

Haugen comes to Europe - will she change the course of tech regulation?

Blog post by Senior Practice Lead Conan D'Arcy, 21 October 2021

In 2013, the revelations of Edward Snowden catapulted online privacy and surveillance to the top of the political agenda. The Cambridge Analytica scandal five years later had a seismic impact on online political campaigning. The testimony of Frances Haugen, the “Facebook whistle-blower”, is now being seen as a similar inflexion point for online content moderation and transparency. The Snowden leaks contributed towards the passing of the General Data Protection Regulation (GDPR) while the fallout from Cambridge Analytica ultimately led to changes in political campaigning rules across all major platforms. Will Haugen’s intervention have a similar impact on the regulation of technology companies in Europe?

This question is timely because Frances Haugen is about to begin her European tour. On Monday, she will give evidence in the British Parliament, followed by further appearances at the European Parliament and at Europe’s premier tech festival, the Web Summit in Lisbon. She does so against the background of ongoing legislative efforts to regulate social media companies through the Digital Services Act (DSA) in Brussels and the pre-legislative scrutiny of the Online Safety Bill (OSB) in Westminster.

Even before arriving in Europe, Haugen’s media and congressional appearances have strengthened voices calling for tougher regulation. Christel Schaldemose, the European Parliament’s Rapporteur for the DSA, has argued that Haugen has demonstrated “the urgent need to set democratic rules for the online world in the interest of users”. Likewise, Damien Collins, chair of the UK Parliament’s Joint Committee on the OSB, stated that the case has been “strengthened” for an “independent regulator with the power to audit and inspect the big tech companies.” These firms will no doubt be braced for tough and frank questioning when they appear before Collins’ committee a few days after Haugen give evidence.

While the controversy guarantees the righteous fury of parliamentarians, its wider significance for the future of digital regulation is less clear. This is partly because Haugen’s evidence tends to confirm what policymakers already suspected to be the case rather than providing fresh critiques of social media platforms. For example, a key allegation is that social media may contribute to eating disorders and body image issues in teenage girls. This echoes the findings of a prior survey from the UK’s Women and Equalities Committee from March which “demonstrated how damaging social media use can be for an individual’s body image”.

There are a handful of areas where proposed changes can be foreseen such as on transparency requirements for algorithms and access rights to platforms for independent researchers. In the UK, it is likely that MPs will push again for stronger senior management liability provisions. However, the fundamentals of the DSA and the OSB would remain broadly intact even with these changes.

And this is because the key policy trade-offs remain the same despite Haugen. While strict, harmonised moderation rules for online platforms could in principle reduce the prevalence of online harms, it raises questions about whether a single set of rules is appropriate given the diversity in business models and platform design, and whether a higher compliance burden would in fact, cement the market position of larger, heavily criticised, incumbent platforms above competitors. There is also the challenge of how to regulate “harmful but legal” content, such as body image or misinformation, in a comparable way to illegal content. The DSA does not regulate “harmful but legal” content at all and there is no suggestion there is a majority in the European Parliament or Council for it to do so, limiting the scope for change resulting from this aspect of Haugen’s evidence.

This raises the question of whether content moderation regulation in the form of the DSA and the OSB is the most appropriate and effective mechanisms for managing the fallout from the Haugen leaks. At its heart, the controversy points to a breakdown in trust between politicians and certain technology platforms. This talks to expectations on and standards of corporate behaviour, mirroring debates of previous decades in highly regulated sectors such as financial services, broadcasting or even taxis, all of which are subject to “fit and proper” tests and licencing regimes. In the longer term, Haugen’s significance may prove to be a step towards tech being regulated like other highly regulated sectors.

That, however, remains some way off. In the here and now, Frances Haugen’s evidence will provide fresh momentum for the DSA and the OSB. Her intervention will cement parliamentary majorities. It will prompt political denunciations of social media platforms. However, it is unlikely to fundamentally alter the legislative frameworks that will govern online content moderation in the UK and the EU for the next five to ten years.