

Bias in Law-Making – How Assumptions About Technology, Trustworthiness, and Human Agency Underpin European Digital Law

Editorial

The international research network “Young Digital Law” has critically explored the assumptions about the human-machine-relationship underpinning European technology law at a conference titled “**Bias in Law-Making, How Assumptions about Technology, Trustworthiness, and Human Agency underpin European Digital Law**”. The conference was jointly hosted by the Department of Innovation and Digitalisation in Law and the Research Platform “Governance of Digital Practices”, in cooperation with the Research Group “Security and Privacy” of the University of Vienna. Over three days (5–7 July 2023) early career researchers from across Europe presented their interdisciplinary work, flanked by a variety of innovative and inspiring formats by other scholars. Some of the papers presented at the conference are published in this special issue of the *University of Vienna Law Review*.

Opening this special issue, **Moritz Griesel** and **Tizian Matschak** explore human oversight as a central requirement for high-risk AI systems under the European Union’s Artificial Intelligence Act (AI Act). The paper examines Article 14 of the AI Act across its successive versions throughout the legislative process and evaluates the requirements for human oversight from both legal and IT perspectives. In doing so, the paper addresses questions such as whether Explainable AI (XAI) could serve as a solution for improving human understanding of AI decisions.

Ann-Kristin Mayrhofer evaluates Human-AI collaboration from the perspective of enterprise liability. The paper focuses on non-contractual, fault-based liability, which requires a violation of the principal’s duty of care. Its aim is to draw on insights from other disciplines to determine the measures principals must take to prevent specific risks resulting from Human-AI decision-making. Furthermore, the paper explores the principal’s duty of care under the Proposal for an AI Liability Directive, which was withdrawn in 2025.

Yann Conti and **Yann Schoenenberger** approach data erasure from a particularly interdisciplinary perspective. The paper compares the legal notion of data erasure under European and Swiss law to its definition in computer science and examines how legal literature, data protection authorities, and case law address its implementation. It sheds light on the similarities and differences between the General Data Protection Regulation (GDPR) and the Swiss Data Protection Act and identifies

specific approaches to implementing data erasure in practice, such as the irreversible approach and the proportionality approach.

Fatma Sümeýra Dođan analyses the regulatory tensions between algorithmic bias mitigation and data protection in AI-driven healthcare within the European Union’s legal framework, focusing on the Regulation on the European Health Data Space (EHDS), the AI Act, and the GDPR. The paper identifies a “fundamental regulatory paradox”: The EHDS prioritizes anonymisation and pseudonymisation for secondary use of health data, whereas the AI Act calls for thorough bias examination of high-risk AI systems requiring access to the very data that anonymisation and pseudonymisation are designed to obscure.

Felicitas Rachinger explores the concept of “non-discrimination” under the Digital Services Act (DSA). The paper describes the fundamental connections between online platforms and non-discrimination, examines the meaning of the term “non-discrimination” and related concepts under the DSA, and provides an analysis of specific content moderation provisions at both the individual and systemic levels. It concludes that the DSA offers only limited guidance on balancing non-discrimination rights with other fundamental rights, including those of online platforms themselves.

By analysing the “Governance Turn” in EU digital policy, **Simona Stockreiter** explores the European Union’s current regulatory approach in its third phase of digital policy-making, focusing on the AI Act and the DSA. The paper explores how these legal acts balance different regulatory goals, such as promoting innovation, protecting fundamental rights, and preventing harms. It is based on an analysis of the legal framework as well as 16 interviews with European Commission officials, experts, and civil society representatives.

This special issue concludes with a paper by **Ondřej Woznica** and **Michal Vosinek** on regulatory impact assessments (RIA) in legislative processes, using the transposition of Article 17 of the Copyright in the Digital Single Market Directive (CDSM) into Czech law as an example. The paper takes an interdisciplinary approach, including public choice theory and behavioral economics perspectives. To improve legislative processes and promote good law-making, it proposes strategies to enhance the outcomes of RIAs and mitigate risks.

We would like to express our gratitude to all those whose efforts made the publication of this special issue possible. Above all, we thank **Professor Franz-Stefan Meissel**, Editor-in-Chief of the *University of Vienna Law Review*, for providing us with the opportunity to bring this project to fruition. We are deeply grateful to **Mary Barrett** and the Ars Iuris team for the smooth collaboration, as well as to the anonymous reviewers for their valuable contributions. Finally, our warmest thanks

got to all the authors, without whose work this special issue would not have been possible.

We would also like to take this opportunity to express our gratitude to everyone who contributed to the success of the conference, especially the speakers. We are particularly grateful for keynotes given by **Professor Nikolaus Forgó**, **Professor Iris Eisenberger**, **Professor Barbara Prainsack**, and **Professor Edgar Weippl** as well as for a mixed panel hosted by **Professor Margarita Boenig-Liptsin**. Important items on the conference agenda were four interactive workshops conducted by **Connor Hogan**, **Paola Lopez**, **Alexander Nussbaumer**, **Kai Erenli**, **Christian Gütl**, **Sebastian Schrittwieser**, and **Professor Edgar Weippl**. **Katja Mayer** and **Žiga Škorjanc** chaired a panel discussion on “Open Science: Legal Framework and Practical Challenges in the Digital Age”, jointly hosted with the Austrian Federal Ministry of Education, Science and Research. Undoubtedly, another highlight of the conference was the panel discussion on “Exploring the Human-Technology Interface of Platform Liability: the DSA and DMA, and Bias in the Digital Age” chaired by **Boris Kandov** and **Syed Zulkifil Haider Shah** at the Austrian Supreme Court of Justice (*Oberster Gerichtshof*).

Lukas Faymann and Florian Werni for the organising team of “Young Digital Law 2023”