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# Better safe than sorry? Digital campaigning governance in Germany

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## ABSTRACT

How political speech is regulated has changed, with online spaces presenting new challenges. Private platforms now play a significant role in providing spaces for political speech with their own rules and algorithms. This paper examines the current state of legal regulation for political speech, both online and offline, and identifies gaps in governance. As we navigate the ever-evolving landscape of online political speech, it is essential to consider the changing and stricter rules that are being put in place. Private actors have played a crucial role in providing space for this speech. It is worth examining the similarities and differences between offline and online political speech and advertising regulation to ensure everyone's voices are heard and respected. Analyzing applicable public and private law, we investigate how different compliance pulls from national and EU law (existing and upcoming) influence the commitments made by the parties, using the most recent federal elections in Germany as an example. Thus, we assess the German legislative framework, which is also influenced by EU legislation. These investigations reflect new European rules, including the Digital Services Act. After analyzing how parties engage with national law and (self-regulatory) commitments, the paper provides suggestions for improving online speech governance.

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Digital campaigning; parliamentary speeches; party manifestos; EU regulation; electoral campaigns

## 1. Introduction

Social media has disrupted opinion-forming and decision-making processes (Azari 2016; Enli 2017). The Trump campaign, the Brexit vote, and the Cambridge Analytica scandal raised questions about social media's impact on elections and offline politics. The Capitol Hill riots in January 2021 added to these concerns. In comparison, it is challenging to establish concrete evidence of social media's impact on democracy. Some political advertising on social networking platforms seems to have minor persuasion effects (Coppock, Hill, and Vavreck 2020), but there is also evidence for backfire effects (Hersh and

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Schaffner 2013). In any case, all changes to decision-making processes must be seen in the context of more significant societal phenomena, like the polarization of US society (Levitsky and Ziblatt 2018) that are linked to political processes spanning decades and traditional media.

Accordingly, we saw in the European, Czech, Hungarian, and Polish elections, to some extent, an illiberal or authoritarian backlash associated with campaigns on social media (Hajer 2009; Norris and Inglehart 2009; 2019). The recent national election in Germany showed rising evidence for disinformation campaigns on platforms (Baptista and Gradim 2022; Wardle and Derakhshan 2017) without establishing any clear evidence of concrete adverse effects by any specific disinformation campaign. However, a clear distinction between the framework under which offline and online campaigning occurs is notable. Historically, political campaigning has been strictly regulated on both sides of the Atlantic. However, political parties' campaigning on social networks is not as well regulated.

Research on the regulation of campaigning in the digital arena remains limited. Dommett, Barclay, and Gibson (2023) stress that data-driven campaigning (DDC) is somehow limited but only to a low level, whereas studies on the interaction between and during campaigns on social media are widespread and cover a vast area of fields (Gauja 2021; Gibson 2015; Jensen 2017; Spierings and Jacobs 2019). Existing research mainly covers the issues of parties' self-regulation during elections and (self-)governance to enable higher transparency in digital campaigning (Di Porto and Zuppetta 2021; Dommett 2020; Wilding 2021).

In conceptualizing constrictions on regulation, we focus on legal constraints and on recognizing the ecosystem of actors who can constrain or moderate campaign activity. Specifically, we foreground the significance of state regulators, platform companies and campaigners – each of whom can impose constraints on campaign activity. It is currently unclear what actions are being taken in each area and what is and is not constrained within this ecosystem. For this reason, we ask: How is online campaigning currently curtailed? We explore with the specific case study of Germany. By campaign governance we understand the policy and polity brought into place by governing and opposing parties during the political process within a said period – the electoral campaign. Moreover, we seek to explore the matter of online campaign regulation beyond campaigns. The best way to study this subject is through parliamentary debates, where regulation and other enactments of online campaign regulation start.

Therefore, this study inquires into the status quo and normative frame of online campaign governance, taking Germany as a case to assess how campaign regulation emerged from established norms and regulations. Mainly due to the Corona pandemic, the German 2021 federal election campaigning markedly used social media, including large online platforms such as Facebook, Twitter/X, YouTube, and Telegram (Borucki and Klinger 2021). Different normative layers regulated this online electoral campaign (Fertmann and Kettemann 2021).

Our focus on Germany comes for two reasons: Germany's Hessian privacy law, enacted on 13 October 1970, was the world's first privacy law. Other countries have since followed its lead, and German courts, including the Federal Constitutional Court, have been central in defining the limits of the right to data protection. Interestingly, Germany, despite being a significant global player and economic power, has fallen back in fulfilling crucial requirements for digital transformation. This is surprising

because Germany's stringent laws could have served as a historic blueprint as a first mover. However, this is a unique case, and it's not certain what lessons other countries can learn from it.

Regarding the first aspect of privacy law history, we see a long tradition of information and media transformation and regulation in Germany, beginning with the introduction of the dual media system divided into private and state-funded media outlets (Reiberg 2017). Today, Germany has a sophisticated media governance system containing several rules to guide campaigning in the traditional media, including at the sub-national levels of the states (Bundesländer) (D'haenens 2007).

The second aspect, lagging back in digital infrastructure, meaning that the cable and mobile network hardware still is premature in Germany, has increased in the last few years, following the Digital Riser Report ("Digital Riser 2021;" 2021). Germany has not met its goals regarding investment in the build-up of digital infrastructure.

We locate digital campaign governance within the regulatory dimension of digital politics as a policy field. That said, all legal rules – public and private law – affecting how parties are allowed to campaign online and offline are captured by this understanding. We see this as a starting step to introduce the field of campaign governance in the European context from a party-legal perspective.

This paper is structured as follows: After introducing our case and methods in the next paragraphs, the following section entails the analysis of political campaign governance between online, offline, private, and state law. Then, we examine these legal dimensions regarding their appropriateness for regulating online campaigning, primarily based on our evaluation of the given regulations so far.

## 2. Case, data and methods

Text analyses of party manifestos and parliamentary debates are utilized to assess how the recent German (online) campaign has been politically discussed as a proxy of the quality of regulation.

To assess the current limitations of online campaigning, we conducted a comprehensive search, using key terms related to relevant laws. Rather than analyzing political actors' messaging on regulatory policies, we examined official documents and parliamentary records to trace the original intentions behind campaign governance. This approach allowed us to avoid potential bias and persuasion from party communicators. Our methodology involved a dictionary-based investigation of existing laws, supported by informed exploratory and extensive big data analyses of parliamentary debates. We prioritized the examination of official documents and parliamentary records over a communication-based approach to uncover the genuine intentions behind campaign governance and regulation. The table below depicts the investigated datasets and figures, indicating how frequently searched terms with truncation (\*) occurred.

The search terms shown in Table 1 were used in various supervised keywords-in-context (kwic) and cooccurrence (coo) searches of the material's manifesto and parliamentary debate datasets (Blaette and Leonhardt 2022; Lehmann et al. 2023). We covered the parliamentary debates from 2000 to 2021, using the GermaParl dataset. This approach aims to catch the preliminary discussion in the parliament before respective acts on the EU level are enacted. Thus, we assume that EU acts include

**Table 1.** Overview of researched Data.

	Database	Search terms [English translation in brackets]	Counts
Party manifestos	Manifesto-Database (Volkens et al. 2021)	Rundfunk* [ <i>broadcast</i> ]	121
		Rundfunkstaatsvertrag [ <i>Interstate Broadcasting Treaty</i> ]	324
		Medien* [ <i>Media</i> ], Medienstaatsvertrag*, MStV* [ <i>State Media Treaty</i> ], Netzwerkdurchsetzungsgesetz*, NetzDG [ <i>Network Enforcement Act</i> ]	317
		Digital Services Act, DSA, Digital Markets Act, DMA, Internet*, Digital*	325
Parliamentary Speeches	GermaParl-Data set (Blaette and Leonhardt 2022)		Coo: 4570 Kwic (all terms): 12,285

implementation processes driven by nation-states beforehand. Initially, the German Federal Data Protection Act was a role model for those acts. For the party manifestos, we started in 2002 because it was the first national election after the millennium.

After identifying hits with relevant keywords, we used computer-assisted qualitative analysis to evaluate the context of found text snippets within the entire document. This keyword-based dictionary approach allows focused data analysis while considering the surrounding context. This process aids in exploring how legal frameworks mirror policymaking and vice versa. Additionally, we conducted unsupervised sentiment analysis to determine the positive or negative values of text snippets based on tonality. Analyzing tonality helps gauge whether a party supported or opposed a particular issue.

Before presenting the findings from these sources, we discuss recent legal changes in campaign governance in Germany, focusing on comparing offline and online regulations and differences between national and European laws.

### 3. Political campaign governance in Germany: the legal frameworks

Political campaigning online is an old phenomenon. Political communication scholars have discussed what parties do on the Internet for about two decades and how this might have changed their campaigning (Farrell, Kolodny, and Medvic 2001; Lusoli and Ward 2004). However, with the advent of social media and the first campaign of then-president Barack Obama in 2008, political campaigning (Levenshus 2010), primarily through social media, gained speed in concerns of reach and traffic among users. In Germany, the migration of parties into the digital world was boosted by the COVID-19 pandemic, making it necessary to move most party activities online (Borucki, Michels, and Ziegler 2020). Political parties globally have shifted to digital campaigns, including those in Germany. However, some predecessors of current digital campaigning were analyzed, especially in the Anglo-American (Bimber and Davis 2003) and European contexts (Anstead and Chadwick 2009; Dolezal 2015; Dolezal et al. 2018). Most studies coming from digitalization of parties (Borge Bravo, Bruqué, and Duenas-Cid 2022; Bravo, Balcells, and Padró-Solanet 2019; García Lupato and Meloni 2023; Lisi 2013) focus on campaign strategies and effects on the electorate and voter turnout relating to a prospective government building. When analyzing the legal regulations that govern campaigning, there is a body of literature that explores the intersectional field between politics and law. This literature examines the ways in which various legal norms intersect with political campaigning.

From the legal perspective we must distinguish between private ordering and state regulation. State orders regulate online communication legally differently: (i) The European Convention on Human Rights (ECHR) grants freedom of expression under international law, which could be interfered with if content or profiles are deleted. This level of international law also includes the UN Guiding Principles on Business and Human Rights (Ruggie Principles). (ii) Several legislative projects have been launched under European law to regulate large online platforms. The recently passed Digital Services Act (DSA) provides particularly extensive obligations in this regard.<sup>1</sup>

The German Basic Law protects the freedom of expression of content authors in Article 5 (1), as does the ECHR in Article 10 (1). The platform property, their data, is protected by Article 14 (1) German Basic Law, Article 1 of the 1st Additional Protocol to the ECHR, and by entrepreneurial freedom, secured by Article 12 (1) Basis Law and Article 16 ECHR.<sup>2</sup> Regarding online election campaigning, three acts are essential according to basic law: First, the Penal Code makes insulting content or content inciting to criminal offences a punishable offence. Second, the State Media Treaty (MStV) obliges the platforms to maintain a diverse public debate through transparency obligations. Third, the Network Enforcement Act (NetzDG) provides regulations for consistently deleting illegal content.

Private orders are other regulatory norms alongside the said state norms. These are particularly the social media platforms' terms of use and the parties' voluntary commitments to conduct themselves in the online election campaign, as seen through initiatives like campaign-watch. The terms of use of the principal online platforms have become increasingly important for online election campaigns as the platforms have become more and more relevant for forming public opinion (Blanke and Pybus 2020; Di Porto and Zuppetta 2021; Wilding 2021). If, for example, a candidate or elected representative is deprived of the possibility to spread their views and goals through the social networks because of violations of the terms of use, this can have severe consequences for the electoral success of the blocked person. Facebook and Twitter/X, among others, have recognized their responsibility in the context of elections and have set specific rules for political content.

This interplay of norms of state and private orders reveals both problems of democratic theory, for example, in the deletion and de-platforming (Van Dijck, de Winkel, and Schäfer 2023) of profiles (keyword: Donald Trump) by the social networks and functional deficits, for instance, in the containment of false news.

### **3.1. Offline legal framework**

Before moving to the online world, campaigning was an obvious matter of political communication. With electoral speeches in the constituencies, election posters on the streets, and campaign tours through the countries and TV debates, media and politics fostered how people were contacted with a campaign. This section differentiates between frameworks affecting parties and private actors, acknowledging the different regulatory sources.

#### **3.1.1. Parties and private actors**

The above-mentioned right to freedom of expression also applies to political parties under Article 5 (1) of the Basic Law. This protects the parties' online presence and their election advertising. This protection derives from Article 21 of the Basic Law, which constitutes the right of German parties to participate in the formation of political

will, giving them a special responsibility and constitutional status. However, according to the current interpretation of Article 21 of the Basic Law, placing election advertisements on TV and radio only refers to broadcasting organizations. This rule is concretized in the State Media Treaty (§ 68 para. 2 MStV).<sup>3</sup> Other media platforms are accessible regarding content; here, the parties are not entitled to election advertising.

Parties' freedom of expression is limited by Article 5(1) of the Basic Law and electoral law principles. Voters must choose a political idea freely and on an informed basis. False information spreads and hinders this freedom. Article 5(1) doesn't cover such behavior.<sup>4</sup> Social bots can deceive voters about political view support, disturbing their information. Spreading false information about politicians is not protected by freedom of expression: The freedom of expression of the false news-spreading person is secondary to protecting the concerned person's honor.<sup>5</sup> Summarizing, we see a clear gap towards freedom of expression and speech protection by the law, which simultaneously limits parties' campaigning activities.

The German party law from 1967 does not cover online campaigning. Instead, it regulates the internal organization, decision-making, and candidate selection of political parties. Concerning elections, the fourth part of this law is of central interest, regulating how much money parties gain from winning elections. Another legislation comes into play when examining how private entities might be active in campaigns (see [Table 1](#)).

### 3.2. Online legal framework

In this section, we will discuss the legal frameworks for online political campaigns. Starting with the Media State Treaty, Network Enforcement Act, and the latest DSA, DMA, and DGA Act proposals, we'll examine their development and how they relate. By evaluating these frameworks, we will understand the regulatory environment for online political campaigns and compare them ([Table 2](#)).

#### 3.2.1. The long history of the RStV to MStV

Before social media and even the Internet, state authorities regulated TV and radio broadcasts. These frameworks function as predecessors of the actual regulatory framework we are interested in.

The State Media Treaty (MStV), replacing the Interstate Broadcasting Treaty (RStV) on 7 November 2020, adapts the legal framework to the evolving digital media

**Table 2.** Offline regulations of campaigns.

Legal Framework	Area of regulation	Actors involved	Constraints
German basic law, 1949 Freedom of expression (Art. 5) Contribution to will formation (Art. 21) Free choice of vote (Art. 38)	Political parties, their candidates, and members	Voters must be able to make a free choice	Regulates only direct means of campaigning; Regulates free information of voters; Gap between freedom of expression and speech protection limiting parties campaign activities.
State Media Treaty (RStV), 2020	Media coverage of election campaigns		Parties are NOT entitled to election advertising
German party law, 1967	Internal organisation of parties	Political parties and their members	Money spending in campaigning

Source: Own summary.

landscape.<sup>6</sup> Unlike the RStV's focus on broadcasting, the MStV introduces the term "media platform," (§ 2 No. 14 MStV), encompassing all services processing media content, including media intermediaries (Section 2 No. 16 MStV), like search engines and social networks, strongly influencing public opinion formation.

One aim of the MStV is to ensure diversity of opinion and communicative equality of opportunity in the media landscape and on media intermediaries.<sup>7</sup> They must disclose the functioning of their algorithms and avoid systematically disadvantaging journalistic content (Sections 93(1), 94(1)). Platforms must also label social bots as such (section 18 (3)). The state media authorities can enact statutes to concretize media intermediaries' requirements. The effectiveness of the MStV relies heavily on the examination of violations, which is the responsibility of state media authorities. Media providers may notify them of suspected violations. For the MStV to succeed in securing diversity of opinion in social networks, especially during events like the 2021 federal election, it is crucial that state media authorities promptly process all reported violations.

The MStV regulates digital media, introducing new terms and obligations. It focuses on media intermediaries and requires transparency in algorithm functioning. State media authorities play a crucial role in enforcing the MStV, particularly during crucial events like the 2021 federal election.

### **3.2.2. Another framework through the NetzDG**

The Network Enforcement Act (NetzDG) requires social network operators to promptly remove "obviously illegal content" within 24 h of user notification, and other illegal content within seven days. § 1 para. 3 outlines specified criminal norms, such as incitement to commit a criminal offence, insult, or dissemination of anti-constitutional organization signs, which must be met for this obligation to apply. Disinformation rarely satisfies these criminal offence criteria.

Moreover, it is worth noting that the NetzDG exclusively applies to profit-driven platforms (as stated in section 1(1) sentence 1 NetzDG) and generally does not extend to services designed for personal communication (as per section 1(1) sentence 3 alt. 1 NetzDG). However, this means that platforms like Telegram, which boast group sizes of up to 200,000 members and the ability to accommodate an unlimited number of subscribers on public channels, can potentially circumvent NetzDG regulations. Given these exceptions, it is debatable whether NetzDG's non-application is justified, particularly given Telegram's claims that it does not prioritize profit.

According to its statements, the network plans to monetize content without making any profit.<sup>8</sup> However, it is still subject to the regulations of the NetzDG, highlighting the significant challenges in online communication. In the following section, we will discuss the new European initiatives on regulating campaigns, and markets, which include the Digital Markets Act (DMA), Digital Services Act (DSA), and Digital Governance Act (DGA). We will provide a detailed discussion of each of these initiatives.

### **3.2.3. European governance: DMA, DSA, and DGA**

In July 2023, the EU institutions adopted the Digital Services Act (DSA). As the successor to the E-Commerce Directive, the DSA shall contribute to secure and reliable online communication through an EU regulation (Art. 1 para. 1 DSA). This regulation provides for a secure environment mostly for commercial intentions.<sup>9</sup> Intermediaries remain



liable for illegal content as soon as they become aware. Moreover, knowledge is assumed according to Article 16 para. 3 DSA when illegal content is reported through obligatory complaint. Management systems must ensure that those reports are processed quickly and reliably, with similarities to the German NetzDG (Berberich and Seip 2021). The transparency obligations for intermediaries are also to be expanded. They must make their guidelines for moderating and restricting content publicly available.

The EU adopted the Digital Services Act (DSA) in July 2023 to replace the E-Commerce Directive. The DSA aims to ensure secure and reliable online communication through an EU regulation (Art. 1 para. 1 DSA) that provides a secure environment, mostly for commercial purposes. Intermediaries are liable for illegal content as soon as they become aware (Art. 16 para. 3 DSA). Complaint management systems must ensure that reports are processed quickly and reliably. Intermediaries must also expand their transparency obligations by making their guidelines for moderating and restricting content publicly available.

Online platforms must provide transparent information about displayed online advertising, including clear identification of the advertiser and visibility of essential parameters. This aims to increase transparency in personalized advertising, especially for election campaigns. Platform providers must also submit annual transparency reports, which include information on deleted content and recommendation algorithms. A report by the NGO HateAid (JaIs 2022) indicates that the major platforms' removal rate ranges between 8.7% and 15.3% as of June 2022.

The Digital Services Act (DSA) defines "Very Large Online Platforms" (VLOPs) as platforms with at least 45 million monthly active users in Europe. These platforms are considered "systemically relevant" due to their significant impact on public opinion. However, the DSA also recognizes the risks associated with VLOPs, such as the spread of illegal content. To address these risks, the DSA introduces measures like public archiving of all ads and independent audits to assess compliance (Art. 37 DSA, (Berberich and Seip 2021)).

Simultaneously enacted with the DSA, the Digital Markets Act (DMA) targets the business practices of "gatekeepers." These companies, connecting customers and businesses, exert significant influence over the EU internal market within a specific timeframe (Art. 3 para. 1 DMA). The VLOPs fall under this category. The DMA seeks to address their data-based supremacy by restricting data use and mandating its sharing. For instance, data from commercial users cannot be used competitively, and there is an obligation to share data on customer behavior and individuals exposed to advertisements with the relevant advertising or selling companies. Notably, the DSA has limited regulations on fake news and disinformation, as they are not classified as illegal content.

Since the enforcement of the General Data Protection Regulation (GDPR) in 2018, companies have grappled, with significant challenges, with a Bitkom survey in 2020, revealing that over half of respondents felt GDPR constrained their innovative capabilities (Bitkom 2020). In response to GDPR-related hurdles, the Data Governance Act (DGA) was introduced as a European regulation on 25 November 2020 to uphold its standards. The DGA includes bolstering user trust in the security of personal data processing and expanding companies' and research institutions' permissible use of data. A pivotal aspect stipulates that personal data should not be anonymized and entrusted to Internet companies but to a neutral body. The intermediary entity's supervision falls under a member state's established supervisory authority.

The DGA enables data altruism where users can voluntarily share their data for the greater good throughout the EU. National supervisory authorities oversee data usage.

In summary (see Table 3), there are disparities between online and offline regulatory frameworks. Offline campaigning involves physical activities, while online campaigning occurs on digital platforms. Although both have regulations, online regulation is in its early stages. Freedom of expression is protected by basic law, while recently enacted European regulations govern online platforms. TV and radio campaign advertising is limited to broadcasting organizations, whereas online platforms have specific rules. Online regulations, like NetzDG, focus on promptly removing illegal content, but addressing disinformation remains challenging. Offline campaign elements also grapple with false information. Recent European regulations impact online campaigning, covering data protection, advertising transparency, and competition.

### 3.3. Private law: platform regulation at the crossroads?

Platforms' role during campaigns has become important (Bernhard, Dohle, and Vowe 2016; Blasco-Duatis, Gallart, and Saez 2018; Kleis Nielsen and Ganter 2018). In the following, we focus on Facebook, Twitter/X, YouTube and Telegram as important networks in Germany (Newman et al. 2023). Excluding messenger apps like WhatsApp due to their unavailability, our focus is on platform-driven regulation, as opposed to state-driven regulation already discussed.

#### 3.3.1. Facebook

Facebook's community standards prohibit manipulating elections and disseminating support for violence (Meta 2021c). Misrepresenting electoral data and influencing

**Table 3.** Limits to online communication by state rules.

Legal framework	Area of regulation	Actors addressed	Constraints
MStV, 2020	Services processing media content; Disclosure of algorithmic functioning; labelling of social bots	Media intermediaries; Social networks/ social media; State media authorities	Responsibility for sanctioning violations is blurry to unclear
NetzDG, 2017	Illegal content deletion on social networks and other platforms within 24 hrs after notification by users	Profit-oriented platforms of social media	Limited to crimes Grey area of disinformation hardly captured Non-commercial messaging such as Telegram not included
Digital Services Act, 2022	Commercials; Advertising transparency and archiving of ads; Content moderation; Illegal content through complaint management system; Independent audit	Intermediaries VLOPs	Systemic constraints that impact disinformation distribution
Digital Markets Act, 2022	Business regulation against monopolizing gatekeepers	So-called gatekeepers: social networks VLOPs	No data transfer for commercial use
Digital Governance Act/GDPR, 2022	Data protection and privacy; Data altruism	Intermediaries; State authorities	Balance between data protection and industrial data usage

Source: Own summary.

elections through intimidation or demonstrations of power is not allowed either (Meta 2021a). Political exclusion and influence from foreign actors or governments are prohibited. Deep fake videos that lead to false beliefs are inadmissible, while parodies and satire are exempt.

In the help area for companies, Facebook informs about the requirements for election advertising. Advertisers must complete an advertising authorization process, and the ad must contain a disclaimer stating who is paying for the ad. It should also be easier to see who owns a Facebook page and how the state may politically influence certain media (Kühl 2020). In addition, the ads are stored in an ad library to create more transparency, as Facebook delineates its policy (Meta 2021b, 2023).

In general, advertisements must not contain lurid or discriminatory content. In addition, no misinformation should be displayed or controversial social and political topics used for commercial purposes (Meta 2021a).

Facebook's recommendation algorithm shows users' content based on their interests, as per its terms of use, allowing it to use available data for personalization. This helps create stronger connections and improve communities, as Facebook targets people, events, and content related to their interests (Meta 2021a).

Advertisements for services and products of companies and organizations are controlled by matching personal data about users' interests and activities with the target audience specified by the company (Meta 2021a). By controlling the content presented in this way, the discourse can appear less diverse.

### 3.3.2. *Twitter/X*

Twitter/X prohibits any interference with elections, including misleading information and voter suppression. Users can report any suspected violations through a special function. Violators can have their tweets flagged or deleted, and their accounts blocked for severe or repeated violations. Polarizing opinions and inaccurate statements about politics are not considered violations as per Twitter/X's 2021 guidelines. Accounts of governments or state-related media companies are uniformly marked on Twitter/X through a small flag symbol in the account's status. Twitter/X does not promote or recommend accounts or tweets marked in this way (The X Rules n.d.).

In addition, synthetic or manipulated content can be labelled as such, and its visibility can be restricted to avoid misleading users.

Regardless of elections, harassment and intimidation are prohibited on Twitter/X. In case of violations, the platform can ask users to delete the content in question and temporarily put the account into read-only mode or block it permanently. Twitter/X provides even stricter measures against the threat and glorification of violence. Potential violations can be reported not only by users but by anyone. "Any account that posts threats of violence will be immediately and permanently banned." (Perpetrators of Violent Attacks Policy | X Help n.d.).

### 3.3.3. *YouTube*

Like Facebook and Twitter/X, misinformation about elections and technically manipulated content that misleads users are prohibited. YouTube also prohibits inaccurate statements about the eligibility of political candidates or the legitimacy of incumbent government representatives. Attempts to disrupt or obstruct an election are also prohibited. To

prevent fraudulent interference in elections, YouTube works with Google’s Threat Analysis Group, other technology companies and law enforcement agencies (YouTube 2023).

The platform shows trustworthy content for news and info topics under “Next Videos”, supporting politically serious sources. In addition, journalistically high-quality content can be highlighted.

Like Twitter/X and its flag icons, details of funding sources are displayed under videos from public or government-funded sites. The ad’s funding must be disclosed for election ads in the public transparency report (YouTube, n.d.). All rules set by YouTube explicitly apply, regardless of the political orientation of the content or user.

### 3.3.4. Telegram

Telegram prioritizes user privacy and staunchly refuses to handle requests related to (illegal) non-public content. The platform emphasizes that the content within (group) chats is considered “a private matter for the respective users,” and only publicly accessible content can be reported via email or the user profile. Despite Telegram’s assertion that group chats are intended for families, friends, and small teams, the allowance of up to 200,000 members and the option to make groups public suggests a potential extensive reach (Telegram FAQ n.d.).

Telegram maintains a stance against political censorship and allows the dissemination of critical government opinions. While it aims to block copyright-infringing, terrorist, and pornographic content, the platform also provides space for the expression of “alternative opinions.”

To enhance user data protection, Telegram utilizes various global data centers for its cloud chats, subject to different jurisdictions. The platform offers secret chats with end-to-end encryption for complete user privacy, supporting features such as self-destructing messages and the recommendation to use passwords for cloud chats if distrustful of mobile operators or state governments (Telegram Datenschutzerklärung 2023).

While Telegram does not explicitly address handling discriminatory, defamatory, or inflammatory content in its terms, privacy policy, or FAQs, it prohibits the propagation of violence in public platform areas. Consequences for violations are not specified. If informed about accounts linked to terror suspects, Telegram may share IP addresses and phone numbers with authorities, but this is not mandatory.

Despite its ability to block abusive profiles and analyze cloud chat data using algorithms, Telegram does not provide a transparency report akin to the NetzDG and does not address false election information. The platform emphasizes the need for ongoing measures to address these issues (Table 4).

Next, we will study how different groups discuss campaign regulation in their campaigns by analyzing their manifestos and parliamentary debates. We expect parliamentary debates to feature more discussion of the issue than electoral programs, possibly due to various factors.

## 4. Political discussions about campaign governance and party commitments: party manifestos and parliamentary discourse

Parties can commit themselves to particular behavior in online election campaigns to guarantee specific principles of conduct and the legal regulations and conditions of the

**Table 4.** Confinements of platforms on online campaigning.

Platform	Area of regulation	Actors addressed	Constraints
Facebook	Election and political content; Provides transparency with an ad library; Community standards to protect democratic and liberal values;	Prohibits election manipulation, violence support, and misinformation Requires advertisers to complete an authorization process; Controls content based on user interests	Strong connections for improved communities; Data usage for personalization; Ad content control for diversity
Twitter/X	Election and political content; Prohibits election manipulation, misleading information, and intimidation; Labels and restricts synthetic or manipulated content	Policy on integrity of civic processes; Identifies government-related accounts	Polarizing or controversial points of view allowed; Strict measures against violence and threats
YouTube	Election and political content; Prohibits misinformation and election interference;	Promotes trustworthy content; Displays funding source details for public videos	Content quality and source are emphasized; Rules apply regardless of political orientation
Telegram	Privacy and content control; Prioritizes user privacy	Refuses to process requests for non-public content; Allows large group sizes and public groups; Doesn't support political censorship; Protects data with global data centers	Lacks guidance on handling certain content; Can share information about terror suspects; No mandatory obligations for sharing information

Own summary.

platforms. This coincidence is what the Greens did in 2017, among others, who committed themselves not to use social bots and publish more extensive information on party donations than the Political Parties Act (PartG) required (Borucki and Meisberger 2019). Disinformation campaigns were also banned in the self-imposed election campaign rules.

During the 2021 electoral cycle, some German parties signed self-commitments for equal campaigning. The SPD and Green party published their own commitments, while others did not sign any. There was little pressure from all parties to be more transparent in their campaign behaviors.

Against the background of the legal framework discussion both online and offline, we assume the following:

- H1: There is a difference between electoral and non-electoral phases concerning parties discussing regulation in parliament. This means the topic of regulation is dependent on electoral cycles.
- H2: Governing parties refrain from talking about regulation compared to opposition parties.
- H3: According to the GAL-TAN differences of the party system in Germany, we see differences in the debates on who brings the topic of regulation to the agenda.

The analysis of the party manifestos and parliamentary debates showed interesting patterns according to the topics' relevance, emphasis and sentiment score. All of these are discussed in the following sections.

#### 4.1. Party manifestos

Looking at the *party manifestos*, digital campaigning and even more, its regulation is not an issue to tackle in the future. Moreover, we see differences between electoral and non-electoral campaigns, leading to our first hypothesis.

The manifestos contain 478 entries with the search words (see [Table 1](#)). Most of them were included in the recent national election manifestos (129 in 2021) and in 2013 (115), whereas only 84 mentions were to be found in 2017. The share of mentions between the parties also differs from the Greens (here denoted as 90/Greens) and The Left (LINKE), thematizing the searched terms the most. The other parties, mainly the Social Democrats (SPD) and Free Democrats (FDP), mention media regulation, internet campaigning and related topics in their manifestos ([Table 5](#)).

In a more detailed look at the electoral years (2002, 2005, 2009, 2013, 2017, 2021), we see different tendencies and accentuations of which topics the parties focus on in their campaigns. In 2002, the SPD highlighted digital and media literacy, together with the Greens, who focused primarily on elderly people's media literacy. The Free Democrats (FDP) wanted to disentangle parties and media, and the CDU wanted to free media from the public broadcast system.

In 2005, the Free Democrats wished to control politics through free access to media and information for all citizens. The Greens favored a free sharing community (at that time, platforms such as Napster were prominent to share music freely).

In 2009, the Social Democrats (SPD) wanted to secure public service broadcasting, funding structures for film producers, and media literacy, interpreting the public service broadcast as a public good. The Free Democrats wanted to reform the tax system for the public service broadcast and considered digital transformation with such a reform. The CDU focused on the quality of the program of public service broadcasters and the need for media literacy. This was also a topic for the Greens in their campaign since they focused again on elderly people needing media literacy. Moreover, they focused on communicating information and pluralistic media environments. The Greens also highlighted the need for transparency in media ownership. The Left wanted to have media as public goods freely available to everyone, whereas the distribution of information and knowledge should be regulated publicly.

In 2013, the SPD focused on media literacy, while the FDP saw information access opportunities. The CDU promoted digital development, media literacy, and child

**Table 5.** Overview of totals from party manifestos.

Party	Election Year						Total
	200209	200509	200909	201309	201709	202109	
	0	0	0	14	0	0	14 (2.93%)
90/Greens	2	14	22	35	19	19	111 (23.22%)
AfD	0	0	0	0	5	18	23 (4.81%)
CDU/CSU	5	1	13	26	7	16	68 (14.23%)
FDP	16	11	12	6	13	14	72 (15.06%)
LINKE	0	0	10	21	25	34	90 (18.83%)
PDS	2	0	0	0	0	0	2 (0.42%)
SPD	17	4	21	13	15	17	87 (18.20%)
SSW	0	0	0	0	0	11	11 (2.30%)
<b>Total</b>	<b>42 (8.79%)</b>	<b>30 (6.28%)</b>	<b>78 (16.32%)</b>	<b>115 (24.06%)</b>	<b>84 (17.57%)</b>	<b>129 (26.99%)</b>	<b>478 (100%)</b>

protection. The Greens sought child protection and regulation of sexism and misogyny. The Left advocated for citizen rights and democratic self-rule in media, opposing data collection by platform media.

In 2017, different political parties had different media and education policy priorities. While the SPD wanted to use the Internet to empower education models and integrate communication spheres, the Free Democrats wanted to focus on computer science to promote media and method literacy. The CDU stressed the importance of media literacy and teaching children how to deal with social media. At the same time, the Greens and the Left wanted to address hate and anger on social media against minorities. The Greens also emphasized the need for informational rights as a fundamental right against disinformation and fake news.

The recent election in 2021 showed that political parties in Germany had different views on media and literacy. While the FDP and CDU wanted a balance between private and public service broadcasters, the Greens suggested a national and European oversight to tackle disinformation. The Left focused on media literacy, and the AfD demanded free speech on platform media and the abolition of NetzDG.

#### 4.2. Parliamentary speeches

When contrasting these findings with the *parliamentary speeches*, we see that the main terms “Digital”, “Internet”, “Media (Medien)” and “Radio/TV (Rundfunk)” and its child-dependencies happen to be found the most in the parliamentary speeches (see Table 6: Frequencies of searched terms.). In total counts, we can see that media appears the most frequently, followed by other words. The regulatory framework of the NetzDG comes next, together with its predecessors, MStV and RStV).

Contrasting these descriptive measures with the sentiments found in the unsupervised sentiment analysis, we can see that both negative connotations (negative senti-score) and some parties are connected here. The senti-score means that the higher a found text snippet or word comes to 1, the more positive is its connotation. Overall, when comparing the four main search words (Rundfunk, Medien, NetzDG, Netzwerkdurchsetzungsgesetz), we see that most of these are negatively connotated, despite the word “Rundfunk” as part of longer word compositions or standalone token (see Table 7).

**Table 6.** Frequencies of searched terms.

Query	Count	freq
"RStV"	0	0.0000000000000000
"MStV"	0	0.0000000000000000
"DSA"	0	0.0000000000000000
"DMA"	0	0.0000000000000000
"Medienstaatsvertrag"	13	0.000000120850800
"Rundfunkstaatsvertrag"	28	0.000000260294100
"Netzwerkdurchsetzungsgesetz"	173	0.000001608246000
"NetzDG"	208	0.000001933613000
"Rundfunk.*"	1280	0.000011899160000
"Regulierung"	2636	0.000024504830000
"Internet*"	5710	0.000053081400000
"Digital.*"	10064	0.000093557130000
"Medien.*"	10583	0.000098381870000

**Table 7.** Senti-scores of searched terms.

Query	senti_score	n	n_in_senti
Rundfunk.*	0,01192	21346	1865
Medien.*	-0,00592703845540131	180113	12534
NetzDG	-0,0225606870229008	3397	262
Netzwerkdurchsetzungsgesetz	-0,0151424778761062	2875	226
Rundfunkstaatsvertrag	0,01206	463	45
Medienstaatsvertrag*	-0,00645909090909091	259	22
Internet*	0,00620745434836988	153315	11993
Digital*	0,0471756419100176	169968	13047

The reversed pattern is true for negativity: Here we see that the most negative score is achieved with the word “NetzDG” in connection with the Greens with a score of  $-0.25$ . This means that the tonality of the passages found around the NetzDG is mainly negative compared to other keywords. The next negative score is on “Rundfunk\*” connected to the split-up party from Bernd Lucke (Liberal-Konservative Reformer, LKR), a former member of the right-extremist Alternative for Germany (AfD). In an overview, the most apparent result is that the mentions of sentiments concerning the newly established NetzDG emerged at that time also in the parliamentary debates. So, here we see an overlap between both data sources when the debates about the NetzDG and other related legal frameworks started.

Of course, we searched for these terms, so the pattern we see in this graph is quite what we awaited. But we see the words around our search terms when looking at the inter-linked words with these through another instrument, the keyword-in-context. The main discussions and topics around the searched keywords concern the costs of public service broadcasting from the early 2000s to 2021.

The overall distribution of keywords over time does not vary very much, as [Table 8](#) shows. Thus, the topic of digital regulation is an ongoing one, constantly discussed in parliament.

When separating for parties, we see that mostly the so-called Volksparteien, CDU and SPD, discuss the issues. Next, the Greens (Grüne) and Free Democrats (FDP) use the searched terms in their speeches. The most found keywords-in-context appeared in 2019 with 12 per cent, and both coalition partners of that time (CDU and SPD) mostly spoke about topics of the media, the Internet and regulation.

To conclude, we see differences between the parliamentary speeches and manifestos concerning frequencies and quality of appearance and duration. In the parliamentary discourse, more and longer statements are to be found, whereas the tokens from manifestos remain short. This is to be explained with the source of said texts and the different arenas in which they are used and crafted – election campaigns and parliamentary debates. Interestingly, we found few mentions of regulating campaigns or fighting disinformation with regulation and oversight boards or comparable measures. This is even more interesting if we consider the electoral campaigns as central arenas to address changes. That said, we need to discuss the importance of online campaign regulation, which seems to be no issue in campaigning or non-campaigning times.

Moreover, regulating online campaigns and establishing an agenda is fine for a governing party. It is more a question of interest to opposition parties and differs among the party system. Here, we see that the big two parties, SPD and CDU, talk most



**Table 8.** Distribution of hits in the parliamentary speeches database.

Label	Party								Total
	AfD	CDU	CSU	DIE LINKE	FDP	GRUENE	PDS	SPD	
year 2000	0	244	63	0	142	149	97	399	1094 (3.92%)
2001	0	117	26	0	65	99	42	262	611 (2.19%)
2002	0	157	47	0	105	133	82	352	876 (3.14%)
2003	0	184	34	0	83	83	13	269	666 (2.39%)
2004	0	163	46	0	51	93	19	309	681 (2.44%)
2005	0	85	30	11	44	57	4	157	388 (1.39%)
2006	0	201	75	81	176	90	0	218	841 (3.02%)
2007	0	134	51	78	79	106	0	251	699 (2.51%)
2008	0	184	60	87	93	91	0	199	714 (2.56%)
2009	0	193	38	84	100	110	0	183	708 (2.54%)
2010	0	213	105	85	139	115	0	164	821 (2.94%)
2011	0	333	144	162	182	150	0	254	1225 (4.39%)
2012	0	326	152	219	233	175	0	281	1386 (4.97%)
2013	0	269	125	183	175	191	0	231	1174 (4.21%)
2014	0	422	169	217	2	210	0	475	1495 (5.36%)
2015	0	359	171	110	0	137	0	304	1081 (3.88%)
2016	0	470	189	140	0	179	0	318	1296 (4.65%)
2017	18	387	108	84	9	128	0	246	980 (3.51%)
2018	264	768	269	180	397	298	0	602	2778 (9.96%)
2019	412	897	257	282	487	404	0	628	3367 (12.07%)
2020	316	830	321	235	361	365	0	486	2914 (10.45%)
2021	199	649	174	170	294	258	0	348	2092 (7.5%)
Total	1209 (4.34%)	7585 (27.20%)	2654 (9.52%)	2408 (8.63%)	3217 (11.54%)	3621 (12.98%)	257 (0.92%)	6936 (24.87%)	27887 (100.00%)

**Table 9.** Overview of all researched frameworks.

Legal Framework/platform	Area of Regulation	Actors Addressed	Constraints
German basic law, 1949	Freedom of expression (Art. 5); Contribution to will formation (Art. 21); Free choice of vote (Art. 38)	Political parties, their candidates, and members	Voters must be able to make a free choice; Regulates only direct means of campaigning; Regulates free information of voters; Gap between freedom of expression and speech protection limiting parties' campaign activities;
State Media Treaty (RStV), 2020	Media coverage of election campaigns	Parties are not entitled to election advertising	
German party law, 1967	Internal organization of parties	Political parties and their members	Money spending in campaigning
MStV, 2020	Services processing media content; Disclosure of algorithmic functioning; labelling of social bots	Media intermediaries; Social networks/social media; State media authorities	Responsibility for sanctioning violations is blurry to unclear
NetzDG, 2017	Illegal content deletion on social networks and other platforms within 24 hrs after notification by users	Profit-oriented platforms of social media	Obligation needs to fulfil the facts of a criminal norm; Grey area of disinformation hardly captured; Non-commercial messengers such as Telegram not included
Digital Services Act, 2022	Commercials; Advertising transparency and archiving of ads; Content moderation; Illegal content through complaint management system; Independent audit	Intermediaries; VLOPs	Hardly any regulation of disinformation and fake news
Digital Markets Act, 2022	Business regulation against monopolizing gatekeepers; So-called gatekeepers: social networks; VLOPs	No data transfer for commercial use	
Digital Governance Act/GDPR, 2022	Data protection and privacy; Data altruism	Intermediaries; State authorities	Balance between data protection and industrial data usage
Facebook	Election and political content;	Community standards to protect democratic and liberal values; Prohibits election manipulation, violence support, and misinformation; Requires advertisers to complete an authorization process; Controls content based on user interests	Strong connections for improved communities; Data usage for personalization; Ad content control for diversity
Twitter/X	Election and political content;	Prohibits election manipulation, misleading information, and intimidation; Labels and restricts synthetic or manipulated content	Policy on integrity of civic processes; Identifies government-related accounts; Polarizing or controversial points of view allowed; Strict measures against violence and threats
YouTube	Election and political content;	Prohibits misinformation and election interference; Promotes trustworthy content; Displays funding source details for public videos	Content quality and source are emphasized; Rules apply regardless of political orientation
Telegram	Privacy and content control;		

*(Continued)*

**Table 9.** Continued.

Legal Framework/ platform	Area of Regulation	Actors Addressed	Constraints
		Prioritizes user privacy; Refuses to process requests for non-public content; Allows large group sizes and public groups; Doesn't support political censorship; Protects data with global data centers	Lacks guidance on handling certain content; Can share information about terror suspects; No mandatory obligations for sharing information

about regulation in parliament, but other parties, the Greens and the Left, talk more about such issues in their programs. Thus, we see some evidence pointing towards our third hypothesis and no real evidence for our second since regulation issues occur independently from electoral phases.

## Conclusion

This paper analyzed the status quo of off- and online political (campaign) speech regulation and identified governance gaps in the example of Germany's most recent federal elections in 2021. We compared four dimensions of frameworks influencing campaigning governance. Legal frameworks differ from platform rules and self-given party commitments. The first result of our analysis is the asymmetry between offline restrictions to promote candidates and parties during campaigns and their online presence. Additionally, when analyzing the parliamentary speeches and manifestos of parties, we saw differences in frequency, tonality in sentiments and range of discussions by parties on digital campaigning practices.

Our analysis of applicable public and private law investigated how different compliance pulls from national and EU law, including the most recent DSA, DMA, and DGA, which functioned together with the mentioned commitments made by the parties during the recent campaign. After an analysis of the way parties engage with state law and (self-regulatory) commitments, the main result is that there are huge gaps in legislation and regulation of online campaigning.

To summarize all our findings, the following framework of confinements and constraints shall help highlight the current regulation patchwork. Looking into and beyond formal law is essential to assess the different influential sources on campaign conduct. The following table showcases this patchwork. In the German super-election year 2021, all mentioned norms regulated an essential part of the election campaign and, thus, a crucial democratic process. Many of the norms discussed are still young (NetzDG from 2017, MStV from 2020) or await EU-level adoption (DSA, DMA, DGA).

The novelty of the norms and the enormous importance of communication on the Internet for election campaigns in Corona times call for an analysis of the norms' impact to develop alternatives to the existing regulations. Together with the herein deployed analytical framework of corpus and text analysis, we could assess the amount of digital regulation in political discourses. More qualitative and deepened analyses are needed to refine our findings (Table 9).

## Notes

1. This section is based on Kettemann et al. (2021) [https://leibniz-hbi.de/de/blog/rechtlicher-rahmen-des-online-bundestagswahlkampfes#\\_ftn1](https://leibniz-hbi.de/de/blog/rechtlicher-rahmen-des-online-bundestagswahlkampfes#_ftn1) (last accessed: 01/24/22).
2. There is some legal debate in Germany if data is protected through the provisions of the Basic Law, cf. Michl, NJW 2019, 2728; Wischmeyer, NJW 2020, 288 (both arguing in favour).
3. Wissenschaftlicher “Dienst des Deutschen Bundestages, Parteienwerbung in privaten Medien”, <https://www.bundestag.de/resource/blob/651780/3fe16363e541588a2dcbdb3d8b851375/WD-10-044-19-pdf-data.pdf>, 05.07.2019, S. 7.
4. Klaas, Arne, “Demokratieprinzip im Spannungsfeld mit künstlicher Intelligenz”, MMR 2019, 84, S. 88.
5. BVerfG, NJW 2000, 3485.
6. Martini, *BeckOK Informations- und Medienrecht*, MStV Präambel, Rn. 43.
7. Begründung. zum MStV, LT-Drs. N 18/6414, 89, [https://www.landtag-niedersachsen.de/drucksachen/drucksachen\\_18\\_07500/06001-06500/18-06414.pdf](https://www.landtag-niedersachsen.de/drucksachen/drucksachen_18_07500/06001-06500/18-06414.pdf); Martini, *BeckOK Informations- und Medienrecht*, MStV Präambel, Rn. 45.
8. Telegram, Fragen und Antworten, “Was ist der Unterschied zwischen Gruppen und Kanälen?”, <https://telegram.org/faq/de#f-was-ist-der-unterschied-zwischen-gruppen-und-kanalen>.
9. Europäische Kommission, 2020/0361 (COD), S. 49, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52020PC0825&from=de>.

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