

# Much Ado About Nothing

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On 26 January 2022, the European Commission proposed [a European Declaration on Digital Rights and Principles for the Digital Decade](#). On 15 December, the Declaration was [adopted](#) in the form of a joint solemn Declaration.

The Declaration forms part of a broader international and regional trend, where non-binding [Internet Bills of Rights](#) have emerged. All of these international and regional initiatives share one thing in common – they aim to provide guidance on the protection of fundamental rights in the digital environment.

The Commission [states](#) that the Declaration builds upon primary EU law instruments such as the [Charter of Fundamental Rights](#) and complements the [European Pillar of Social Rights](#). Therefore, the question arises of what additional value and effect the Declaration may have. I argue that due to the way the Declaration is formulated, it is hard to imagine it providing added value for the protection of fundamental rights in the EU.

## The Framing of Fundamental Rights in the Digital Environment

The Declaration is framed as a necessary addition to work on creating a [Europe fit for the Digital Age](#). A focus is placed on six thematic areas, including digital inclusion, participation and safety, security and empowerment. The principles contained in the Declaration aim to guide both policymakers and corporations on the protection of fundamental rights in the digital environment.

As a non-binding instrument, the Declaration cannot directly affect or alter the content of EU legal rules or their application. It is therefore unclear what role, if any, it may play in the interpretation of EU legislative frameworks.

In many instances, the Declaration simply restates what legislation on particular subjects already requires. For example, in the section on encouraging participation in the digital public space, the Declaration states that very large online platforms should mitigate the risks stemming from the functioning and use of their services with due regard for freedom of expression. This is already a requirement under the [Digital Services Act](#). Therefore, even if used as an interpretative tool it is hard to see a benefit in being able to point to the Declaration on this topic as it merely reinstates, without being formulated differently requirements that are already contained in primary legislation.

Further, it is hard to see how some of the statements in the Declaration could be implemented in practice . For instance, it is stated that in order to encourage solidarity and inclusion “technology should be used to unite and not divide people.”

Although this could refer to the divisive political impact of new technologies, the language used is suggestive and ambiguous rather than prescriptive. In addition, it is stated that Artificial Intelligence “should serve as a tool for people, with the ultimate aim of increasing human well-being.” Although it is hard to object to such language, it hardly moves the dial forward. These broad statements oversimplify how technology works. They may look good on paper, but what they concretely mean for law and policy implementation is ambiguous. It is hard to imagine a policymaker or judge finding such statements useful for guidance in their work on digital policy.

## Net Neutrality and Fundamental Rights

Contrary to its stated purpose, the Declaration puts forward some principles that might actually threaten people’s fundamental rights. Of particular concern is the reference in Chapter II on developing adequate frameworks for all market actors to make a “fair and proportionate contribution to the costs of public goods, services and infrastructure.” This is a direct reference to the ongoing debate on [net neutrality](#) in the EU, with the European Commission stating that it will present a legislative initiative on the topic. Net neutrality is the principle that internet service providers should enable access to all content equally, without favouring or blocking particular websites or sources.

At the heart of the debate is lobbying efforts by European Telecoms operators, arguing for a so-called “[fair share](#)” contribution to their infrastructure costs. The Declaration has been used in their lobbying efforts in [interviews](#) and [joint statements](#). In practice, a contribution to infrastructure costs would require content platforms that generate the most internet traffic to pay a fee to the telecoms operators to have access to their infrastructure and interconnection.

This is not a new debate. The idea, then framed as “sending party pays” was examined and disregarded by the Commission in 2012. Since then, the Commission adopted the [Open Internet Regulation](#), which protects net neutrality. Requiring a specific payment by some companies to telecoms operators raises the question of what would happen if an online service cannot or will not pay – would the service be slowed down or would it be blocked from the internet? Both instances would clearly have an impact on people’s fundamental right to access information.

The initiative has been criticized by a range of actors, including [Members of the European Parliament](#), [Member States](#), [NGO’s](#) and [independent experts](#). In addition, the Body of European Regulators for Regulators for Electronic Communications in its [preliminary assessment](#) dismissed the telecom operators’ arguments that this fee is required for them to survive, and highlighted the harm that it would cause to the open internet ecosystem.

The Declaration may be continued to be used by the telecoms operators’ lobbying efforts in this debate. Much will depend on how the interpretation of what a “fair and proportionate contribution” is understood as. It has been [argued](#) that to protect fundamental rights, this provision should be interpreted as the requirement of effective taxation of digital corporations.

## Conclusion

The stated aim of the Declaration is to provide a vision for the protection of fundamental rights in the digital environment. It will be interesting to follow whether the Declaration will have any effect on how the Commission interprets existing legislation and whether it may lead to new legislative proposals. Equally, it will be interesting to follow whether the Court of Justice of European Union sees any added value in the Declaration when it comes to the task of adjudicating on existing legislation. I doubt it will. This is due to its ambiguity and the fact that it simply restates what is required under legislation. Therefore, it is difficult to see how it will add value and what effect it will have for the protection of fundamental rights in the digital environment.

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