No. 7418, Art. 29). However, the interpretive flexibility of these elements creates ambiguity regarding the scope of the regulation and poses potential risks to freedom of expression.

Indeed, the 2024 European Commission Progress Report explicitly stated that Türkiye's legislation on disinformation and social media is not aligned with the core principles of the EU *acquis* on digital services or with the European Convention on Human Rights. The report emphasized that the law should be revised, particularly due to its disproportionate interference with freedom of expression (European Commission, 2024). This provision has frequently been referred to in public discourse as the «censorship law» and has faced criticism for potentially increasing state control over content (Dülger and Özkan, 2021; Torun and Şimşek, 2023). These criticisms indicate that the regulation constitutes not only a legal intervention but also one shaped by political and ideological preferences.

Law No. 7418 not only introduced criminal norms but also brought significant structural changes to fundamental communication legislation such as the Press Law (No. 5187) and the Internet Law (No. 5651). In particular, the definition and regulation of digital platforms were restructured: for the first time, online news websites were defined as «periodical publications» (Article 2 of Law No. 5187; Article 8 of Law No. 7418), and these platforms were made subject to the obligation of appointing a «responsible editor» (Article 6). These provisions aim to bring online news streams under institutional oversight and to extend the principles of editorial responsibility and accountability in the digital realm.

Amendments to Law No. 5651 increased the obligations imposed on social network providers, introducing requirements such as opening a representative office in Türkiye, storing user data domestically, and complying with access blocking orders (Articles 4, 4/A, 6, 8, and 8/A). These regulations aim to prevent the spread of disinformation—particularly via social media—and to establish legal grounds for rapid intervention when necessary.

From the perspective of traditional media, the sanctions enforced through the Radio and Television Supreme Council (RTÜK) stand out. According to Article 8 of Law No. 6112, administrative sanctions such as warnings, fines, broadcast suspensions, and license cancellations are foreseen for broadcasts that mislead the public, incite hatred and hostility, or disrupt public order. Although RTÜK's actions are often based on the principles of public interest and accurate information—especially during election periods and times of crisis—they frequently become subjects of debate in terms of freedom of expression due to the potential for politically motivated oversight (Aluç Demirel, 2023; European Commission, 2023).

5.1. Theoretical Assessment

The legal and institutional framework developed in Türkiye to combat disinformation generally reflects an individual-centered, content-focused, and punitive approach. Disinformation is defined not merely as a governance-related risk, but as a direct threat that must be addressed through criminal law. In this context, Türkiye's approach largely aligns with the theory of militant democracy, which holds that fundamental rights and freedoms may be restricted in order to protect democracy. Within this framework, the state reserves the right to directly intervene against information flows that threaten public peace and order, while freedom of expression is regarded as a domain that may be restricted in the face of such threats (Loewenstein, 1937a).

However, the vague definition and boundaries of disinformation in practice lead to legal uncertainties regarding both press freedom and individual freedom of expression. As a result, even critical discourse intended to inform the public may be subject to criminal risk. This situation renders the compatibility of Türkiye's disinformation governance model with democratic standards—especially in terms of freedom of expression—open to debate. Indeed, the European Commission's 2022 Progress Report explicitly emphasized that Türkiye must refrain from further restricting press freedom while combating disinformation, and should instead implement a legal framework aimed at preventing the spread of false information in a neutral and proportionate manner (European Commission, 2022a). Türkiye prioritizes state authority and public order over individual freedoms. This demonstrates that, while the EU defines democratic resilience through institutional coordination and citizen participation, Türkiye conceptualizes it primarily within a framework of state-centered securitization. This warning highlights the need for regulation that aligns with international norms and underscores the necessity of reassessing the extent to which current practices conform to democratic standards.

In summary, Türkiye's regulatory approach to disinformation aligns with Loewenstein's (1937) concept of militant democracy, reflecting an understanding that the preservation of democracy may require active state intervention, even at the expense of restricting individual freedoms.

Conclusion

This study provides a comparative analysis of the regulatory frameworks developed by the European Union, Spain, and Türkiye to combat disinformation.

It interprets these findings through the theoretical lens of militant and defensive democracy, illustrating how these approaches can be related to the legal and political responses to disinformation. In doing so, the study draws attention to the intersection between these theories and contemporary policy and regulatory practices.

The European Union defines disinformation as a systemic threat to democratic processes and public discourse. In response, it has developed a preventive and transparency-based model that emphasizes platform responsibility. With the DSA (2022), voluntary codes of practice have been rendered legally binding, shifting the focus from content control to algorithmic oversight and the reduction of systemic risks. These results reinforce earlier findings (Capoccia, 2001a; Malkopoulou and Norman, 2018) that defensive democracy relies on proportionality, transparency, and civic participation as key mechanisms of resilience. The EU's model illustrates

how liberal democracies can operationalize these theoretical principles through institutional design rather than punitive control.

In parallel with the EU's governance-based framework, Spain combats disinformation not through direct criminal regulations, but through institutional coordination and early warning mechanisms. The national security procedure established by Royal Decree PCM/1030/2020 in 2020 aims to limit media manipulation through threat-level assessments and inter-institutional cooperation. Proposals to criminalize disinformation at the parliamentary level have been rejected on the grounds that such measures would harm freedom of expression. This demonstrates that Spain views disinformation as a systemic governance issue and adopts a defensive democracy approach that upholds freedom of expression. Although rhetorical shifts towards militant democracy can be observed during periods of political tension, the legal stance remains consistently aligned with EU standards. This interpretation aligns with Osiewicz and Skrzypek (2020), who argue that while Spain largely operates within a defensive democratic model, gradual securitization trends—particularly after the 2008 economic crisis—have revealed a cautious drift toward militant tendencies without a full departure from liberal democratic principles.

In contrast, Türkiye has incorporated disinformation directly into criminal law with Law No. 7418, criminalizing the dissemination of misleading information to the public under Article 217/A of the Turkish Penal Code. Additionally, amendments to the Press Law and Law No. 5651 have introduced obligations such as content removal, access blocking, and mandatory representation for digital platforms, while increasing regulatory control over traditional media through the Radio and Television Supreme Council (RTÜK). Türkiye's approach, by defining disinformation as an individual-level offense and deploying coercive legal instruments, aligns with the theory of militant democracy. However, this has also raised concerns regarding the restriction of freedom of expression, the criminalization of critical discourse, and the lack of democratic oversight. There is a pressing need to restructure Türkiye's regulatory framework on disinformation. First and foremost, disinformation should be addressed not merely as an individual criminal act, but as a systemic communication issue. In this regard, Türkiye should develop inclusive educational policies that enhance media literacy, digital citizenship, and critical thinking skills. Moreover, institutional cooperation with social media platforms should be established around transparency, algorithmic accountability, and content governance—supported not by administrative control, but through multi-stakeholder mechanisms that are open to public scrutiny. The EU's and Spain's risk-based and proportionate mechanisms, developed in

accordance with the principles of defensive democracy, should serve as reference models for Türkiye. A policy architecture that upholds the public interest without undermining freedom of expression must be built. This pattern supports Loewenstein's (1937a) notion that militant democracies may justify exceptional measures in the name of regime survival; however, it also demonstrates the risk of democratic erosion when such measures become normalized, as emphasized by Tyulkina (2015).

This analysis also provides a framework for studying how different governments respond to disinformation, and the potential divergences between formal or official responses and political discourse. More consolidated liberal democracies tend to opt for the model of defensive democracy, while developing democratic systems are more likely to lean toward militant democracy. Future research could empirically explore which of these theoretical approaches different democratic regimes tend to rely on when regulating disinformation, and assess the long-term implications of these choices for democratic resilience.

Authorship contribution

Merve Ergüney had the leading role in the conceptualization, methodology, data analysis and first drafting of the article.

Charo Sádaba contributed to conceptualization, and manuscript preparation and final edition.

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Appendix

TABLE 1. Comparative Overview of Disinformation Regulatory Frameworks: European Union, Spain, and Türkiye

Criteria / Country	European Union (EU)	Spain	Türkiye
Definition	Disinformation: «Deliberately false or misleading information created and disseminated for economic gain or to intentionally mislead the public» (European Commission, 2018).	No explicit legal definition; indirectly addressed in Royal Decree PCM/1030/2020 as manipulative information aimed at misleading the public and disrupting democratic systems.	Defined in Article 217/A of the Turkish Penal Code: «Publicly disseminating false information that threatens public peace with the intent to create fear, panic, or unrest.»
Legal Tools	Combination of soft law (Code of Practice, Action Plan) and hard law (Digital Services Act - Regulation (EU) 2022/2065).	Primarily soft law; strategic communication and institutional coordination mechanisms (PCM/1030/2020).	Hard law with direct criminal penalties (TCK 217/A), supported by amendments in the Press Law and Law No. 5651.
Implementation Level	Multi-actor system involving EU institutions, Member States, and digital platforms.	Focus on institutional coordination and strategic communication.	Centralized legal enforcement via judiciary, RTÜK, BTK, and public prosecutors.
Approach to Freedom of Expression	Defensive Democracy: Proportional, legally supervised, and avoids direct restrictions on expression.	Constitutionally prioritizes freedom of expression; avoids direct criminalization (Spanish Constitution, Art. 20).	Tends toward Militant Democracy: Accepts limiting expression; disinformation is criminalized outright.
International Alignment	Aligned with EU <i>acquis</i> and international platform cooperation.	In line with EU strategies but prefers institutional risk monitoring over content control.	Limited alignment with EU norms; prioritizes domestic legal mechanisms and enforcement bodies.
Key Regulations in Force	Digital Services Act (Regulation 2022/2065), Code of Practice (2018, 2022), Action Plan Against Disinformation (2018).	Royal Decree PCM/1030/2020, Penal Code (Articles 282, 284, 285, 510, 561), Electoral Law.	Law No. 7418 (2022), TCK Article 217/A, Law No. 5187, Law No. 5651, Law No. 6112 (Art. 8).