User empowerment against disinformation online

A publication
of the European Audiovisual Observatory

30 Years

European
Audiovisual
Observatory

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

User empowerment against disinformation online

Francisco Javier Cabrera Blázquez, Maja Cappello, Julio Talavera Milla, Sophie Valais

Foreword

"What convinces masses are not facts, and not even invented facts, but only the consistency of the system of which they are presumably part."

Hannah Arendt, *The Origins of Totalitarianism*

Disinformation is one of the most complex problems of our times. We all seem to agree upon the grave nature of the dangers it poses to society. But dealing with disinformation is not easy, especially since, although it may be harmful, it is not necessarily illegal. Lying is not illegal per se, and opinions are subjective by nature. Freedom of expression and information is a fundamental pillar of modern democratic systems, and any regulatory intervention in this field must be prescribed by law and be necessary in a democratic society, as explained in Article 10 of the European Convention on Human Rights and developed by the jurisprudence of the European Court of Human Rights.

Given this state of affairs, providing users with the tools to defend themselves from harmful but technically legal disinformation appears to be a possible winning strategy. This user empowerment can be achieved through a variety of tools, such as media literacy campaigns, content labelling by online platforms, the possibility for users to flag disinformation, the promotion of reliable information, safe design practices, and transparent appeal mechanisms.

This publication describes the many ways in which public authorities and private enterprises empower users against disinformation online. The first chapter sets the scene by discussing relevant concepts, such as mis-, dis- and malinformation, empowerment, and media literacy. It further discusses the way in which disinformation affects users, why it has become such an issue, and how to measure it. Chapter 2 presents the international and EU legal and policy framework, with special emphasis on the different measures introduced by the European Union to fight disinformation. Chapter 3 covers responses at national level, highlights some examples of legislative and non-legislative responses to online disinformation in Europe, and shows how states are placing user empowerment at the centre of their approach to the issue. Chapter 4 focuses on self- and co-regulation, providing an overview of the Strengthened EU Code of Practice on Disinformation, delving into the role of national regulatory authorities, and looking at the practical implementation of measures by Big Tech platforms. Chapter 5 presents relevant judgments of both the Court of Justice of the European Union and the European Court of Human Rights in which they had to rule on cases that are connected, directly or indirectly, to the issue of disinformation. Wrapping up the publication, Chapter 6 presents stakeholders' reactions to the 2022 Code and recent developments at EU level.

Strasbourg, December 2022

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory

Table of contents

Figures

1. Setting the scene

1.1. Definitions

The average person may have a general idea of what empowerment, fake news or disinformation means, as these terms pop up regularly to a greater or lesser extent in mainstream and social media. Although they are not new concepts, their use and the concerns they generate have gained new momentum since the 2016 US presidential campaign, followed by the Covid-19 infodemics[1] and the recent invasion of Ukraine. However, the definitions of these terms are quite heterogeneous and, sometimes, vague, simplistic and even contradictory. So, first things first, let's set the record straight.

1.1.1. Disinformation and fake news

Although there is no common understanding as to the definition of the terms "disinformation" and "fake news", they are often used as synonyms. The Cambridge Dictionary defines 'fake news' as "false stories that appear to be news, spread on the internet or using other media, usually created to influence political views or as a joke",[2] while 'disinformation' is referred to as "false information spread in order to deceive people".[3] According to these definitions, the difference between the two terms would be that fake news doesn't necessarily involve fabrication of information and a deceptive use thereof. In this vein, some authors consider that the overarching term "fake news" incorporates "misinformation (false or misleading information) and disinformation (false information that is purposely spread to deceive people)".[4]

A much more pragmatic approach can be seen in Wardle and Derakhshan's (2017) typology of what they term information disorders,[5] where they refrain from using the term

---

[1] According to the World Health Organisation (WHO), an infodemic is too much information including false or misleading information in digital and physical environments during a disease outbreak, https://www.who.int/health-topics/infodemic/the-covid-19-infodemic#tab=tab_1.

[2] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/fake-news.

[3] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/disinformation.

[4] Lazer D. M. J. et al., 2018, « The Science of Fake News", *Science*, 359 (6380), pp. 1094-1096.

[5] Wardle & H. Derakhshan, 2017, Information disorder: Toward an interdisciplinary framework for research and policy-making, *Council of Europe*, https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c.

"fake news" – on the one hand because it seems too simplistic to explain "the complex phenomena of information pollution", but also because some politicians have come to use it to single out news organisations whose coverage they find disagreeable. A high-level expert group on fake news and online disinformation set up by the European Commission has endorsed this approach, suggesting favouring the term 'disinformation' instead of the possibly misleading "fake news".[6]

The information disorders described by Wardle and Derakhshan (2017) are misinformation, disinformation and malinformation; while the first two involve false information, the last two have a harmful purpose. In other words, disinformation is the only one of the three terms lying at the intersection of the subsets "false information" and "harmful purpose". In short:

- **misinformation** is "information that is false, but not created with the intention of causing harm" – for instance, false connection (a headline mismatched with its article's content) and misleading content;
- **disinformation** consists of information that "is false and deliberately created to harm a person, social group, organization or country" – e.g.., false context as well as imposter, manipulated and fabricated content; and
- **malinformation** is "information that is based on reality, used to inflict harm on a person, organization or country" – such as leaks, harassment and hate speech.[7]

Tandoc et al. (2018) identified six types of fake news usually described in research literature, including news satire and news parody, which have a weak immediate intention to deceive, as well as fabrication, photo manipulation, advertising and public relations (in the form of native advertising),[8] and propaganda – all of them with a strong immediate intention to deceive.[9] Moreover, these last four could be ranked by their level of facticity, from high to low as follows: native advertising, propaganda, manipulation and fabrication; equally, the level of facticity of news parody would be low as opposed to news satire.

As for the purposes of disinformation and fake news, some authors identify the following:

- **financial**, in the tradition of so-called yellow journalism, publishing sensationalist content so as to increase readership, and generate clickbait or advertising revenues;
- **political**, to discredit political opponents or influence public opinion with domestic or foreign propaganda; and

---

[6] European Commission, Directorate-General for Communications Networks, Content and Technology, 2018, "A multi-dimensional approach to disinformation: Report of the independent high-level group on fake news and online disinformation", Publications Office, p. 10, https://data.europa.eu/doi/10.2759/739290.

[7] Wardle & H. Derakhshan, 2017, "Information disorder: Toward an interdisciplinary framework for research and policy making, *Council of Europe*, https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c.

[8] Native advertising is news articles paid for by a sponsor.

[9] Tandoc E. C., Z.W. Lim, & R. Ling, 2018, "Defining 'fake news', *Digital Journalism*, 6(2), pp. 137–153, https://www.tandfonline.com/doi/full/10.1080/21670811.2017.1360143.

- **social and psychological**, in order to connect with a certain group online or offline, gain status, draw attention, or build an identity – this could include a wide range of people, from artists to social media users (including influencers, trolls, etc.)[10]

1.1.2. Empowerment vs media literacy

According to the Merriam-Webster dictionary, empowerment is "the act or action of empowering someone or something: the granting of the power, right, or authority to perform various acts or duties".[11] Within the context of disinformation and fake news, the term has often been used as a synonym for media literacy, which would be far too simplistic an approach, with the whole (empowerment) represented by a part (media literacy).

The Audiovisual Media Services Directive (AVMSD) defines media literacy as the "skills, knowledge and understanding that allow consumers to use media effectively and safely", allowing them to make informed choices and "[...] enabling them to access information and to use, critically assess and create media content responsibly and safely".[12]

Another definition considers media and information literacy (MIL) as "the capacity to exercise critical thinking as to the productions, representations, languages (visuals, texts, sounds), audiences and communities characteristic of mainstream and social media".[13] In view of these definitions, media literacy is only part of user empowerment in the media, insofar as it provides the user with the knowledge and abilities to use the media effectively; but there is more to it than knowledge. Empowerment is also about giving users the means to control the content made available and recommended to them, as well as to verify sources and their reliability.

The independent high-level group on fake news and online disinformation, set up in January 2018 by the European Commission, has advised the Commission on fake news, formulating recommendations on the topic. In its final report it stated that "[e]mpowering users of platforms' services, both citizens and media professionals, is a key element to

---

[10] Wardle & H. Derakhshan, 2017, "Information disorder: Toward an interdisciplinary framework for research and policy making", *Council of Europe*, https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c.

[11] Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/empowerment.

[12] Recital 59, Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, https://eur-lex.europa.eu/eli/dir/2018/1808/oj. For further details on the AVMSD, please refer to Chapter 2 of this publication.

[13] Frau-Meigs D. and B. Blondeau, 2018, "YALLA EMI, Un guide d'éducation aux medias et à l'information, IREX et Savoir*Devenir", http://savoirdevenir.net/wp-content/uploads/2016/07/GuideYalla-FR.pdf.

increase the resilience of society to various forms of disinformation".[14] For this purpose, it considers it necessary to develop and make available a series of tools such as identity labels, source transparency indicators and verified content labels, as well as to increase users' control over searched-for content and the recommendations received through personalised filtering systems.[15]

1.2. Scope

Knowing what disinformation is, its different formats and the intentions behind it, the next logical questions would be how it affects users, why it has become such an issue, and how to measure it.

1.2.1. Key issues

According to the Council of Europe, online disinformation is a problem insofar as it affects a series of rights, such as the right to free and fair elections, since disinformation may affect the way in which individuals vote. Equally, it is relevant for the right to privacy and reputation, as disinformation often targets individuals and their reputation. Similarly, it can target particular groups within society, such as ethnic minorities, refugees or migrants, inciting violence, discrimination or hostility against them, and therefore violating the right to non-discrimination. In addition, disinformation can represent a threat to the right to health, as false information about health and disease prevention can put people at risk. Last, the Council of Europe considers that disinformation represents a threat to the right to freedom of expression, since "inappropriate, rash or too restrictive responses to disinformation pose risks to freedom of expression and media freedom".[16]

In the same report, the Council of Europe establishes a series of elements which have helped disinformation to propagate, including advances in technology, the shift of communication and information to the Internet, the existence of new gatekeepers of information and higher concentration within the media which manage public debate and influence public opinion, and the success of online platforms, which has resulted in a loss of advertising revenues for the media. All these factors combined have resulted in a decline of trust in information and media with people becoming more confused when exposed to both established and unreliable news sources.

---

[14] European Commission, Directorate-General for Communications Networks, Content and Technology, 2018, "A multi-dimensional approach to disinformation: Report of the independent High-level Group on fake news and online disinformation", Publications Office, https://data.europa.eu/doi/10.2759/739290.

15 Although empowerment comprises both citizens/users and media professionals, the scope of this analysis focuses only on the former.

[16] Umek U., 2021, Council of Europe's responses to disinformation, Council of Europe, https://www.osce.org/files/f/documents/2/3/487525.pdf.

1.2.2. Measuring the perception of disinformation

In March 2018, Eurobarometer,[17] the polling instrument of the European Union, released a Flash Eurobarometer (an ad-hoc punctual survey) on fake news and disinformation online.[18] In fact, the initiative came from a request of the European Parliament, which in June 2017 adopted a Resolution calling on the European Commission to analyse in depth the situation and legal framework with regard to fake news, as well as to verify legislative options to hinder its dissemination and spreading.

As a public opinion survey, its goal was not to assess disinformation itself, but awareness and perception of the issue among the European people, overall and by country, covering the following issues:

- Levels of trust in news and information accessed through different channels;
- People's perceptions of how often they encounter news or information that is misleading or false;
- Public confidence in identifying news or information that is misleading or false;
- People's views on the extent of the problem, both in their own country and for democracy in general;
- Views on which institutions and media actors should act to stop the spread of fake news.

According to the survey, with a sample of +25k respondents throughout the EU28, there is overall trust in traditional media across member states (radio (70%), television (66%), and printed media (63%)). Things change when it comes to online newspapers and magazines (47%), and plummets in the case of video-hosting websites and podcasts (27%) and online social networks and messaging apps (26%). In addition, 83% of the respondents considered fake news a problem in their country and for democracy in general (85%). Moreover, most respondents came across fake news very often – at least once a week (31%) and in 37% of the cases, every day or almost every day. However, only 71% of them were totally or somewhat confident that they were able to spot fake news, although this confidence varied significantly from country to country and, furthermore, was higher among regular users of online social networks as they came across fake news more frequently. Last, in the respondents' view, journalists are better placed to stop the spread of fake news (45%), followed by national authorities (39%), press and broadcasting management (36%), citizens themselves (32%), online social networks (26%), EU institutions (21%) and non-governmental organisations (15%).[19]

---

[17] https://europa.eu/eurobarometer/screen/home.
[18] Flash Eurobarometer on fake news and disinformation online, https://data.europa.eu/data/datasets/s2183_464_eng?locale=en.
[19] Idem.

1.2.3. Possible actions

The European Commission carried out an Open Public Consultation[20] from June to September 2020, within the framework of the setting of the Digital Education Action Plan 2021-2027. This consultation, aimed at all interested citizens and organisations, but very particularly at learners, educators, education staff, parents/carers/family members of learners, as well as representatives of education and training institutions, showed that the second most useful 21st century digital skill and competences, right after "being able to manage the overload of information and knowledge", was that of "being able to identify facts from fake content online". In fact, the latter was viewed as the most useful digital competence by learners.

The resulting Digital Education Action Plan[21] adopted in late 2020 establishes 13 actions divided into two strategic priorities, one of which consists of enhancing digital skills and competences for the digital transformation. More concretely, action 7 is related to the creating of common guidelines for teachers and educators to foster digital literacy and tackle disinformation through education and training. The rationale behind this action is that education and training are fundamental to exercising judgment in the online world and certain particular phenomena "related to the presence of algorithms, 'information bubbles' and 'echo chambers'" should be taken into account.[22] Therefore, teachers and educators should be supported with guidance and hands-on examples so as to address disinformation throughout the education process and the Commission will develop resources for that purpose. Equally, an informal Commission expert group on addressing disinformation and promoting digital literacy through education and training has been set up.[23] In either case, the goal is to raise awareness and knowledge on disinformation, a broader understanding of digital literacy as well as responsible and safe use of digital technologies.

1.2.4. Infodemics within the context of COVID-19 and the Russian invasion of Ukraine

Two events have profoundly impacted the world in recent years: the COVID-19 pandemic and the Russian invasion of Ukraine. Both of them have had a series of implications; when it comes to the former, notably, with regard to health measures, with the latter, a profound impact on geopolitics, migration, as well as defence policy and strategies and

---

[20] Open Public Consultation, Digital education action plan (update), European Commission, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12453-Digital-Education-Action-Plan/public-consultation_en.

[21] Digital Education Action Plan (2021-2027), European Commission, https://education.ec.europa.eu/focus-topics/digital-education/action-plan.

[22] https://education.ec.europa.eu/focus-topics/digital-education/action-plan/action-7

[23] https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=3781.

international relations. As any major event, they have had implications for the economy. Probably less visible for ordinary people, disinformation has also played an important role in both of them. The word infodemics, a portmanteau of the terms information and epidemics refers to "the rapid spread of information—both accurate and inaccurate—in the age of the internet and social media";[24] although coined well before the COVID outbreak and not necessarily linked to an actual epidemic, the term gained prominence within the context of the COVID-19 pandemic. At the 2020 Munich Security Conference, World Health Organization (WHO) Director-General Tedros Adhanom Ghebreyesus stated: "[w]e're not just fighting a pandemic; we're fighting an infodemic".[25]

According to the WHO,[26] an infodemic consists of an excess of information, including but in no way restricted to false or misleading information, in the digital and physical environment, within the context of a disease outbreak. Although the organisation acknowledges that growing digitisation facilitates broader spreading of information, therefore helping to rapidly fill information voids, it notes that it can also amplify the effect of harmful messages. The consequences of an infodemic include possible mistrust in health authorities, undermining a public health response, as well as an intensification or lengthening of outbreaks. Nevertheless, according to ERGA, "[t]here is an opportunity to use the challenges created by COVID-19 to good effect since it is apparent that the infodemic wave has led to information thirst where people have relied heavily on social media for stress relief, looking for good news but also going back to traditional media looking for accurate information on such a crucial health issue".[27]

When it comes to the invasion of Ukraine by the Russian Federation, the term infowar (or information warfare) often comes up. As with infodemic, the concept is not new and most definitions describe it as both cyberwar and disinformation targeting an enemy. According to NATO, it includes "acquiring and using the opponent's information, destroying their information systems and disrupting the information flow".[28] According to some scholars, Russian disinformation and cyberwar in Ukraine contributed to the exploitation of social divisions and public distrust in the government, as well as to the generation of a separatist narrative in Eastern Ukraine and, eventually, to the annexation of Crimea by Russia in 2014.[29] Moreover, increased concerns following the Russian invasion of Ukraine in 2022 led to the banning of certain Russian broadcasters in the EU (see below). However, the EU, as well as most member states, had already implemented mechanisms to fight Russian disinformation in Europe; for instance, as early as in 2015,

---

[24] Merriam-Webster Dictionary, https://www.merriam-webster.com/words-at-play/words-were-watching-infodemic-meaning.

[25] Editorial, 2020, "The COVID-19 infodemic", *The Lancet Infectious Diseases*, 20(8), p. 875, https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30565-X/fulltext.

[26] WHO, Health Topics, Infodemics, https://www.who.int/health-topics/infodemic#tab=tab_1

[27] ERGA report on Improving Media Literacy Campaigns on Disinformation, 2020, https://erga-online.eu/wp-content/uploads/2021/01/ERGA-SG2-Report-2020-Improving-Media-Literacy-campaigns-on-disinformation.pdf.

[28] NATO, 2014, Information Warfare, https://www.nato.int/nato_static_fl2014/assets/pdf/2020/5/pdf/2005-deepportal4-information-warfare.pdf.

[29] Henry M. Jackson School of International Studies, 2017, "Countering Disinformation: Russia's Infowar in Ukraine, , https://jsis.washington.edu/news/russia-disinformation-ukraine/.

the European External Action Service (EEAS) set up EUvsDisinfo, a tool "to better forecast, address, and respond to the Russian Federation's ongoing disinformation campaigns affecting the European Union, its Member States, and countries in the shared neighbourhood",[30] which has published articles since the invasion to contest and contrast Russian arguments.[31]

Moreover, there appears to have been a reason why the European Union recently updated its anti-disinformation code (see below), a tool at the core of the EU strategy against disinformation which "has proven to be an effective tool to limit the spread of online disinformation, including during electoral periods and to quickly respond to crises, such as the coronavirus pandemic and the war in Ukraine".[32] In addition, although many of the existing fact-checking tools had already spread in recent years, before these two developments occurred, it is true that the pandemic along with the invasion of Ukraine has highlighted the perils of false information. In short, it can be said that there are two recurrent types of tools: on the one hand, those made available by existing services such as online platforms (for instance, Google's Fact Check Explorer),[33] broadcasting companies (such as the BBC, with Reality Check in the UK),[34] or newspapers (i.e.: De'codex by Le Monde in France). In addition, fact-checking companies have been launched with the sole purpose of providing said services. Some are backed or endorsed by platforms or media services, such as Newtral in Spain,[35] which works closely with Facebook. Others, such as Factual[36] in Romania or Mimikama[37] in Austria, are financed via crowd-funding, which represents a form of civil society involvement in fighting disinformation.

---

[30] https://euvsdisinfo.eu/about/.
[31] For instance, see: EUvsDisinfo, 2022, "Disinformation about the current Russia-Ukraine conflict – seven myths debunked", https://euvsdisinfo.eu/disinformation-about-the-current-russia-ukraine-conflict-seven-myths-debunked/.
[32] https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation.
[33] https://toolbox.google.com/factcheck/explorer.
[34] https://www.bbc.com/news/reality_check.
[35] www.newtral.es.
[36] www.factual.ro.
[37] www.mimikama.at.

2. International and EU legal and policy framework

2.1. International framework

2.1.1. UNESCO

UNESCO has put in place different types of responses to combat disinformation. Some target the actors deemed responsible for disinformation, others the disruptive techniques used, while some responses focus on empowering citizens by improving their resilience to disinformation, notably through education, empowerment and credibility-labelling efforts. These responses involve most of the time regulatory bodies, international organisations, academia, education systems and news organisations.[38]

Various initiatives and resources have been launched, ranging from the publication of policy and strategy guidelines in 2013,[39] to the organisation of global events to raise awareness,[40] or the launch of new resources. Thus, for example, UNESCO has developed a comprehensive Media and Information Literacy (MIL) Curriculum for Educators and Learners,[41] which provides a framework for training teachers. The Curriculum also provides help to citizens as they consume, create and use content. The objective of this initiative is to empower people to find, evaluate and use content effectively and to create their own messages of social value. As far as news is concerned, guidance is given to consumers as to how to identify messages in the news, verify

---

[38] For example, UNESCO promotes Media and Information Literacy (MIL) resources to counter the spread of disinformation "to enable people's ability to think critically and click wisely". This covers in particular competences that enable people to critically and effectively engage with information, the institutions that facilitate information, and the discerning use of digital technologies,
https://www.unesco.org/en/communication-information/media-information-literacy. For more details, see also: Bontcheva, K. and Posetti, J. (eds.), "Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression", UNESCO Broadband Commission Report, September 2020.
[39] Media and Information Literacy Policy and Strategy,
https://www.unesco.org/en/communication-information/media-information-literacy/policy-strategy.
[40] See for example the Global Media and Information Literacy Week, 24-31 October 2021,
https://en.unesco.org/commemorations/globalmilweek.
[41] MIL Curriculum for Educators and Learners, "Media and Information Literate Citizens: Think Critically, Click Wisely", https://unesdoc.unesco.org/ark:/48223/pf0000377068.

information, recognise professional news and differentiate it from other kinds of content, etc. MIL for journalists also aims to help them set higher standards regarding the news they produce, thereby responding to the public interest and ultimately restoring public trust in media.

2.1.2. OSCE Representative on Freedom of the Media

Among its missions, the Organization for Security and Co-operation in Europe (OSCE) actively tackles the issue of disinformation and propaganda and its effects on freedom of expression and democracy. The OSCE Representative on Freedom of the Media (OSCE RFoM) has stated on numerous occasions that at all times, and especially in difficult times, blocking or banning media outlets is not an answer to the phenomenon of disinformation and propaganda, as it leads to arbitrary and politically motivated actions. According to the OSCE RFoM, limits on media freedom for the sake of political expediency lead to censorship and the answer lies in more debate and media pluralism.

As a result, the OSCE RFoM has been holding a series of expert roundtables since May 2021 to discuss how to counter disinformation and limit its harmful effect, especially in view of the mistrust it sows among nations.[42] Different perspectives have been considered at each of these meetings, such as the framework of international law and policy on disinformation in the context of freedom of the media,[43] or that of media self-regulation,[44] with a view to determining best practice and providing recommendations from the RFoM. Among these, the role of independent national media regulatory authorities (NRA) in regaining trust in the media was also given specific attention. In particular, it was stressed that the relationship of many NRAs with citizens has gradually been evolving towards active engagement with citizens and their empowerment, to turn them into partners of regulation. In this regard, media literacy is expected to become a key remit for media NRAs in the future, and collaboration among media literacy stakeholders is seen as particularly important, especially since media literacy development is expensive and might even create further divides between richer and poorer countries.[45]

Other aspects of disinformation have been addressed, although not specifically related to user empowerment, such as the role of artificial intelligence (AI) in the spread of disinformation, the legal and policy initiatives among OSCE states to prevent the

---

[42] https://www.osce.org/representative-on-freedom-of-media/488890.

[43] For more information, please see: "Policy brief paper on international law and policy on disinformation in the context of freedom of the media", prepared by Dr. Andrey Rikhter, Senior Adviser at the Office of the OSCE Representative on Freedom of the Media, https://www.osce.org/representative-on-freedom-of-media/485606.

[44] For more information, please see: OSCE Representative on Freedom of the Media, Report on the second expert roundtable: Disinformation and media self-regulation, 25 June 2021, https://www.osce.org/representative-on-freedom-of-media/493537.

[45] For more information, please see: OSCE Representative on Freedom of the Media, Report on the third expert roundtable: The role of independent national media regulatory authorities in regaining trust in the media, 2 November 2021, https://www.osce.org/representative-on-freedom-of-media/505060.

spread of disinformation during election campaigns, or the role of public service media (PSM) in countering disinformation.

2.1.3. Council of Europe

Article 10 ("Freedom of expression") of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[46] reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court of Human Rights (ECtHR) has interpreted in its caselaw the scope of Article 10 in relation to disinformation.[47]

The issue of disinformation was addressed in Resolution 2143 (2017) of the Parliamentary Assembly of the Council of Europe (PACE) "Online media and journalism: challenges and accountability".[48] The Resolution referred to an undefined line "between what could be considered a legitimate expression of personal views in an attempt to persuade readers and disinformation or manipulation". It noted with concern the growing number of online media campaigns designed to misguide sectors of the public, through intentionally biased or false information, hate campaigns against individuals and personal attacks, often in a political context, aimed at harming democratic political processes. The Resolution suggested a number of steps be taken by national authorities, such as inclusion of media literacy in the school curricula, support for awareness-raising projects and targeted training programmes to promote the critical use of online media, and support for professional journalistic training.

---

[46] Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 15 as from its entry into force on 1 August 2021, https://rm.coe.int/1680a2353d.

[47] See Chapter 5 of this publication.

[48] Resolution 2143 (2017), "Online media and journalism: challenges and accountability", https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23455&lang=en
.

On a more general level, the Council of Europe has been promoting user empowerment through media literacy in many of its activities. Although there is no universally accepted definition of media literacy, it is widely accepted that the concept encompasses understanding and critical evaluation of the media; access to and use of the media; and creation within and participation in the media. In this sense, the Council of Europe has recognised the role that media literacy plays in countering disinformation.

A study published by the Council of Europe in 2017, "Information Disorder: Towards an Interdisciplinary Framework for Research and Policy Making",[49] identified supporting public service media organisations, strengthening good-quality journalism and local news development, as well as encouraging programs to educate citizens about online scrutiny, as possible ways to counter disinformation. Among the solutions proposed, the study highlights the need for increased cooperation of the media with fact-checking organisations, the sharing of best practices and the strengthening of ethical and professional standards. Concerning consumers, the study considers that more information should be provided to them on the issue of "information disorder" and on how they can avoid contributing to it.

At a standard-setting level, the Council of Europe has stressed on several occasions the importance of empowering people of all ages, notably through media and information literacy (MIL). It did so in particular in 2018, through its recommendations on media pluralism and transparency of media ownership[50] and on protecting the rights of the child in the digital environment.[51] In the former, member states are urged to draft national MIL policies and consolidate networking and the sharing of best practices among all actors. In the recommendation related to the rights of the child, MIL is positioned as one of the digital skills that should be taught, as part of basic education, to all children.

More recently, the Council of Europe has emphasised the importance of user empowerment in relation to the reception of quality information. Specifically in a Recommendation of March 2022 on promoting a favourable environment for quality journalism in the digital age,[52] member states recognise that MIL

> *is a key factor to enable individuals to deal with the media in a self-determined way. It involves the development of cognitive, technical and social skills and capacities that enable people to:*

---

[49] "Information disorder: Toward an interdisciplinary framework for research and policy making", https://rm.coe.int/information-disorder-report-november-2017/1680764666?ct=t().

[50] Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership,
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13.

[51] Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, http://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a.

[52] Council of Europe (2022),[52] Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

- *Effectively access media content and critically analyse information, thus empowering them to understand how media content is produced, funded and regulated, as well as to have the confidence and competence to make informed decisions about which media they use, and how they use them;*
- *Understand the ethical implications of media and technology;*
- *Communicate effectively, including by interpreting, creating and publishing content."*

The Recommendation further stresses that MIL initiatives for all age groups which promote the skills and knowledge required to recognise and value quality journalism, or illustrate the benefits of quality journalism to various audiences, should receive maximum support from states. In addition, online platforms and advertisers are called on to recognise their responsibility and contribute to the development and promotion of MIL initiatives that empower individuals to recognise and value quality journalism. Online platforms are encouraged to partner with civil society, governments, educational institutions and other stakeholders to support efforts aimed at improving critical thinking and digital media literacy.

2.2. EU legal and policy framework

In its 2018 Communication "Tackling Online Disinformation: a European Approach",[53] the European Commission highlighted the potential of the Internet and online and social media to make democratic processes more participatory and inclusive, but it also stressed the risks they pose in terms of widespread dissemination of disinformation. The EU legal and policy framework includes various instruments that address different aspects of disinformation according to their respective objectives. Among the possible responses, the Commission considers that the promotion of media education and literacy and the provision of tools for users to access different sources of information and to report disinformation are essential to combat disinformation.

2.2.1. The Action Plan against Disinformation

In autumn 2018, the Commission developed an Action Plan Against Disinformation with a set of actions aiming to build up capabilities and strengthen cooperation between member states and EU institutions to proactively address disinformation.

One of the objectives pursued by the Action Plan is to raise awareness and improve societal resilience. Among the actions envisaged to this end, the Action Plan recommends the organisation of targeted campaigns in Europe and beyond; the active

---

[53] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Tackling online disinformation: a European Approach", COM/2018/236 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0236.

participation of civil society in identifying and exposing disinformation; and supporting independent media and fact-checkers.

In addition, the Action Plan calls for the mobilisation of the private sector to tackle disinformation. As a result, for the first time worldwide, a self-regulatory Code of Practice on Disinformation was agreed on and signed by representatives of several major online platforms, social networking services and advertising companies in September 2018. The Code aims at achieving the objectives set out by the Commission in the above-mentioned 2018 Communication, by setting a wide range of commitments, from transparency in political advertising to the closure of fake accounts and demonetisation of purveyors of disinformation. The Code also aims to empower users by making it easier for them to discover and access different news sources representing alternative viewpoints.[54]

At the core of the EU strategy against disinformation, the Code has proven to be, in the Commission's view, an effective tool to limit the spread of online disinformation, including during electoral periods and to quickly respond to crises, such as the coronavirus pandemic and the war in Ukraine. However, on the basis of an Assessment by the Commission after the first period of implementation of the Code,[55] a number of shortcomings were identified, leading the Commission to issue detailed Guidance in May 2021[56] to address these shortcomings and to work on a revised version of the Code to make it more effective. This process led to the adoption of a strengthened version of the Code in June 2022, which was signed by a larger range of stakeholders.[57] Among the reinforced areas of commitments, the 2022 Code commits to better protect users from disinformation through enhanced tools to recognise, understand and flag disinformation, to access authoritative sources, and through media literacy initiatives. In particular, the Code aims to ensure that safe design practices are put in place to limit the spread of disinformation and ensure more transparency of their recommender systems, adapting them to limit the propagation of disinformation.[58]

At EU policy level, it is expected that the fight against disinformation will continue to be a top priority in the coming years according to the European Council's Strategic Agenda 2019-2024, as disinformation is seen as a risk to citizens' fundamental rights and freedoms and to the rule of law.[59] In a chapter entitled "Protecting citizens and

---

[54] For more details about the 2018 Code of Practice against Disinformation, please see Chapter 4 of this publication.

[55] SWD (2020) 180 Final - Commission Staff Working Document, "Assessment of the Code of Practice on Disinformation - Achievements and areas for further improvement",
https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=69212.
https://digital-strategy.ec.europa.eu/en/library/assessment-code-practice-disinformation-achievements-and-areas-further-improvement.

[56] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2585.

[57] https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation.

[58] For more details on the 2022 Code of Practice against Disinformation, please see Chapter 4 of this publication.

[59] European Council, "A new strategic agenda for the EU 2019-2024", June 2020,
https://www.consilium.europa.eu/en/eu-strategic-agenda-2019-2024/.

freedoms", the Council recommends a comprehensive approach involving more cooperation, more coordination, more resources and more technological capacities.[60]

2.2.2. The European Democracy Action Plan and the Digital Services Act

In December 2020, the European Commission presented the European Democracy Action Plan (EDAP)[61] together with its proposal for the Digital Services Act. The Digital Services Act (DSA) was formally adopted by the Council of the European Union in October 2022 .[62] Both initiatives take a broad view of digital regulatory policy by proposing to introduce legally binding tools, in particular regarding the accountability and transparency of digital platforms. These measures aim to strengthen democratic resilience and the EU's regulatory toolbox.

On the one hand, the EDAP undertook to revamp the Code of Practice on Disinformation based on the above-mentioned European Commission Guidance and to strengthen the EU policy framework more generally. On the other hand, the DSA's proposal to develop "systemic rules for the online ecosystem" aims to offer a model for global digital governance – as called for by the European Parliament.[63] Together, these two initiatives aim, in the Commission's view, to provide a more ambitious framework to protect fundamental rights and embed the issue of user empowerment, in the fight against disinformation, within the EU legal and policy framework.

2.2.2.1. Empowering citizens to make informed decision under the EDAP

The EDAP distinguishes between different phenomena that are commonly referred to as disinformation, namely:[64]

- Misinformation: false or misleading content shared without harmful intent;

---

[60] See also, Colomina, C., Sanchez Margalef, H., Youngs, R., "The impact of disinformation on democratic processes and human rights in the world", Study on behalf of the European Parliament, April 2021, https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653635/EXPO_STU(2021)653635_EN.pdf.

[61] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on the European democracy action plan, COM/2020/790, final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423.

[62] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), https://eur-lex.europa.eu/eli/reg/2022/2065.

[63] European Parliament, Digital: "The EU must set the standards for regulating online platforms, say MEPs", EP Press release of 20 October 2020, https://www.europarl.europa.eu/news/en/press-room/20201016IPR89543/digital-eu-must-set-the-standards-for-regulating-online-platforms-say-meps.

[64] Please see Chapter 1 of this publication regarding definitions of key concepts.

- Disinformation: false or misleading content that is spread with an intention to deceive or secure economic or political gain and which can cause public harm;
- Information influence operation: coordinated efforts by either domestic or foreign actors to influence a target audience using a range of deceptive means; and
- Foreign interference in the information space: often carried out as part of a broader hybrid operation (can be understood as coercive and deceptive efforts to disrupt the free formation and expression of individuals' political will by a foreign state actor or its agents.

For each type of these phenomena, and depending on the actor, channel and impact, appropriate policy responses can be designed, according to the EDAP. For example, while foreign interference calls for a strong and well-coordinated response using other instruments and approaches and involving the European External Action Service (EEAS),[65] when it comes to misinformation without the intention to deceive, cause public harm or gain economically, measures related to media and information literacy may be more appropriate. These can consist, for example, in proactive communication, providing reliable information and raising awareness of the need to critically assess content and sources.

The EDAP announced that the Commission would increase its efforts to strengthen media literacy from various angles and further support national media literacy campaigns, in cooperation with the European Digital Media Observatory (EDMO)[66] and the Media Literacy Expert Group.[67]

2.2.2.2. New measures to empower consumers under the DSA

In general terms, the DSA provides a horizontal framework for regulatory oversight, accountability and transparency in the online space in response to certain emerging risks. In particular, the Regulation aims to establish a more accountable online environment by imposing obligations on online platforms to act against illegal content, whilst empowering platform users with enhanced transparency and traceability, and better reporting systems.

In particular, the new framework lays down some ground rules for combating disinformation, which is seen – in its broadest acceptance – as a systemic risk for society and democracy. Indeed, the DSA includes disinformation in the first of four identified categories of risks, with reference to illegal content. More specifically, the Regulation states that

---

[65] The European Parliament has set up a special committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE) that can also contribute to this issue.
[66] https://edmo.eu/; For further information about the EDMO, please see below.
[67] https://ec.europa.eu/transparency/expert-groups-register/screen/index.cfm?do=groupDetail.groupDetail&groupID=2541.

When assessing the systemic risks [...], those providers [of very large online platforms and of very large online search engines] should also focus on the information which is not illegal, but contributes to the systemic risks identified [...]. Such providers should therefore pay particular attention on how their services are used to disseminate or amplify misleading or deceptive content, including disinformation [...] (Recital 84 of the DSA Regulation).

In addition, another form of disinformation on a larger scale and in a coordinated manner is identified in the fourth category of risks, which includes risks related to the design, functioning or use of the service. More specifically, reference is made here to risks "[...] that may also stem from coordinated disinformation campaigns related to public health, or from online interface design that may stimulate behavioural addictions of recipients of the service." (Recital 83 of the DSA Regulation). When assessing such risks, providers of very large online platforms should focus on the system and other elements that may contribute to the risks, including all algorithmic systems that may be relevant, in particular their recommended systems and advertising systems, their terms and conditions and the enforcement thereof, as well as their content moderation, technical tools and allocated resources. Such risks may arise, for example, through the creation of fake accounts, the use of bots, etc., which may lead to the rapid and widespread dissemination of information that contributes to disinformation campaigns.[68]

According to the DSA Regulation, providers of very large online platforms and of very large online search engines should deploy the necessary means to diligently mitigate these systemic risks. Among the range of measures that may be taken, awareness-raising actions are specifically pointed out where risks relate to disinformation campaigns (Recital 88 of the DSA Regulation). Furthermore, adherence to and compliance with a code of conduct by a very large online platform or a very large online search engine may be considered as an appropriate risk-mitigating measure in relation to disinformation. In particular, the Code of Practice on Disinformation is explicitly mentioned in the text (Recital 106 of the DSA Regulation).

It is also worth mentioning that online platforms are encouraged to draw up and apply specific crisis protocols for extraordinary circumstances (e.g. threat to public security or public health in the Union). This may also apply to cases where platforms are misused for the rapid spread of disinformation or where the need arises for rapid dissemination of reliable information (Recital 91 of the DSA Regulation).

On a more general level, the obligations that will apply to very large online platforms and very large online search engines under the DSA tend to increase the level of user and civil society empowerment with enhanced transparency and traceability, and better reporting systems, such as:

- the possibility to challenge platforms' content moderation decisions and seek redress, either via an out-of-court dispute mechanism or judicial redress;

---

[68] Ibid.

- provision of access for vetted researchers to the key data of the largest platforms and provision of access for NGOs as regards access to public data, to provide more insight into how online risks evolve;
- transparency measures for online platforms on a variety of issues, including on the algorithms used for recommending content or products to users

The DSA Regulation shall be binding in its entirety and directly applicable in all member states from 17 February 2024. As regards the providers of very large online platforms and of very large online search engines, the DSA Regulation shall apply from an earlier date, that is, four months after their formal designation.

2.2.3. The Audiovisual Media Services Directive and the Media and Audiovisual Action Plan[69]

As mentioned in Chapter 1 of this publication, media literacy is defined in the Audiovisual Media Services Directive (AVMSD)[70] and media literacy skills are widely recognised as an important tool in combatting disinformation, as outlined in Recital 59 of this Directive:

> [....] In order to enable citizens to access information and to use, critically assess and create media content responsibly and safely, citizens need to possess advanced media literacy skills. Media literacy should not be limited to learning about tools and technologies, but should aim to equip citizens with the critical thinking skills required to exercise judgment, analyse complex realities and recognise the difference between opinion and fact. It is therefore necessary that both media service providers and video-sharing platform providers, in cooperation with all relevant stakeholders, promote the development of media literacy in all sections of society, for citizens of all ages, and for all media and that progress in that regard is followed closely.

The AVMSD has set out specific measures to help improve citizens' media literacy skills. The Directive provides that EU member states should promote and take measures to develop media literacy skills (and report on such measures to the Commission, on the basis of the Commission's guidelines defining the scope of such reports); and that video-sharing platforms should put in place effective media literacy measures and tools and raise user awareness of those measures and tools (Article 28b 3 (j)).

---

[69] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation",
https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0784&from=EN.
[70] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities,
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN.

The effective implementation of these AVMSD provisions is of key importance for further development of media literacy skills and to improve the accessibility of content across member states. These points are further developed under the Media and Audiovisual Action Plan (MAAP),[71] under which citizens are to be equipped with the necessary skills to understand fully the mechanisms that shape online interaction among users, including via a media literacy toolbox and guidelines to Member States (Action 9 MAAP).

2.2.4. Supporting empowerment and media literacy under EU programmes and initiatives

Following up on the EDAP in 2020, in 2022 the Commission introduced new calls for proposals to support media literacy projects under the new cross-sectoral strand of the Creative Europe programme representing EUR 2.4 million in EU funds.[72] Media literacy projects are also supported across various other programmes involving young people and schools (e.g. Erasmus+ and the European Solidarity Corps). In 2021, the priority theme for the "eTwinning" action (which helps schools, teachers and students across the EU to collaborate on new technologies) was "media literacy and disinformation".[73] According to the Commission, it was made clear during 2020, the year of the coronavirus pandemic, that the exposure of citizens to disinformation is a major challenge not only for adults but also for students.

In addition, EDMO and the multidisciplinary community coordinated by it provides support to national media literacy campaigns aiming at strengthening citizens' ability to assess the quality and veracity of online information, including citizens with additional needs. Through the work of its national hubs, the EDMO identifies specific issues to be tackled.[74]

The Commission is also scaling up its efforts within the European Media Literacy Week.[75] In addition, it cooperates closely with other international organisations such as UNESCO. Furthermore, in October 2021, an Expert Group on Tackling Disinformation and Promoting Digital Literacy through Education and Training was set up at the initiative of the Directorate-General for Education, Youth, Sport and Culture (DG EAC) and the

---

[71] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation", https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0784&from=EN.

[72] https://ec.europa.eu/commission/presscorner/detail/en/ip_22_725.

[73] https://www.etwinning.fr/.

[74] For more details on EDMO, see below, https://edmo.eu/2021/05/26/national-edmo-hubs-announced/.

[75] The European Media Literacy Week promotes media literacy initiatives and projects across the EU to underline the societal importance of media literacy. For more information, see: https://digital-strategy.ec.europa.eu/en/events/european-media-literacy-week.

Directorate-General for Communications Networks, Content and Technology (DG CNECT).[76] The main task of this group is to develop common guidelines for teachers and educational staff to foster digital literacy and tackle disinformation through education and training, as set out in the Digital Education Action Plan.[77] In this context, it engages with multiple stakeholders, including civil society, European technology companies and carriers, broadcasters, journalists, the Media Literacy Expert Group, EDMO, national authorities, parents, students, and young people. The guidelines will go hand in hand with new initiatives to develop innovative ways to fight disinformation, such as an EUvsDisinfo hackathon.[78]

Furthermore, the Commission is supporting the involvement of journalists in media literacy activities, in particular through "back-to-school" initiatives enabling them to discuss their work and the role of the media with school pupils. Support for civil society (including funding) is also a key element of the action to tackle disinformation.

The Commission supports initiatives aimed at helping civil society actors to participate in public debate. It also helps to strengthen cooperation across civil society at European level.[79] For example, the Media Literacy for All programme[80] funds various projects so media literacy practitioners can develop innovative strategies to raise awareness on disinformation and to promote responsible use of social media. Ongoing projects include: SMaRT-EU,[81] which provides tools, suggestions and resources to train young and old; the Influencers Trust Label,[82] which is developing a transparency and trust label; FREEYOU,[83] a fact checking programme for youth, etc.

---

[76] Mandated for one year, the group's deliverables are (1) a report on tackling disinformation with media literacy (December 2021); (2) a report dedicated to teachers (expected in September 2022). Five subgroups were created: critical thinking; teacher training and education; pre-bunking, debunking and fact checking; student engagement; community approach and pedagogy. For more details, see: https://education.ec.europa.eu/news/kick-off-meeting-of-the-expert-group-on-tackling-disinformation-and-promoting-digital-literacy-through-education-and-training.

[77] The Digital Education Action Plan adopted by the European Commission in January 2018, highlighting the risks disinformation poses for educators and students and the urgent need to develop digital skills and competences of all learners, in both formal and non-formal education, https://ec.europa.eu/education/sites/education/files/digital-education-action-plan.pdf.

[78] EUvsDisinfo is the flagship project of the European External Action Service's East StratCom Task Force. It was established in 2015 to better forecast, address, and respond to the Russian Federation's ongoing disinformation campaigns affecting the European Union, its Member States, and countries in the shared neighbourhood. EUvsDisinfo's core objective is to increase public awareness and understanding of the Kremlin's disinformation operations, and to help citizens in Europe and beyond develop resistance to digital information and media manipulation. Using data analysis and media monitoring services in 15 languages, EUvsDisinfo identifies, compiles, and exposes disinformation cases originating in pro-Kremlin media that are spread across the EU and Eastern Partnership countries. These cases are collected in the EUvsDisinfo database which currently comprises over 12,000 samples of pro-Kremlin disinformation. For more information, see: https://euvsdisinfo.eu/about/.

[79] See, for example, the Digital Competence Framework for Citizens, https://joint-research-centre.ec.europa.eu/digcomp_en.

[80] https://digital-strategy.ec.europa.eu/en/funding/preparatory-action-media-literacy-all-call-proposals-2020.

[81] http://smart-toolkit.eu/.

[82] https://influencerstrustlabeleu.org.

[83] https://www.meetcenter.it/en/freeyou-fake-risk-escaping-through-the-empowerment-of-youth/.

2.2.5. The European Digital Media Observatory

The European Digital Media Observatory (EDMO)[84] was set up in June 2020, as an independent observatory funded by the European Union, bringing together fact-checkers and academic researchers with expertise in the field of online disinformation, social media platforms, journalist-driven media and media literacy practitioners. It aims to act as a reference point on data and policies on disinformation, public trust, media literacy and quality information, and to contribute to a deeper understanding of relevant disinformation actors, vectors, tools, methods, dissemination dynamics, prioritised targets, and impact on society.[85]

While EDMO's main focus is on the European infosphere, it addresses domestic and international disinformation and cooperates with similar initiatives at global, multinational, and national levels. Based notably on the report of the High-Level Expert Group on disinformation,[86] EDMO also supports and provides expertise in assessing the implementation of the Code of Practice on Disinformation.[87]

2.2.5.1. EDMO's values and mission on user empowerment

EDMO promotes core values among its partners and the wider fact-checking and media and information literacy community, including a) public trust with regard to the platform to detect disinformation campaigns, b) independent fact-checking activities in Europe, c) scientifically grounded academic research on disinformation, and d) critical thinking and fair debate within a media-literate population in schools, universities and local communities.

EDMO fulfils its goals through, among other initiatives, annual action plans and public reports and is working on a set of strategic priorities, which include the following areas of activity with direct connection to user empowerment:

- Run a secure online platform supporting the academic analysis of disinformation campaigns and providing public information to raise awareness about disinformation,
- Training activities on a variety of topics related to disinformation for relevant stakeholders, including fact-checking actors, researchers, journalists and policy makers,
- Support and facilitate the coordination of independent fact-checking activities in Europe in close relation with EDMO national hubs

---

[84] EDMO is a partnership under the leadership of the European University Institute in Florence (Italy), which relies on the expertise of its School of Transnational Governance and Centre for Media Pluralism and Media Freedom, and includes Datalab at Aarhus University, the Athens Technology Center, which provides the technological support and is also coordinating the Social Observatory for Disinformation and Social Media Analysis (SOMA), and Pagella Politica. For more information: https://edmo.eu/.

[85] https://edmo.eu/governance/.

[86] https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=50271.

[87] https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation.

■ Disinformation campaigns on COVID-19

2.2.5.2. Media literacy and fact-checking activities

Considering that media literacy is a complex, multi-faceted area involving a wide variety of stakeholders, EDMO has positioned itself as a platform bringing together a multidisciplinary community to encourage closer and more effective collaboration between the various national, civil society and industry initiatives that tackle media literacy across Europe.

For this purpose, EDMO has conducted a mapping and analysis exercise to thoroughly investigate existing European media literacy policies and initiatives and provide a roadmap for EDMO activities in the field. Through the "Roadmap report",[88] EDMO aims to become "a vital resource for the media literacy community in Europe, providing expertise, ideas and opportunities for connection that will empower media literacy practitioners and others in the fight against disinformation". The tools envisaged for this purpose are:

■ Make available background content on the role of media literacy in tackling disinformation,
■ Explain who's doing what, providing an overview of Europe-wide stakeholders and their roles and priorities,
■ Share country profiles[89] specifying any national public body with a media literacy mandate, identifying key stakeholders and any useful contacts, the focus of major projects and campaigns, and any gaps to be filled,
■ Provide examples of good practice in specific areas[90]
■ Help with network building, working with the national hubs to decide on the best way to encourage networking.

On fact-checking activities, EDMO provides a comprehensive "map" of initiatives and organisations that meet the following criteria:[91] a) there is a focus on fact-checking, verification, or open-source intelligence (OSINT), b) stories / posts / explainers etc. are digitally accessible to the public, c) the creators are based in one of the 27 member states of the EU (or in the UK, which was still a part of the union when EDMO was conceived). For now, this repository features an actual map with names and locations of relevant

---

[88] Goodman E., "Media literacy in Europe and the role of EDMO", European Digital Media Observatory, September 2021, https://edmo.eu/wp-content/uploads/2022/02/Media-literacy-in-Europe-and-the-role-of-EDMO-Report-2021.pdf.

[89] See https://edmo.eu/media-literacy/media-literacy-repository/.

[90] In this regard specific reference is made to the European Audiovisual Observatory's "Mapping of media literacy practices and actions in EU-28", and its criteria to identify significant best practices: 1. The size of the target audience, 2. The total budget or cost of the project, 3. The success of the project (outcomes/impact compared to objectives), 4. The level of public awareness of the project, 5. The level of engagement by the target audience, and any other measurement that was relevant to the project. The EAO mapping report is available at http://rm.coe.int/media-literacy-mapping-report-en-final-pdf/1680783500.

[91] See https://edmo.eu/fact-checking-activities/.

organisations (zoomable), a table with extended information (sortable, searchable), and an editorial section featuring short portraits of individual operations.

Particularly relevant in this regard are the EDMO hubs.[92]

Each national and multinational hub constitutes a network of organisations active in one or several countries, to provide specific knowledge of local information environments so as to strengthen the detection and analysis of disinformation campaigns, improve public awareness, and design effective responses for national audiences. Each hub will contribute to:

- Detecting and analysing disinformation campaigns, as well as producing content to support mainstream and local media and public authorities in exposing harmful disinformation campaigns,
- Organising media literacy activities at national or multinational level,
- Providing support to national authorities for the monitoring of online platforms' policies and the digital media ecosystem.

---

[92] At the time of writing eight hubs have been set up: Ireland Hub; Belgium-Netherlands Digital Media and Disinformation Observatory (BENEDMO); Central European Digital Media Observatory (CEDMO), covering Slovakia, the Czech Republic and Poland; Iberian Digital Media Research and Fact-checking Hub (IBERIFIER), covering Spain and Portugal; Nordic Observatory for Digital Media and Information Disorder (NORDIS), covering Denmark, Sweden, Norway and Finland; Belgium-Luxembourg Research Hub on Digital Media and Disinformation (EDMO BELUX); Observatoire de l'Information et des Médias (DE FACTO), covering France; Italian Digital Media Observatory (IDMO). For more information, see https://edmo.eu/edmo-hubs/.

3. National

3.1. A diversity of national responses towards user empowerment with regard to online disinformation

Alongside the EU's efforts to research, educate and raise awareness about disinformation, many countries have begun in recent years to take legislative and administrative measures targeting disinformation on online platforms. This trend has been further intensified by the Covid-19 pandemic and the increase of disinformation campaigns that came with it. More recently, a number of countries from Central and Eastern Europe have adopted amendments to their audiovisual law concerning disinformation and propaganda, with a view to countering Russian propaganda about the war in Ukraine. However, these provisions concern mainly bans on disinformation and propaganda about military aggression, and do not focus so much on user empowerment – which requires a longer-term approach.

Different legal traditions and socio-economic contexts come into play in choosing a national approach to addressing online disinformation. Although most countries have typically regulated it through non-legislative tools, some countries have proposed or adopted specific legislation on online disinformation. In other countries, the issue is addressed by existing sets of laws that are not specific to disinformation, but which nevertheless address some aspects of the phenomenon (e.g. criminal code,[93] civil law, electoral law or cybersecurity law).

According to a study by the ITU and UNESCO of September 2020,[94] many of these measures are taken with the objective of protecting users or consumers and citizens. On

---

[93] According to a survey of the European Regulators Group for Audiovisual Media Services (ERGA) among its members, some of the respondents reported rules in criminal law that could cover disinformation, however, none of them use this terminology. The Hungarian Criminal Code names these violations scaremongering (Section 337 Hungarian Criminal Code), the Criminal Code of the Republic of Cyprus calls them "Publication of fake news, etc." (Article 50 Planar Code of the Republic of Cyprus), in the Czech Republic it is called "Spreading of Alarming News" (Section 357 of the Czech Penal Code). In Romania the relevant crime is called "Giving false information", etc. For more details, see: ERGA report on notions of disinformation and related concepts (2020), https://erga-online.eu/wp-content/uploads/2021/03/ERGA-SG2-Report-2020-Notions-of-disinformation-and-related-concepts-final.pdf.

[94] According to the study by the ITU and UNESCO, at least 28 countries worldwide had passed legislation related to disinformation, either updating existing regulations or passing new legislation. The scope of the established legislation varies from media and electoral laws to cybersecurity and penal codes. For more information, see: "Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression",

the one hand, there are measures like data protection rules and media and information literacy policy to empower users by giving them basic skills to participate in the online environment. On the other hand, there are restrictions on expression that causes harm to others, such as incitement to hatred and violence.

Four kinds of behaviour are mainly targeted by national measures:

- Persons involved in producing, enabling and distributing content deemed harmful are subject to sanctions when they exceed the limits of free speech. These restrictions on free speech must not interfere with legitimate expression which, even if false or disturbing, is not necessarily illegal by international standards. In addition, they should not protect particular interests, such as political interests. Furthermore, one caveat to such an approach is that it requires the cooperation of global tech companies, which have themselves become the main vectors of viral disinformation.
- Competition and consumer protection rules, as well as sector-specific rules, including schemes such as laws on misleading advertising, set the limits of acceptable commercial practices for online platforms. However, there seems to be a growing concern in the policy sphere as to the effectiveness of current rules in tackling disinformation.
- Technical behaviour, i.e. legally formulated cyber policy seeking to deter the use of Internet technologies with malicious intent, such as spam or coordinated information operations for disinformation purposes.
- Regulatory interventions to channel behaviours of political actors including election and political campaign advertising rules.

According to the same study, in addition to strictly restrictive approaches, enabling measures are taken at national level with a view to increasing the availability of information as an alternative to disinformation. These may include increased transparency and proactive disclosure practices by public officials, linked to access to information regimes. They may also include public funding to support news media, fact-checking initiatives, and counter-disinformation campaigns by private or public entities.

These measures may be intersectoral and cover all types of actions. They may target users, through initiatives aimed at ensuring information quality to reliably inform users and empower them to detect disinformation (e.g. diluting the visibility of disinformation by improving the findability of trustworthy content and by making it easier for users to discover and access different news sources representing alternative viewpoints). Government initiatives may also focus on online platforms, through the imposition of greater obligations on them (e.g. regarding the transparency of their algorithms, self-regulation obligations, empowering users on content moderation practices, or by requiring de-prioritisation, blocking and takedown of certain types of content and websites). Journalists and the news media, as well as political actors, are also

---

Broadband Commission research report on "Freedom of Expression and Addressing Disinformation on the Internet", September 2020,
https://www.broadbandcommission.org/Documents/working-groups/FoE_Disinfo_Report.pdf.

targeted by government responses (e.g. transparency in online political campaigns, fact-checking during election periods).

While it is not possible to cover all of them exhaustively in this publication, it is worth highlighting some examples of legislative and non-legislative responses to online disinformation in Europe and to show how states are placing user empowerment at the centre of their approach to the issue.

3.2. Examples of legislative responses

3.2.1. German law against illegal content on social networks

In October 2017, the Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act) (*Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, NetzDG*) entered into force in Germany.[95] The NetzDG was the first European regulation to fight hate crime, criminally punishable fake news and other unlawful content on social networks more effectively. The adoption of the NetzDG came as a result of a lack of effectiveness in the reporting and user-flagging mechanisms put in place on a voluntary basis by social networks to protect users against illegal content online.

The NetzDG defines new obligations for operators of social networks and binding standards for effective and transparent complaints management systems, new reporting obligations, fines and increased accountability of those operators. The Act applies to social networks defined as telemedia service providers which, for profit-making purposes, operate Internet platforms designed to enable users to share any content with other users or to make such content available to the public (Section 1(1)(1) NetzDG). Platforms offering journalistic or editorial content for which the service provider itself is responsible, and platforms designed to enable individual communication or the dissemination of specific content, are excluded from the scope of the Act. The former concerns Internet platforms often used by radio stations or television providers, for example. Only larger social network operators with more than two million registered users in Germany are concerned by the Act (Section 1(2) NetzDG).[96]

---

[95] The complaints procedures had to be introduced by 1 January 2018. See Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken – NetzDG,
https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_NetzDG.pdf?__blob=publicationFile&v=2.

[96] It may be argued that the dissemination of fake news can be assimilated to intentional defamation (Article 187 of the German Criminal Code (Strafgesetzbuch), StGB) and enter into the definition of illegal content provided under Section 1(3) of the NetzDG. See Claussen, V., "Fighting hate speech and fake news. The Network Enforcement Act (NetzDG) in Germany in the context of European legislation", https://www.medialaws.eu/wp-content/uploads/2019/05/6.-Claussen.pdf.

The new binding standards for effective and transparent complaints management are provided in Section 3 NetzDG. Among other obligations, the operators of social networks must offer users an easily recognisable, directly accessible and permanently available procedure for reporting criminally punishable content. In particular, they must immediately take notice of content reported to them by users, examine whether the content might violate criminal law and take down or block access to the content within 24 hours (for manifestly unlawful content) or seven days (for other criminal content) from receiving the notice. Those operators that fail to set up a complaints management system or do not set one up properly are committing a regulatory offence, which is punishable with a fine of up to EUR five million imposed on the person responsible for the complaints management system or up to EUR 50 million imposed on the company itself (Section 4 NetzDG).[97]

The NetzDG has been instrumental in creating some form of oversight of big tech companies, mainly by forcing them to be more open about their content moderation practices. However, during its development and implementation, the Act triggered fierce debate and widespread concern about its implications for freedom of expression and the risk that it encourages the removal of legal content (also known as "over-removal"). Relatedly, critics objected to NetzDG as an instance of "privatised enforcement" because, rather than courts or other democratically legitimated institutions, platforms assess the legality of content.[98] Since the law entered into force, several political parties have submitted proposals to amend or repeal it.

On 1 October 2021, new rules establishing an appeal procedure for social networks and video-sharing platform (VSP) services entered into force in Germany. The rules were introduced as part of the latest reform of the NetzDG under the Act to Amend the Network Enforcement Act (*Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes*) of 3 June 2021.[99] For VSP services, the appeal procedure has been applicable to user-generated videos and programmes since 28 June 2021. Since 1 October 2021, as well as social networks, VSP services have also been obliged to provide a corresponding procedure for other types of content.

Under the newly introduced Article 3b NetzDG, providers are obliged to provide an effective and transparent procedure for reviewing decisions on the removal or blocking of access to content. Both the complainant (i.e. the person who flags the third-party content) and the user, on whose behalf the flagged content was stored (content creator), can request a review if a service provider decides to remove or block access to content

---

[97] See also, Borzucki, B., "[DE] Network Enforcement Act enters into force", IRIS 2018-1:1/15, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/8101.
[98] https://deklaration-fuer-meinungsfreiheit.de/.
[99] Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes vom 3. Juni 2021 (BGBl. 2021 I/29), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_NetzDG.pdf;jsessionid=8D70A0B85DA81EF4DF4E2C1BC090D7A0.1_cid334?__blob=publicationFile&v=2.

following a complaint alleging that it is illegal. The Act also contains new provisions designed to promote transparency.[100]

In its decisions of March 2022,[101] in cases brought by Google Ireland Ltd. and Meta Platforms Ireland Ltd, the Verwaltungsgericht Köln (Cologne Administrative Court – VG Köln) ruled that the reporting obligations added to the NetzDG under Article 7 of the Gesetz zur besseren Bekämpfung des Rechtsextremismus und der Hasskriminalität (Act on improving the fight against right-wing extremism and hate crime),[102] which entered into force on 1 February 2022, were inapplicable because they breached EU law.[103]

3.2.2. French law on combating the manipulation of information during elections

The NetzDG has been a source of inspiration for the French legislator. At the beginning of 2018, the French President called for the adoption of a law on disinformation during election periods. By the end of 2018, the French law on the fight against the manipulation of information (*Loi organique n° 2018-1201 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information*)[104] was adopted, and it entered into force before the European elections of May 2019, as intended by the French Executive.

This law was not the first one in France to combat the spread of fake news. Indeed, an important legal arsenal already existed, which created several criminal offences in the fight against false information causing harm (for example, information that disturbs public order or alters the sincerity of the electoral ballot). However, given the change in scale of the dissemination of false news made possible by digital technologies, the French government considered that false news had become a threat to democracy. The challenge for the legislator was therefore to adapt the legal tools to

---

[100] Under the exemption referred to in Article 3b(3)(4) NetzDG, a provider does not need to review its decision if the appeal concerns commercial communications that are clearly unsolicited, or are in breach of the provider's general terms of business and are either shared by the user with many other users or are made accessible to the public, or if the appeal clearly has no prospect of being upheld. This exemption is designed to ensure the appeal procedure is not abused in clear cases of advertising. For further details, see: Etteldorf, C., "[DE] October entry into force for Netzdg Appeal Procedure", IRIS 2021-10:1/14, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/9334.

[101] Cologne Administrative Court press release, https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/05_01032022/index.php.

[102] Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität , 1 April 2021, https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/DE/Bekaempfung_Rechtsextremismus_Hasskriminal itaet.html.

[103] For further details, please see Etteldorf, C., [DE] Cologne Administrative Court: New Network Enforcement Act provisions breach EU law, IRIS 2022-4/23, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/9442.

[104] Loi organique n° 2018-1201 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037847559/.

these new modes of dissemination and to increase the level of empowerment of users online to counter it more effectively.[105]

Among the vectors of fake news, the law targets in particular media controlled by foreign states and digital platforms, which are tools of virality for fake news. It also amends the Electoral Code to introduce a new urgent procedure to stop the dissemination of false information via online public communication services if it is likely to affect the integrity of the vote. As far as users are concerned, the law strengthens the transparency obligations of platforms towards their users. In particular, new duties are imposed on online platforms that attract a certain number of users, in terms of loyalty and transparency towards users. In particular, the law states that users must be provided with information that is fair, clear and transparent on how their personal data is being used and that sites have to clearly identify any natural or legal person that pays them "remuneration in return for promoting news content linked to a debate of general interest" (sponsored content). Criminal sanctions are provided in the law in case of failure to comply with these transparency obligations (up to a one-year prison sentence and a EUR 75 000 fine for infringement of these new transparency obligations during an election campaign). Online platforms also have a permanent duty of cooperation (not only during election periods). This requires them to establish measures to combat "fake news" and a system for bringing it to users' attention. They must also ensure the transparency of the algorithms that they use, promote the certification of genuine accounts, and inform users about the nature, origin, and means of distribution of content. Although these obligations are not subject to specific sanctions, the law extends the powers of the national regulatory authority (NRA) (former *Conseil Supérieur de l'Audiovisuel*, CSA - now ARCOM), which "contributes to the fight against the dissemination of false information likely to disrupt public order or affect the integrity of a vote" covered by the law (new Article 17(2) of the law of 30 September 1986 on freedom of communication).[106] To this end, the NRA can make recommendations to platforms and monitor their compliance with their obligations.[107]

In 2020, the former CSA conducted for the second year a review of the methods implemented by online platforms operators to cooperate in the fight against the

---

[105] In the same vein, although not specifically aimed at combating false information, a law to fight online hateful content was adopted on 24 June 2020, which also aims to increase user empowerment online. It creates an obligation for platforms to remove illegal content, to set up a notification system, to publish transparency reports and to appoint accountable company representatives. For further information, see: Loi n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet, https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000038745184/.

[106] Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard), https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/.

[107] The second section of the law, which amends the law of 30 September 1986, is aimed at certain audiovisual communication services and endows the NRA with the power to suspend television channels controlled by or under the influence of a foreign state if they "deliberately disseminate false information likely to affect the sincerity of the ballot". Sanctions imposed for violations of the law include one year in prison and a fine of EUR 75 000. For more information, see: Blocman, A., [FR] "Law on manipulation of information, validated by the Constitutional Council, is published", IRIS 2019-2:1/11, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/8477.

dissemination of false information. The review highlighted the progress made in terms of the quantity and quality of declared information compared with the previous year. Nevertheless, it called for greater cooperation in certain key areas, such as the operation of algorithmic recommendation and moderation systems, the fight against manipulation of information in the advertising field and the provision of data required for a better understanding of these issues.[108] The declarations also reflected the efforts made by the operators in response to an overabundance of false information linked to the health crisis. In order to provide more information to the public, the CSA urged operators to improve the transparency of the measures taken and of their impact. The CSA welcomed the meaningful work undertaken to promote content from companies, press agencies and audiovisual communication services, and the partnerships entered into in this regard, and encouraged the platforms to adopt them in the long term. New initiatives have also been taken by some operators against accounts spreading massive amounts of false information and coordinated influence operations. Nevertheless, the CSA noted the lack of information passed on to users on the resulting risks, and called for increased collaborative work between the actors to fight against such practices.[109]

3.2.3. Italian bills against massive-scale disinformation online

Before the recent elections in September 2022, the Italian Parliament was considering establishing an ad hoc parliamentary committee of inquiry on the problem of disinformation and, more precisely, on the dissemination on a massive scale of fake news. The bill (No. 1900), approved in first reading by the Chamber of Deputies and under examination by the Constitutional Affairs Committee of the Senate at the date of elections,[110] did not establish any binding measure to counter the dissemination of fake news.[111] The objective of this law was rather to empower a committee in charge of various tasks: the investigation of the massive-scale dissemination of "disinformation activities"[112],

---

[108] CSA, "The fight against the manipulation of information on online platforms: Review of measures implemented in 2020" Lutte contre la manipulation de l'information : le CSA publie le bilan des mesures mises en œuvre par les plateformes en ligne en 2020), https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-les-infox-le-CSA-publie-le-bilan-des-mesures-mises-en-oeuvre-par-les-plateformes-en-ligne-en-2020.

[109] For further details, see also: Blocman, A., [FR] "CSA reviews measures to combat the manipulation of information on online platforms", IRIS 2021-9:1/8, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/9315.

[110] Istituzione di una Commissione parlamentare di inchiesta sulla diffusione massiva di informazioni false, https://www.senato.it/leg/18/BGT/Schede/Ddliter/53197.htm.

[111] Another bill (AS 1549) on the "Creation of a parliamentary committee of enquiry into the serial and massive dissemination of illegal content and false information through the Internet, telematic social networks and other digital platforms" was examined together with bill 1900. For further details, please see: Istituzione di una Commissione parlamentare di inchiesta sulla diffusione seriale e massiva di contenuti illeciti e di informazioni false attraverso la rete internet, le reti sociali telematiche e le altre piattaforme digitali, https://www.senato.it/leg/18/BGT/Schede/Ddliter/52384.htm.

[112] This concept includes any illegal, false, non-verified or intentionally misleading information and content, disseminated both via traditional and online media.

its origin and context (e.g. during an electoral campaign), its financing (including from abroad), its impact and the objectives pursued (health, incitement to hatred, commercial interests), and the existence and adequacy of procedures implemented by the platform with regard to the removal of such content. In relation to user empowerment in respect of countering disinformation, the committee was to be entrusted with assessing the existence of social, educational and literacy measures and best practices or initiatives aimed at raising the awareness of individuals regarding the importance of fact-checking and reliable sources of information.[113] Following the settlement of the newly elected Parliament, a Bill for the "Establishment of a Parliamentary Commission of Inquiry on the serial and massive dissemination of illegal content and false information via the Internet, telematic social networks and other digital platforms" was presented on 25 October at the Chamber of Deputies (no. 470), but no text is available at the time of writing of this publication.[114]

User empowerment was also specifically mentioned in the context of disinformation in the European Delegation Law[115] which entrusted the government with the transposition of the AVMS Directive 2018/1808. This law, which dictates certain guiding principles to be followed in its implementation, called for measures be taken to require media service providers, including social platforms, to provide users with sufficient information about certain content (harmful content, including advertising), as well as specific measures against those who use fictitious profiles or appropriate the identities of others, to alter the exchange of opinions, to cause alarm or to take advantage of the dissemination of false news. In addition, the Delegation Law stressed the need to promote digital literacy.

Legislative Decree no. 208/2021 implementing the 2018 AVMS Directive (New AVMS Code)[116] approved by the Italian government on 4 November 2021 includes new

---

[113] It is also worth mentioning that on a non-legislative level, awareness campaigns are also conducted at national level to counter disinformation. For example, the Italian communications authority launched an awareness campaign that communicates two main messages and seven rules to follow regarding the correct use of information on the Internet. For further details, see a:
https://cdn.epra.org/attachments/files/3563/original/Agcom_-_disinformation_campaign.pdf?1567435868.
See also, Apa, E. and Bassini, M., [IT] "European Delegation Law setting criteria and principles for VMSDimplementation", IRIS 2021-6:1/32, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/9196.
[114]
https://documenti.camera.it/apps/commonServices/getDocumento.ashx?idLegislatura=19&sezione=lavori&tipoDoc=pdl&idDocumento=470
[115] The European Delegation Law No. 53/2021 provides for the legislative delegations needed for transposing EU directives and other EU acts into the Italian framework. Legge 22 aprile 2021, n. 53 - Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea - Legge di delegazione europea 2019-2020 (European Delegation Law (Law no. 53/2021) of 22 April 2021), http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2021-04-22;53!vig=2021-05-082019-2020.
[116] Decreto Legislativo 8 novembre 2021, n. 208 Attuazione della direttiva (UE) 2018/1808 del Parlamento europeo e del Consiglio, del 14 novembre 2018, recante modifica della direttiva 2010/13/UE, relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri, concernente il testo unico per la fornitura di servizi di media audiovisivi in considerazione dell'evoluzione delle realta' del mercato. (21G00231), Legislative Decree no. 208/2021 (New AVMS Code) implementing Directive (EU) 2018/1808 of the European Parliament and of the Council that amended Directive 2010/13/EU

---

provisions on user empowerment with regard to VSP services, although not specifically directed against disinformation. In particular, Article 42 of the new Code requires VSPs to provide specific safeguards for users (e.g. by including specific requirements in the terms and conditions of VSPs, and by providing transparent and user-friendly mechanisms and procedures for users to report on certain content and to process complaints). VSP services should also put in place effective media literacy measures and tools, and raise user awareness of these measures and tools.[117]

3.2.4. UK law to empower users to make safe choices online

In September 2017, the Digital, Culture, Media and Sport (DCMS) Select Committee of the House of Commons launched an inquiry into disinformation and "fake news". On 18 February 2019, the House of Commons published the final report of this Committee,[118] pointing out the need for a "radical shift in the balance of power between the platforms and the people". Damian Collins, the Chair of the DCMS Select Committee, stressed: "The age of inadequate self-regulation must come to an end. The rights of the citizen need to be established in statute, by requiring the tech companies to adhere to a code of conduct written into law by Parliament, and overseen by an independent regulator."

More precisely, the report called for: a compulsory code of ethics for tech companies overseen by an independent regulator; the granting of powers to the regulator to launch legal action against companies breaching the code; reforms by the government of the electoral communications laws and rules on overseas involvement in UK elections; and obligations on the part of social media companies to take down known sources of harmful content, including proven sources of disinformation.

Following up on this report, the UK Minister for Digital and Culture launched, in July 2021, the Online Media Literacy Strategy.[119] This strategy and accompanying action plan - with GBP 340,000 to be spent in the first year (2021/2022) - set out the government's plan to coordinate media literacy education and empower users to make safe choices online and advance critical thinking, with a focus on vulnerable Internet users. It is part of the government's national drive to combat the spread of misinformation and disinformation by giving people the skills to think critically about what they see and

---

(AVMS Directive). Legislative Decree no. 208/2021 repealed and substituted Legislative Decree No. 177/2005, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:DECRETO.LEGISLATIVO:2021-11-08;208!vig=5.

[117] For further details, see: Apa, E. and Foco, E., [IT] "Transposition of the revised AVMSD, IRIS 2022-2:1/3", IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/9387.

[118] House of Commons, Digital, Culture, Media and Sport Committee, "Disinformation and 'fake news': Final Report", Eighth Report of Session 2017–19, https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/1791.pdf. An interim report into disinformation and fake news was published in July 2018. For further information see: https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/363/363.pdf.

[119] Department for Digital, Culture, Media & Sport, "Online Media Literacy Strategy", July 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004233/DCMS_Media_Literacy_Report_Roll_Out_Accessible_PDF.pdf.

read online and help children navigate the Internet safely. In fact, according to the UK regulator, Ofcom, 40% of adult Internet users do not have the skills to critically assess online content. Children up to the age of 15 are particularly vulnerable with studies by the National Literacy Trust finding that just 2% of children have the critical thinking skills needed to tell fact from fiction online.[120] In addition, the UK government indicates that there was a rise in misinformation and disinformation on social media and other online platforms during the global pandemic, with promotion of fake COVID-19 treatments and falsehoods about 5G which led to vandalism of telephone masts in a number of locations.

The aim of the government's strategy is to educate and empower Internet users across the UK to manage their online safety. The Media Literacy Strategy sets out the government's multi-year plan to bring coordination to the media literacy landscape and outlines a Media Literacy Framework of best practice principles to inform the content and delivery of media literacy education. The areas covered by the framework are: data and privacy; online environment; information consumption; online consequences; online engagement. The strategy also identifies six key challenges faced by the media literacy sector: evaluation; funding; hard-to-reach audiences; vulnerable users; building audience resilience to disinformation; coordination.

The government announced that it would publish an annual Media Literacy Action Plan outlining the initiatives to be delivered in the forthcoming year. Key action under the strategy will include, for example: "Train the Trainer" programmes to provide government training to carers of disabled children and teachers; funding for the National Youth Agency to develop a module on media literacy; a training programme for frontline library workers who interact with members of the public every day to teach them about information literacy; work with social media influencers to promote key online media literacy skills and critical thinking, raising of awareness amongst groups that may otherwise be hard to reach; creation of an Online Media Literacy Taskforce made up of tech platforms, civil society and academia, bringing together key stakeholders to take collective action to remove the barriers to advancing people's media literacy. An online portal will also provide a one-stop shop for users to access resources about media literacy and online safety, and to help equip them with key skills and the knowledge to spot disinformation and make safe decisions online.[121]

In addition to this strategy, the UK government published in May 2021 the Online Safety Bill, aimed at "making the UK the safest place in the world to be online while defending free expression".[122] The Bill, which is still under discussion in the House of

---

[120] https://www.gov.uk/government/news/minister-launches-new-strategy-to-fight-online-disinformation.

[121] It is also worth mentioning that the Digital Culture Media and Sport Committee of the UK Parliament is undertaking an enquiry, which started in June 2021, into influencer culture, including radicalisation by some influencers and the problem of "disinformation for hire" (i.e. where influencers have been hired to spread disinformation, including about COVID-19). For more information, see : Wilkins, J., [GB] "Digital Culture Media and Sport Committee undertake enquiry into role and impact of social media influencers and the need for further regulation", IRIS 2022-1:1/8, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/9360.

[122] https://www.gov.uk/government/publications/online-safety-bill-supporting-documents/online-safety-bill-factsheet.

Commons,[123] introduces new rules for online platforms that host user-generated content, that is to say those which allow users to post their own content online or interact with each other, and for search engines, which will have tailored duties focused on minimising the presentation of harmful searches to users. Those platforms which fail to protect users will need to answer to the regulator, and could face fines of up to 10 percent of their revenues, or, in the most serious cases, being blocked.

The type of duties imposed on platforms will depend on the category of content concerned (illegal content, (primary priority) content harmful to children, (priority) content harmful to adults, search content). Mis/disinformation that could cause physical or psychological harm is included in harmful and inappropriate content. Specifically, the duty of care will require platforms to have robust and proportionate measures to deal with content that could cause significant physical or psychological harm to children (e.g. misinformation and disinformation about vaccines). Platforms will also need to address in their terms of service how they will treat named categories of content which are harmful to adults, and likely to include disinformation. This will mean:

- all companies will need to remove illegal disinformation, for example where this contains direct incitement to violence;
- services accessed by children will need to protect underage users from harmful disinformation;
- services with the largest audiences and a range of high-risk features (Category 1 services) will be required to set out clear policies on harmful disinformation accessed by adults

The regulatory framework will also include additional measures to address disinformation, including provisions to boost audience resilience through empowering users with the critical thinking skills they need to spot online falsehoods, giving the regulator, Ofcom, the tools it needs to understand how effectively false information is being addressed through transparency reports, and supporting research on misinformation and disinformation.

3.3. Examples of non-legislative responses to empower users with regard to disinformation

Some countries have taken steps through a range of initiatives - albeit non-legislative at least for the time being - to tackle the problem of disinformation with a focus on empowering users of online platforms.

---

[123] As of 29 July 2022. See: https://bills.parliament.uk/bills/3137.

3.3.1. Media regulators and/or government campaigns

3.3.1.1. Ireland

In Ireland, the national regulatory authority (NRA), the Broadcasting Authority of Ireland (BAI) in April 2020 published a research report on tackling disinformation across digital platforms. The report, "CodeCheck 2020: A Review of Platform Compliance with the EC Code of Practice on Disinformation",[124] examines and reviews the progress of the actions carried out by digital platforms Facebook, Twitter, Google and Microsoft in Ireland over a 12-month period to November 2019 in support of their commitments to the EC Code of Practice on Disinformation 2018 (EC Code),[125] with particular emphasis on the areas of "empowering consumers" and "empowering the research community".

With respect to users, the report found that Facebook, Twitter, Google and Microsoft had introduced various actions aimed at empowering Irish consumers, including "mechanisms to report fake news, providing greater information on the content visible on the platforms, greater control and transparency in relation to advertising and user preferences and the promotion of authentic and authoritative information sources". However, the report also indicated that the level at which Facebook, Twitter, Google and Microsoft had engaged in these actions was both "mixed and inconsistent". The CodeCheck 2020 report found, *inter alia*, that "although all four platforms provide tools for consumers to report or give feedback on content, it is unclear what the uptake of these tools is in Ireland and also what procedures are in place to address this content once a complaint has been received". Moreover, the report indicated that "the most significant shortcoming in the empowering of consumers" identified in the report was in relation to "the labelling of trustworthy content". The CodeCheck 2020 report found that researchers "could not identify any news items across any of the four platforms which had been labelled as fact-checked with the corresponding verdict on authenticity," which "represents a substantial obstacle in assisting consumers to make informed decisions when they encounter news online".

The report makes a number of recommendations to address all of the issues identified in it. The then-Chief Executive of the BAI, Michael O' Keefe, stated that "the report is timely, considering the harmful effect that disinformation has had across society during the COVID-19 crisis," adding that it has "brought into sharp focus the urgency at which digital platforms must engage more meaningfully with the Code".[126]

---

[124] BAI, FuJo, "CodeCheck 2020: A Review of Platform Compliance with the EC Code of Practice on Disinformation", 28 April 2020, http://www.bai.ie/en/download/134886/.

[125] For further details, see Chapter 2 of this publication.

[126] For further information, see: Cunningham, I., [IE] "Report on tackling disinformation across digital platforms", IRIS 2020-6:1/17, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/8902.

From a broader perspective, it is also worth mentioning that the Irish government launched a 10-year strategy in July 2021 focusing on adult critical thinking skills.[127] This strategy comprises four pillars, one of which focuses on user empowerment. Disinformation is not directly addressed in the strategy, although the need to access reliable information in the context of the COVID-19 pandemic has been highlighted.

3.3.1.2. Norway

Another example is Norway, where the NRA, Medietilsynet, launched, as of 2019, a large awareness campaign: "Stopp.Tenk.Sjekk" (stop, think, check) on how to expose fake news and misinformation. This campaign, developed on behalf of the Norwegian government's plan to prevent unwanted influence during the parliamentary and Sami parliamentary elections in the autumn of 2021, encourages users to be critical of the content they share.[128]

In collaboration with the fact-checking service Faktisk.no, The National Association of Local Newspapers, The Norwegian Directorate for Civil Protection (DSB) - and with support from Facebook - Medietilsynet worked out six questions for users to ask themselves when reading content online. These questions are aimed at helping them to stop, think and check whether or not the article, post or piece of news is trustworthy (e.g. Does the story evoke strong feelings? Does it seem unlikely? Do you believe the photo? Is the story trying to influence you? Has the story been published elsewhere? etc.). The campaign "Stop, Think, Check" has been shared with national regulatory authorities (NRAs) across Europe, some of which have adapted the campaign for their own needs.

In addition, it is worth mentioning that in Norway a new dedicated budget has been assigned to Medietilsynet for 2022 and a project was launched regarding media and education literacy and seniors, focusing on how to detect fake news before elections, accompanied by a teaching guide for educators.[129]

3.3.1.3. Iceland

Inspired by the Norwegian example, the Icelandic regulatory authority, Fjölmiðlanefnd (the Icelandic Media Commission) conducted in 2020 the same Stoppa, hugsa, athuga (Stop, think, check)[130] awareness campaign adapted to Icelandic audiences, in order to

---

[127] Government of Ireland, "Adult Literacy for life – a 10-year adult literacy, numeracy and digital literacy strategy", July 2021, https://www.adultliteracyforlife.ie/f/120607/x/133e8d1481/15607_all_strategy_web.pdf.
[128] https://www.medietilsynet.no/english/stop-think-check-en/.
[129] The Norwegian Media Authority published a report in September 2021 on seniors' critical media understanding. It emerged that the oldest age groups consider themselves less competent to deal with disinformation and fake news online than the general population. The seniors also scored the worst in a test in which they were asked to identify a fake news story, https://www.medietilsynet.no/digitale-medier/skole/seniorguide/.
[130] Árvekniátakið Stoppa, hugsa, athuga á vefsíðu fjölmiðlanefndar (awareness campaign "Stop, think, check", Icelandic Media Commission), https://fjolmidlanefnd.is/stoppa-hugsa-athuga/.

help people detect fake news and disinformation. The Icelandic campaign is a collaboration between the Icelandic Media Commission, Embætti landlæknis (the Directorate of Health in Iceland) and Vísindavefurinn (the University of Iceland's Web of Science), with support from Facebook.

The focus of the campaign is to increase people's awareness of, and ability to detect, fake news. The aim is to enhance critical thinking and media literacy and to highlight the importance of professional media and journalism. In the campaign, attention is drawn to the fact that false and misleading information is often intentionally disseminated on social media. Therefore, it is important to be able to spot the difference between fake news and real news. The campaign focuses specifically on misstatements and misleading information on social media relating to the COVID-19 pandemic.[131]

3.3.2. Fact-checking and/or media literacy organisation initiatives

3.3.2.1. Poland

In some countries, such as in Poland, fact-checking organisations sometimes also work with schools or train volunteers. So, for example, the Akademia Fact-Checkingu[132] (Fact-Checking Academy) is an educational project of the Demagog Association addressed to pupils and students, teachers and educators, seniors, as well as businesses, aimed at distinguishing truth from falsehood. Using many years of experience in fact-checking, demagog.org.pl experts conduct workshops and webinars, during which they explain how to search for and verify information, assess the credibility of sources, use useful online tools and how to fight fake news.

3.3.2.2. Hungary

Media literacy organisations also contribute to user empowerment with regard todisinformation, sometimes with the support and in coordination with the NRA. For example, in Hungary, the Magic Valley Media Literacy Education Centres[133] have been established by the Hungarian NRA, the National Media and Infocommunications Authority (NMHH), in order to promote the media literacy education of students aged 9-16 by providing them with hands-on learning experience.

---

[131] For further details, see Ingimarsson, A-E, [IS] "The Icelandic Media Commission's awareness campaign on disinformation", IRIS 2020-7:1/28, IRIS Legal Observations of the European Audiovisual Observatory, https://merlin.obs.coe.int/article/8914.

[132] https://akademia.demagog.org.pl/.

[133] https://magicvalley.eu/.

Among the Magic Valley activities is a newscast workshop, where students aged 13-16 can compile a report presenting different sides of the news item that they have chosen beforehand. They can add an introduction, a narrative and an interview to the pre-recorded material. Younger children can try out their skills as weather forecasters or newscasters. Through these workshops, Magic Valley aims to empower youngsters so they can understand "what has happened and what is being said about it".

3.3.3. Other examples of initiatives carried out by associations and NGOs with national and/or private support

Some initiatives are carried out by associations and NGOs with direct support from the state and/or IT tech companies. For example, in France two Google.org grantees - Génération Numérique[134] and Observatoire pour la Parentalité et l'Éducation au Numérique - have provided trainings to debunk fake news and conspiracy theories, through the online programme Google Ateliers Numériques.

In Spain, Google and the prime minister launched the media literacy programme for teens "Infórmate", focused on critical thinking as a vaccine against fake news. In Germany, Google.org funded "Weitklick",[135] a media literacy project of Voluntary Self-Control for Multimedia Providers (*Freiwillige Selbstkontrole Multimedia-Diensteanbieter*, FSM)[136] which focuses on information literacy and misinformation. The project aims to engage with secondary and vocational teachers to help them address misinformation online and its impact on democratic societies in the classroom with a blended learning concept that includes an online platform and digital tools in self-learning courses and modules, online webinar sessions, and offline trainings. To achieve nationwide implementation the project worked with ministries of education to certify the project's resources along with state curricula.[137]

---

[134] https://asso-generationnumerique.fr/theme/lutter-contre-la-desinformation/.

[135] https://www.weitklick.de/ueber-uns.

[136] https://www.fsm.de/en.

[137] For more examples of media literacy campaigns on disinformation, please see "Improving Media Literacy campaigns on disinformation" (ERGA Report), https://erga-online.eu/wp-content/uploads/2021/01/ERGA-SG2-Report-2020-Improving-Media-Literacy-campaigns-on-disinformation.pdf.

4. Self- and co-regulation

4.1. The Strengthened 2022 Code of Practice on Disinformation

4.1.1. From the 2018 Code of Practice on Disinformation to the 2022 version

In its 2018 Communication on online disinformation,[138] the European Commission called upon platforms "to decisively step up their efforts to tackle online disinformation". The Commission added that it "considers that self-regulation can contribute to these efforts, provided it is effectively implemented and monitored". As a result of this call, and with the aim to achieve the objectives set out by the Commission's Communication, the 2018 Code of Practice on Disinformation ("the 2018 Code")[139] was adopted – "the first time worldwide that industry has agreed, on a voluntary basis, to self-regulatory standards to fight disinformation".[140]

As explained in Chapter 2 of this publication, the 2018 Code was a self-regulatory initiative by industry players committing to counter disinformation but was considered insufficient in the 2020 Commission Assessment[141] of its first period of implementation precisely because of its self-regulatory nature.[142] The Commission revealed some shortcomings[143] such as:

---

[138] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Tackling online disinformation: a European approach, COM/2018/236 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236.

[139] 2018 EU Code of Practice on Disinformation, https://ec.europa.eu/newsroom/dae/redirection/document/87534.

[140] https://digital-strategy.ec.europa.eu/en/library/2018-code-practice-disinformation.

[141] https://digital-strategy.ec.europa.eu/en/library/assessment-code-practice-disinformation-achievements-and-areas-further-improvement.

[142] Press release of the European Commission, 10 September 2020, "Disinformation: EU assesses the Code of Practice and publishes platform reports on coronavirus-related disinformation", https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1568.

[143] European Commission, "Questions and Answers: Strengthened Code of Practice on disinformation", https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_3665.

- Inconsistent and incomplete application of the Code across platforms and member states;
- Gaps in the coverage of the Code's commitments;
- A lack of appropriate monitoring mechanisms, including key performance indicators;
- A lack of commitments on access to platforms' data for research on disinformation;
- Limited participation from stakeholders, in particular from the advertising sector.

In May 2021, the Commission proposed solutions to make the 2018 Code more effective in a detailed Guidance.[144] After that, a revision process was initiated leading to a strengthened Code ("the 2022 Code"),[145] which was welcomed by the Commission on 16 June 2022.[146]

4.1.2. Overview of the 2022 Code

The 2022 Code of Practice has been signed by a broad range of actors[147] who have subscribed to commitments and measures relevant to their mission, including Big Tech companies such as Google, Meta, Microsoft, TikTok and Twitter. Notable absences are Amazon (represented only through its subsidiary Twitch), Apple and Telegram.

Signatories have agreed to establish a framework for further collaboration through a permanent task-force. The 2022 Code includes a strengthened monitoring framework based on qualitative reporting elements (QRE) and service-level indicators (SLI) measuring the effectiveness of its implementation. Signatories will also set up a Transparency Centre, providing a clear overview to the public of the policies they put in place to implement their commitments, and will update it regularly with the relevant data.

Disinformation is considered for the purposes of the 2022 Code to include misinformation, disinformation, information influence operations and foreign interference in the information space as defined in the EDAP.[148] This notion of "disinformation" does not, however, include misleading advertising, reporting errors, satire and parody, or clearly identified partisan news and commentary, and is without prejudice to binding

---

[144] European Commission Guidance on Strengthening the Code of Practice on Disinformation (COM(2021) 262 final), https://ec.europa.eu/newsroom/dae/redirection/document/76495.
[145] The Strengthened Code of Practice on Disinformation 2022, https://ec.europa.eu/newsroom/dae/redirection/document/87585.
[146] Press release of the European Commission, 16 June 2022, "Disinformation: Commission welcomes the new stronger and more comprehensive Code of Practice on disinformation", https://digital-strategy.ec.europa.eu/en/news/disinformation-commission-welcomes-new-stronger-and-more-comprehensive-code-practice-disinformation.
[147] See European Commission, "Signatories of the 2022 Strengthened Code of Practice on Disinformation", https://digital-strategy.ec.europa.eu/en/library/signatories-2022-strengthened-code-practice-disinformation.
[148] See Chapter 2 of this publication.

legal obligations, self-regulatory advertising codes, and standards regarding misleading advertising.

The Signatories agree that the 2022 Code applies within the framework of existing laws of the EU and its member states and must not be construed in any way as replacing, superseding or interpreting the existing and future legal framework. Furthermore, the 2022 Code is without prejudice to other initiatives aimed at tackling disinformation.

The 2022 Code builds on the 2018 Code of Practice and identifies the commitment areas and measures each Signatory is making. Very importantly, Signatories agreed to sign up to commitments and measures "that are of relevance to the product(s), activities, and service(s) they and their subsidiaries offer and identify in the subscription document the relevant commitments and measures they will implement, and they will also specify the relevant services covered by such commitments and measures". They agree to regularly review their commitments and measures and to consider subscribing to additional ones "as they become relevant, pertinent, and practicable, taking into account input on these matters from the Code's task-force". The Signatories are also able to bring to the rest of the task-force's attention commitments or measures that may benefit from changes over time.

4.1.3. Empowering users in the 2022 Code

According to the Commission,[149] thanks to the 2022 Code users will be better equipped to identify and react to disinformation:

- Labelling will be available more widely on platforms' services across the EU;
- Services will provide users with a functionality to flag disinformation;
- Reliable information will be better promoted;
- The adoption of safe design practices will make platforms' services more resilient to the viral propagation of disinformation. For instance, a recommender system will display unreliable sources less prominently and boost the visibility of authoritative sources;
- Providers of messaging apps will implement specific features - compatible with the nature of these services - aiming to limit the spread of disinformation;
- A transparent appeal mechanism will be available for users affected by decisions made regarding their content.

In the area of media literacy, the Code contains commitments on tools to improve media literacy and critical thinking, awareness-raising campaigns and partnerships. The Code places a special emphasis on involving vulnerable groups in media literacy campaigns and cooperation with entities with relevant expertise, such as the European Digital Media

---

[149] European Commission, "Questions and Answers: Strengthened Code of Practice on Disinformation", https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_3665.

Observatory (EDMO), ERGA's Media Literacy Action Group and the Media Literacy Expert Group.

4.1.3.1. Commitments and measures regarding empowering users

4.1.3.1.1. Enhancing media literacy (Commitment 17)

Relevant Signatories[150] commit to continue and strengthen their efforts in the area of media literacy and critical thinking, also with the aim to include vulnerable groups. This may be done via tools to improve media literacy and critical thinking (Measure 17.1), campaigns to raise awareness (Measure 17.2), in partnership or consultation with media literacy experts in the EU, including for instance the Commission's Media Literacy Expert Group, ERGA's Media Literacy Action Group, EDMO, its country-specific branches (EDMO Hubs), or relevant member state universities or organisations that have relevant expertise (Measure 17.3).

4.1.3.1.2. Safe design of the architecture of the services, transparent policies, and accountability of recommender systems (Commitments 18-20)

Relevant Signatories commit to minimising the risks of viral propagation of disinformation (Commitment 18) by adopting safe design practices as they develop their systems, policies, and features. Measures in this regard may be recommender systems or other systemic approaches such as pre-testing (Measure 18.1). Moreover, Relevant Signatories will develop and enforce publicly documented, proportionate policies to limit the spread of harmful, false or misleading information and take action on webpages or actors that persistently violate these policies (Measure 18.2), and will invest and/or participate in research efforts, making findings available to the public or report on those to the 2022 Code's task-force (Measure 18.3).

With regard to recommender systems, a transparency requirement (Commitment 19) concerns the main criteria and parameters used for prioritising or deprioritising information. This commitment may be satisfied by making available to users information outlining the main parameters recommender systems employ in a clear, accessible and easily comprehensible manner (Measure 19.1), and by providing options to select and to modify preferred options (Measure 19.2).

Another way to empower users is by making available tools to assess the provenance and edit history or authenticity or accuracy of digital content (Commitment 20), such as technology solutions to help users check the authenticity or identify the provenance or source of digital content (Measure 20.1), and taking steps to join/support

---

[150] As mentioned above, signatories agreed to sign up to commitments and measures "that are of relevance to the product(s), activities, and service(s) they and their subsidiaries offer. Therefore, not all commitments and measures are signed by all signatories to the 2022 Code.

global initiatives and standards bodies (for instance, C2PA) focused on the development of provenance tools (Measure 20.2).

4.1.3.1.3. Better equipping users to identify disinformation (Commitments 21-22)

Relevant Signatories commit to strengthening their efforts to better equip users to identify disinformation (Commitment 21). They commit to facilitating, across all member states languages in which their services are provided, user access to tools for assessing the factual accuracy of sources through fact-checks from fact-checking organisations that have flagged potential disinformation, as well as warning labels from other authoritative sources. In order to achieve this, they will help users benefit from the context and insights provided by independent fact-checkers or authoritative sources, with tools or features to inform users about content rating by an independent fact-checker (Measure 21.1). Relevant Signatories will research and test warnings or updates targeted at users who have interacted with content that was later actioned for violation of policies mentioned in the section concerning user empowerment, disclosing and discussing their findings within the permanent task-force (Measure 21.2). Labelling and warning systems will be designed in accordance with up-to-date scientific evidence and with analysis of user needs on how to maximise the impact and usefulness of such interventions (Measure 21.3).

Commitment 22 is the most controversial of all,[151] as some Big Tech companies have decided not to adhere to it (see figure 1 below). According to this commitment, Relevant Signatories must provide users with tools to help them make more informed decisions when they encounter online information that may be false or misleading, and to facilitate user access to tools and information to assess the trustworthiness of information sources, such as indicators of trustworthiness for informed online navigation, particularly relating to societal issues or debates of general interest.

In order to satisfy Commitment 22, the following measures are included:

- <u>Measure 22.1</u>: users should have access to indicators of trustworthiness (such as trust marks focused on the integrity of the source and the methodology behind such indicators) developed by independent third parties, in collaboration with the news media, including associations of journalists and media freedom organisations, as well as fact-checkers and other relevant entities that can support users in making informed choices.
- <u>Measure 22.2</u>: users should have the option of having signals relating to the trustworthiness of media sources in the recommender systems, or feed such signals into their recommender systems.
- <u>Measure 22.3</u>: details of the policies and measures put in place to implement the above-mentioned measures should be made available to EU users, especially by publishing information outlining the main parameters recommender systems employ in this regard. This information should also be included in the Transparency Centre.

---

[151] See section 4.1.3.2. of this publication.

- <u>Measure 22.4</u>: Relevant Signatories providing trustworthiness indicators will ensure that information sources are being reviewed in a transparent, apolitical, unbiased, and independent manner, applying fully disclosed criteria equally to all sources and allowing independent audits by independent regulatory authorities or other competent bodies.
- <u>Measure 22.5</u>: Relevant Signatories providing trustworthiness indicators will provide compliance and correction mechanisms and respect the right of publishers to be heard, including to engage in the assessment process before indicators are applied and to have their responses available to consumers after assessments are published.
- <u>Measure 22.6</u>: Relevant Signatories providing trustworthiness indicators by means of voluntary, self-regulatory and certifiable European standards or European standardisation deliverables as defined by European law ("technical standards") will:
  - o develop and revise them based on internationally accepted best-practices and ethical norms;
  - o make them publicly available and accessible in a non-proprietary, neutral way;
  - o govern their implementation in line with European Accreditation and EU Regulation (EC) No 765/2008.[152]
- <u>Measure 22.7</u>: Relevant Signatories will design and apply products and features (e.g. information panels, banners, pop-ups, maps and prompts, trustworthiness indicators) that lead users to authoritative sources on topics of particular public and societal interest or in crisis situations.

4.1.3.1.4. Functionality to flag harmful false and/or misleading information (Commitment 23)

Users must be provided with the functionality to flag harmful false and/or misleading information that violates Signatories' policies or terms of service. For this, they will make available on all their services and in all of the member state languages in which their services are provided a user-friendly functionality for users to flag harmful false and/or misleading information that violates Signatories' policies or terms of service. The functionality should lead to appropriate, proportionate and consistent follow- up actions, in full respect of freedom of expression (Measure 23.1). Furthermore, Relevant Signatories will take the necessary measures to ensure that this functionality is duly protected from human or machine-based abuse (Measure 23.2).

---

[152] Consolidated text: Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 (Text with EEA relevance),
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0765-20210716.

4.1.3.1.5. Transparent appeal mechanism (Commitment 24)

Users will be informed whose content or accounts have been subject to enforcement actions (content/accounts labelled, demoted or otherwise the subject of enforcement) taken on the basis of violation of policies relevant to this section,[153] and provide them with the possibility to appeal against the enforcement action at issue and to handle complaints in a timely, diligent, transparent, and objective manner and to reverse the action without undue delay where the complaint is deemed to be founded. Relevant Signatories commit to providing users with information on why particular content or accounts have been labelled, demoted, or otherwise been the subject of enforcement, on the basis of violation of policies relevant to this section, as well as the basis for such enforcement action, and the possibility for them to appeal through a transparent mechanism (Measure 24.1).

4.1.3.1.6. Measures to curb disinformation on messaging apps (Commitment 25)

Relevant Signatories that provide messaging applications commit to continuing to build and implement features or initiatives that empower users to think critically about information they receive and help them to determine whether it is accurate, without any weakening of encryption and with due regard to the protection of privacy. In more concrete terms, users will have access to authoritative information without any weakening of encryption and with due regard for the protection of privacy, and third-party partners could include civil entities such as governments, fact-checkers, and other civil society organisations where appropriate (Measure 25.1). Tools and features will help users identify disinformation and limit their viral propagation on their services, without any weakening of encryption and with due regard for the protection of privacy (Measure 25.2).
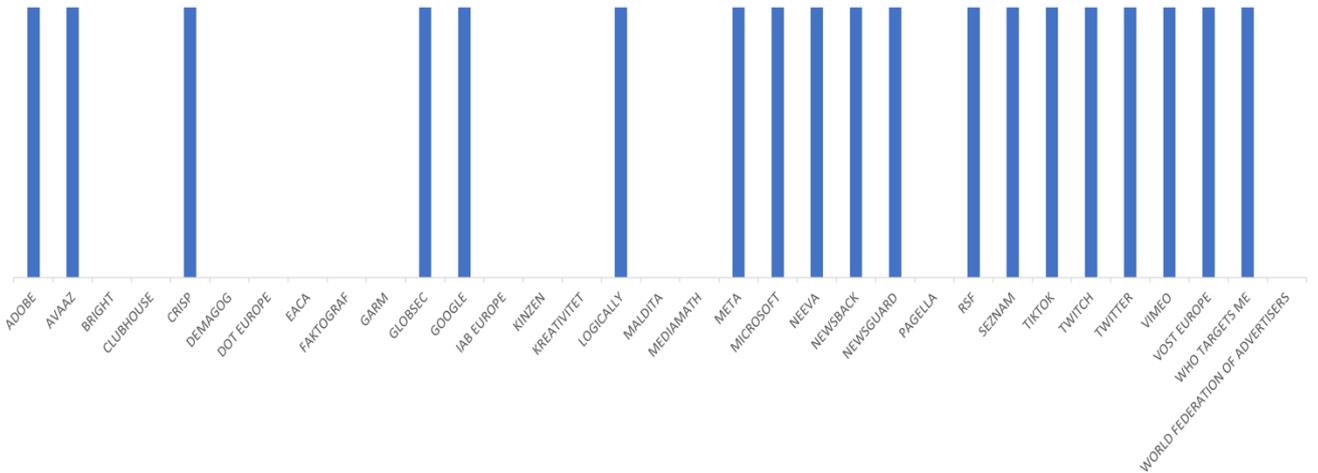
4.1.3.2. Implementation

The following graphs show the signatories that have committed to empowering users (figure 1) and Big Tech commitments per type of measure (figure 2).[154]

---

[153] See Measure 18.2.

[154] The following graphs have been created on the basis of information available on 23 August 2022.

Figure 1.   **Signatories that have committed to empowering users**

Elaboration by the European Audiovisual Observatory

As can be seen, several signatories have chosen not to make any commitments regarding empowering users. There are a few reasons for this: As explained in the Preamble to the 2022 Code, trade associations which have signed the 2022 Code cannot enter into obligations on behalf of their members. However, these associations commit to making their members fully aware of this Code and encouraging them to join it or respect its principles, as appropriate. Also, Signatories who help address the spread of disinformation through their tools, technical efforts, philanthropic work, or specific expertise, commit to signing up to commitments and measures that are attuned to the company or organisation and the role they play in the online ecosystem.

Figure 2.   Big Tech commitments per 2022 Code measure
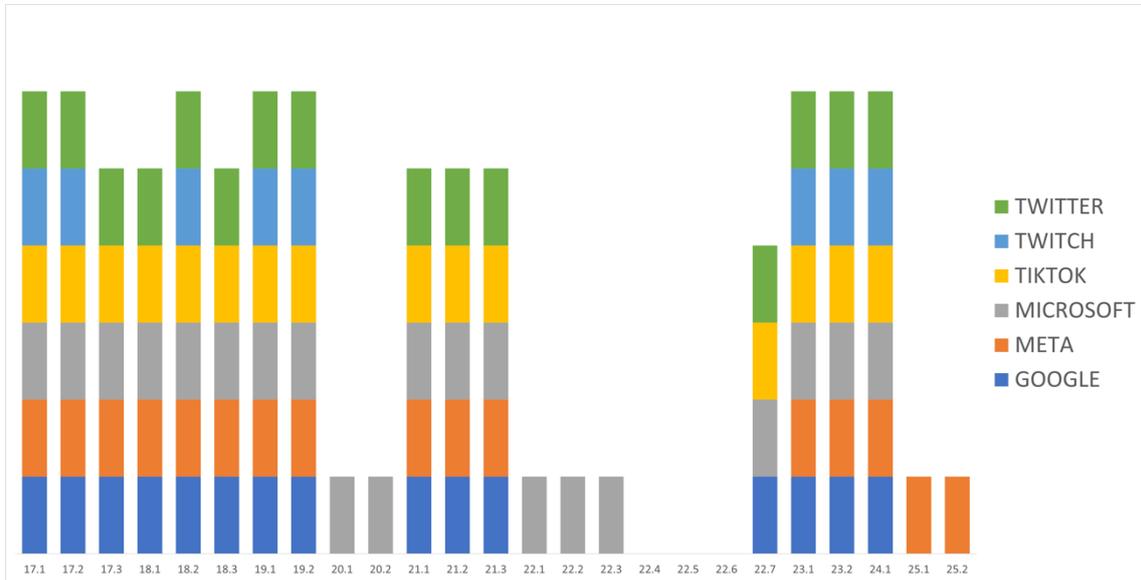
Elaboration by the European Audiovisual Observatory

When it comes to the Big Tech companies mentioned above, they have committed to most measures, as can be seen in the graph above. However, except for Microsoft none of them have agreed to implement "trustworthiness indicators" (see measures 22.1 to 22.3) that can support users in making informed choices, a move that has been widely criticised.[155]

4.2. The role of national regulatory authorities

Regulating disinformation is a multi-faceted problem exacerbated by the often-advanced truism that "disinformation is often harmful but not necessarily illegal". If hard regulation is difficult to implement given the broad scope of the fundamental freedom of expression at stake here, self-regulation has too many critics to appear as a fit-for-all-purposes solution.

National regulators are at the crossroads of this conundrum and have an important and increasingly difficult role to play.

---

[155] See Chapter 6 of this publication.

4.2.1. ERGA

Since the very beginning of its actions against disinformation, the European Commission has involved national regulators through the European Regulators Group for Audiovisual Media Services (ERGA).[156]

- The Action Plan against Disinformation[157] of 5 December 2018 stated that "the Commission will, with the help of the European Regulators Group for Audiovisual Media Services (ERGA), monitor the implementation of the commitments [made] by the signatories of the Code of Practice".
- In 2019 ERGA was asked by the Commission to monitor the implementation of the Code of Practice on Disinformation. In its report it identified several shortcomings of the mechanism and made recommendations on how to make it more effective – particularly by enhancing transparency and moving from self-regulation to a more effective co-regulatory model.
- In 2020, ERGA's subgroup on disinformation continued along this path, conducting interviews with external experts, organising events with platforms and other relevant stakeholders and networks, and preparing reports focusing on definitions of disinformation and related concepts, media literacy activities, relations between platforms and researchers, fact-checkers, and on handling of users' complaints.
- In 2021 ERGA was again asked by the European Commission to monitor the effectiveness of the Code of Practice in the context of online disinformation about COVID-19. The results of the monitoring were presented in two reports adopted by ERGA in November and December 2021.[158] The monitoring led to a set of recommendations for Signatories of the strengthened Code.

With regard to the 2022 Code, the Signatories recognise the need to closely cooperate with and involve ERGA and EDMO, in particular in the implementation phase and in the monitoring phase of the Code.

In its work programme for 2022,[159] ERGA set the orientation and priorities to optimise the engagement of ERGA and achieve the group's objectives for the year 2022. Among its priorities for 2022, ERGA foresees that the European Democracy Action Plan, the future Act on political advertising, the Code of Practice on Disinformation and the revision thereof may demand additional monitoring and assistance from ERGA, in particular on media pluralism issues and disinformation, which remains a core issue that media regulators are facing. Accordingly, one of its three working subgroups (Subgroup 3)

---

[156] https://erga-online.eu/; ERGA consists of the national regulatory authorities in the field of audiovisual media services; ERGA advises the European Commission and facilitates cooperation between the regulatory bodies in the EU.
[157] Action Plan against Disinformation, 5 December 2018, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52018JC0036.
[158] ERGA reports and opinions, https://erga-online.eu/?page_id=14.

will be dedicated to countering disinformation and strengthening democracy in the digital environment.[160]

In December 2020, ERGA adopted a Memorandum of Understanding (MoU),[161] which creates a common framework under which ERGA members provide each other with mutual assistance, and exchange information. The action group on the implementation of the MoU[162] is intended to secure an immediate application and administration of the MoU by concretely working on the implementation of the tasks foreseen for this action group by the MoU.

In its Work Programme 2023, ERGA confirms that it will continue to work on the issue of media literacy in 2023, in the light of its importance for democratic discourse and debate.[163]

4.2.2. EPRA

Following a series of fruitful meetings by an EPRA Media and Information Literacy working group (started in 2018), EPRA launched the EPRA Media and Information Literacy (EMIL) task-force. According to its terms of reference, updated on 16 February 2022,[164] EMIL's purposes are the following:

- promoting and supporting the creation and functioning of media literacy networks, throughout Europe, by bringing together key actors of these networks, and by providing them an independent and transparent forum to share relevant information, best practice, experience and expertise,
- raising the public profile of media literacy networks and helping share the best practice and experience from these networks with a wider audience of stakeholders,
  sharing knowledge, best practices and experiences on media literacy activities and initiatives in general, including avoiding duplication of efforts between various coordination groups.

EMIL currently gathers more than 35 members - mostly media regulators but also national media literacy bodies, such as CSEM or Mediawijs, the Media & Learning Association, and multinational bodies like the European Audiovisual Observatory, EDMO and the

[160] ERGA Memorandum of Understanding, as adopted on 3 December 2020, https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_l.pdf.

[162] Action Group 1 – Implementation of the Memorandum of Understanding, https://erga-online.eu/wp-content/uploads/2022/02/AG1_ToR_2022_adopted.pdf.

[163] ERGA Work Programme for 2023, https://erga-online.eu/wp-content/uploads/2022/09/2022-09-15-ERGA-Work-Programme-2023-as-adopted.pdf.

[164] EPRA MIL Taskforce: Terms of Reference (ToR), 16 February 2022, https://www.epra.org/attachments/emil-terms-of-reference-2022.

Community Media Forum Europe (CMFE) – its main purpose is to give MIL networks a voice in Europe.

During regular meetings, EMIL members share experiences and reflections on typical issues such as the empowerment of youth, disinformation, news literacy, hate speech, MIL Project evaluation or how to manage MIL networks.

EMIL also organised a joint event with ERGA on news literacy[165] in November 2022. Outputs, which are publicly available on the EPRA website[166], notably include guidance documents (top-tips), recorded virtual meetings on MIL Multistakeholder Networks, reflections on MIL on video-sharing platforms, an overview of MIL initiatives in response to COVID-19 misinformation and discussion points on the role of MIL in the fight against hate speech.

4.3. Empowering users in practice (so far)

The work carried out by ERGA in monitoring and assessing the 2018 Code is fundamental in order to acquire a global vision of how committed Big Tech platforms really are to the fight against disinformation and how effective are their actions in this regard.

4.3.1. Empowering consumers in the 2018 Code

ERGA's report on disinformation of 29 April 2020[167] summarised the monitoring of compliance with the provisions of the 2018 Code conducted by 13 NRAs, which gathered information from the Self-Assessment Reports (SARs), from third-party reports and from their meetings with civil society organisations, associations of consumers and journalists, universities, researchers and fact-checkers (or from their websites).

Regarding empowering consumers,[168] the 2018 Code aims at diluting the visibility of disinformation by improving the findability of trustworthy content and by making it easier for users to discover and access different news sources representing alternative viewpoints and by providing them with easily accessible tools to report disinformation. Moreover, platforms commit to undertaking media literacy campaigns aimed at making the general public aware of the threats of disinformation.

According to the report, consumers of all the platforms are supported primarily in two ways:

---

[165] Recording available under: https://www.youtube.com/watch?v=3Lh2047J-AA.

[166] All material available under: https://www.epra.org/attachments?category=mil-taskforce&page=1.

[167] ERGA report on disinformation: Assessment of the implementation of the Code of Practice on Disinformation,
https://erga-online.eu/wp-content/uploads/2020/05/ERGA-2019-report-published-2020-LQ.pdf.

[168] This notion was changed into "empowering users" in the 2022 Code.

- Firstly, immediately via the interface of the platforms through labelling and links to additional information, and
- Secondly, more broadly, through media literacy or fact-checking initiatives.

The report concluded that platforms are making an evident effort to invest in products, technologies and programs to help people make informed decisions when they encounter online news that may be false, to encourage market uptake of tools that help consumers understand why they are seeing particular advertisements and to improve critical thinking and digital media literacy. These efforts, nevertheless, are not made in the same way in all the countries and, when they are made, they are conducted in a scattered manner: regarding media literacy in particular, they are involving only a tiny fraction of the total population (mainly journalists, politicians and schoolteachers), usually concentrated in the main cities. These efforts should be, according to the report, part of a more systematic campaign and should address a much bigger part of the population, in the whole national territory.

4.3.2. Media literacy campaigns[169]

In its report titled "Improving Media Literacy campaigns on disinformation",[170] ERGA analysed the media literacy projects carried out during the year 2020, taking information from the platforms' reports provided to the Commission, directly from platforms and received from NRAs. It provided a list of shortcomings in the behaviours and in the measures adopted by the platforms:

- Several initiatives fulfil the features of effective activity undertaken in order to combat disinformation, but even these do not reach a wide-enough audience.
- The media literacy campaigns or different initiatives designed to counter disinformation have limited reach and do not cover all EU member states and in many cases the more detailed programmes are not translated into several languages.
- Some valuable initiatives developing digital competences among children do not cover lessons dedicated to disinformation recognition.
- In Europe there was no media literacy campaign addressed to elderly people (however one can find information on such a campaign addressed to this target group in the US).
- Only in a few cases did the platforms organise face-to-face training for students, publicists, teachers, etc.; these practices were marginal and did not reach the wider population (especially youngsters).

---

[169] See Chapter 3 of this publication for information on non-legislative measures introduced by some countries to tackle the problem of disinformation with a focus on empowering users of online platforms.
[170] ERGA report, "Improving Media Literacy campaigns on disinformation",
 https://erga-online.eu/wp-content/uploads/2021/01/ERGA-SG2-Report-2020-Improving-Media-Literacy-campaigns-on-disinformation.pdf.

- The platforms' media literacy activity is centred around the widening of user-friendly options and information pages; however, such functions and sites are hard to spot and do not reach users actively.
- No interactive or audiovisual web-based campaigns were conducted by the platforms; their own informational pages, tips and guidelines are rarely propagated on the platforms.

5. Case law

The Strengthened Code of Practice on Disinformation 2022 applies (as did its predecessor) within the framework of existing laws of the EU and its member states and does not replace, supersede, or interpret the EU legal framework, including the case-law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).[171] This chapter presents relevant judgments of both European courts in which they had to rule on cases that, directly or indirectly, are connected to the issue of disinformation.[172]

5.1. European Court of Human Rights

Although there are no rulings of the European Court of Human Rights (ECtHR)[173] that directly address disinformation, there are many judgments that are helpful in shedding light on this issue.[174]

5.1.1. Scope of Article 10 ECHR

The first question to answer when dealing with disinformation is whether it is at all legal to publish false information. The ECtHR has not answered this question in full, but several of its judgments have at least clarified the contours of what is protected under Article 10 ECHR.[175]

---

[171] See the Preamble, letter (q).

[172] Further information can be found a.o. in the following publications: EDMO, "Case law for policy making: an overview of ECtHR principles when countering disinformation", January 2022, https://edmo.eu/wp-content/uploads/2022/01/Case-law-for-policy-making-Report-2022.pdf; Bayer J., Katsirea I., Batura O., Holznagel B., Hartmann S., Lubianiec K., "The fight against disinformation and the right to freedom of expression", document requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, PE 695.445, https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695445/IPOL_STU(2021)695445_EN.pdf. See also Voorhoof D. et al and McGonagle T. (Ed. Sup.), "Freedom of Expression, the Media and Journalists: Case-law of the European Court of Human Rights", IRIS Themes, European Audiovisual Observatory, Strasbourg, 2022, https://rm.coe.int/iris-themes-vol-iii-7th-edition-april-2022-final-/1680a65f50.

[173] https://echr.coe.int/.

[174] See EDMO, *op.cit.*, p.4.

[175] For more information on Article 10 ECHR, see Chapter 2 of this publication.

In one of its most-cited judgments, *Handyside* (1976),[176] the ECtHR stated that freedom of expression is applicable "not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population". As such, "every "formality", "condition", "restriction" or "penalty" imposed in this sphere" (according to Article 10(2) ECHR), "must be proportionate to the legitimate aim pursued".

In *Salov* (2005),[177] the ECtHR explained that "Article 10 of the Convention as such does not prohibit discussion or dissemination of information received evens if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression set forth in Article 10 of the Convention".

In *Lingens* (1986),[178] the ECtHR clarified the difference between facts and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof, and a requirement to prove value judgments would infringe freedom of opinion itself, which is a fundamental part of the right secured by Article 10 ECHR.

In *Financial Times* (2009),[179] a case concerning a disclosure order against four newspapers and a news agency, the ECtHR decided that such a disclosure order constituted a violation of the right of freedom of expression and information, adding that "[w]hile it may be true that the public perception of the principle of non-disclosure of sources would suffer no real damage where it was overridden in circumstances where a source was clearly acting in bad faith with a harmful purpose and disclosed intentionally falsified information, courts should be slow to assume, in the absence of compelling evidence, that these factors are present in any particular case." The Court emphasised that "the conduct of the source can never be decisive in determining whether a disclosure order ought to be made but will merely operate as one, albeit important, factor to be taken into consideration in carrying out the balancing exercise required under Article 10 § 2" ECHR".

5.1.2. Application of Article 17 ECHR

Cases of disinformation could theoretically fall under the scope of Article 17 ECHR, which prohibits the destruction of and excessive limitation on the rights and freedoms set forth

---

[176] *Case of Handyside v. The United Kingdom*, 5493/72, Judgment (Merits), Court (Plenary), 07/12/1976, https://hudoc.echr.coe.int/eng?i=001-57499.
[177] *Case of Salov V. Ukraine*, 65518/01, Judgment (Merits and Just Satisfaction), Court (Second Section), 06/09/2005, https://hudoc.echr.coe.int/eng?i=001-70096.
[178] *Case of Lingens V. Austria*, 9815/82, Judgment (Merits and Just Satisfaction), Court (Plenary), 08/07/1986, https://hudoc.echr.coe.int/eng?i=001-57523.
[179] *Case of Financial Times Ltd and Others V. The United Kingdom,* 821/03, Judgment (Merits and Just Satisfaction), Court (Fourth Section), 15/12/2009, https://hudoc.echr.coe.int/eng?i=001-96157.

in the ECHR. Article 17 ECHR applies to atates, groups, and individuals. It was included in the ECHR as it could not be ruled out that a person or a group of persons would attempt to rely on the rights enshrined in the ECHR to derive the right to conduct activities intended to destroy those very same rights.[180]

There is an important case in which the ECtHR declared it illegal to publish a blatant falsehood based on Article 17 ECHR: Holocaust denial. In *Lehideux and Isorni* (1998),[181] the ECtHR mentioned explicitly "the category of clearly established historical facts – such as the Holocaust – whose negation or revision would be removed from the protection of Article 10 by Article 17".

In *Perinçek* (2015),[182] however, the court did not go as far. In this case, which concerned the denial of the Armenian genocide, the court considered that, as the applicant's statements:

> *bore on a matter of public interest and did not amount to a call for hatred or intolerance, that the context in which they were made was not marked by heightened tensions or special historical overtones in Switzerland, that the statements cannot be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal-law response in Switzerland, that there is no international-law obligation for Switzerland to criminalise such statements, that the Swiss courts appear to have censured the applicant for voicing an opinion that diverged from the established ones in Switzerland, and that the interference took the serious form of a criminal conviction – the Court concludes that it was not necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the present case.*

Under Article 17 ECHR, the decisive point was whether the applicant's statements sought to stir up hatred or violence, and whether by making them he attempted to rely on the ECHR to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it. According to the ECtHR, this issue was "not immediately clear" and overlapped with the question of whether the interference with the applicant's right to freedom of expression was "necessary in a democratic society".

5.1.3. Types of speech

Paraphrasing George Orwell, all types of speech are free, but some are freer than others.[183] The next paragraphs show that, while political speech is highly protected and rarely

---

[180] European Court of Human Rights, "Guide on Article 17 of the European Convention on Human Rights", updated on 30 April 2022, https://www.echr.coe.int/Documents/Guide_Art_17_ENG.pdf.
[181] *Case of Lehideux and Isorni v. France*, 24662/94, Judgment (Merits and Just Satisfaction), Court (Grand Chamber), 23/09/1998, https://hudoc.echr.coe.int/eng?i=001-58245.
[182] *Case of Perinçek v. Switzerland*, 27510/08, Judgment (Merits and Just Satisfaction), Court (Grand Chamber), 15/10/2015, https://hudoc.echr.coe.int/eng?i=001-158235.
[183] "All animals are equal, but some are more equal than others", George Orwell, *Animal Farm*.

limited, commercial speech is not shielded to the same extent. This is particularly so because of the colliding rights involved.

In *Mouvement raëlien Suisse* (2012),[184] the ECtHR recalled that contracting states enjoy, under Article 10 ECHR, a certain margin of appreciation in assessing the need for and extent of interference in the freedom of expression protected by that Article.[185] However, this margin goes hand in hand with the ECtHR's supervisory function. Its task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the ECHR.[186] This margin of appreciation varies depending on a number of factors, among which the type of speech at issue is of particular importance. Therefore, a wider margin of appreciation is generally available to the contracting states a.o in the regulation of speech in commercial matters or advertising.[187]

In the case at hand, the ECtHR observed that the poster campaign in question sought mainly to draw the attention of the public to the ideas and activities of a group with a supposedly religious connotation that was conveying a message claimed to be transmitted by extraterrestrials, referring for this purpose to a website address. The applicant association's website thus referred only incidentally to social or political ideas. The Court took the view that the type of speech in question was not political because the main aim of the website in question was to draw people to the cause of the applicant association and not to address matters of political debate. Even if the applicant association's speech fell outside the commercial advertising context – there was no inducement to buy a particular product – it was nevertheless closer to commercial speech than to political speech per se, as it had a certain proselytising function.[188]

In *Bowman* (1998),[189] the ECtHR stressed the importance of opinions and information of all kinds circulating freely in the period preceding an election. Freedom of expression may, however, conflict with the right to free elections, and it may therefore be "considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the 'free expression of the opinion of the people in the choice of the

---

[184] *Case of Mouvement Raëlien Suisse v. Switzerland*, 16354/06, Judgment (Merits and Just Satisfaction), Court (Grand Chamber), 13/07/2012, https://hudoc.echr.coe.int/eng?i=001-112165.

[185] Here the ECtHR quoted its judgment in *Tammer v. Estonia*, no. 41205/98, § 60, ECHR 2001-I, https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-63764&filename=CEDH.pdf

[186] Here the ECtHR quoted its judgment in *Axel Springer AG v. Germany* [GC], no. 39954/08, § 86, 7 February 2012.

[187] Here the ECtHR quoted its judgments in *markt intern Verlag GmbH and Klaus Beermann v. Germany*, 20 November 1989, § 33, Series A no. 165,
https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-62172&filename=001-62172.pdf   and
Casado Coca v. Spain, 24 February 1994, § 50, Series A no. 285-A,
https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-62423%22%5D%7D.

[188] For further case-law on advertising see Cappello M. (ed.), "New actors and risks in online advertising", IRIS Special, European Audiovisual Observatory, Strasbourg, 2022, https://rm.coe.int/iris-special-1-2022en-online-advertising/1680a744d7

[189] *Case of Bowman v. The United Kingdom*, 24839/94, Judgment (Merits and Just Satisfaction), Court (Grand Chamber), 19/02/1998, https://hudoc.echr.coe.int/eng?i=001-58134.

legislature'". The Court further recognised that, in striking the balance between these two rights, the contracting states have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems".[190]

In *Brzeziński* (2019),[191] the ECtHR had to deal with a provision in Poland's election law which allows a court, within 24 hours, to consider whether "untrue information" has been published, and to issue an order prohibiting its further distribution. The ECtHR noted that the summary and urgent nature of the procedure in question was justified by the need to ensure that "fake news" and statements that damage the reputation of election candidates and are likely to distort the outcome of the vote are rectified as quickly as possible. However, it also recalled that the examination of election-related disputes, however desirable, should not lead to an undue diminution of the procedural safeguards afforded to the parties to the proceedings and in particular to the defendants.[192] The ECtHR also disagreed with the domestic courts' finding that Brzeziński was required in the present case to prove the truth of his statements, and it held that the language used had remained within the limits of admissible exaggeration or provocation, having regard to the ordinary tone and register of the political debate at local level.

In *Animal Defenders* (2013),[193] the ECtHR considered that a ban on paid political advertising on television was consistent with Article 10 ECHR, noting a.o. that other media remained open to the applicant and recalling that access to alternative media is key to the proportionality of a restriction on access to other potentially useful media.[194] In particular, it remained open to the applicant to participate in radio or television discussion programmes of a political nature (ie. broadcasts other than paid advertisements). It could also advertise on radio and television on a non-political matter if it set up a charitable arm to do so. Importantly, the applicant had full access for its advertisement to non-broadcasting media including the print media, the Internet (including social media) as well as to demonstrations, posters and flyers. Here the ECtHR mentioned that, "if it has not been shown that the internet, with its social media, is more influential than the broadcast media in the respondent State, those new media remain powerful communication tools which can be of significant assistance to the applicant NGO in achieving its own objectives".[195]

---

[190] Here the ECtHR quoted its judgment in *Mathieu-Mohin and Clerfayt*, pp. 23 and 24, §§ 52 and 54.

[191] *Case of Brzeziński v. Poland*, 47542/07, Judgment (Merits and Just Satisfaction), Court (First Section Committee), 25/07/2019, https://hudoc.echr.coe.int/eng?i=001-194958 (in French only). For a detailed description of the case see Voorhoof D., "European Court of Human Rights: Brzeziński V. Poland", IRIS 2019-8:1/1, https://merlin.obs.coe.int/article/8632.

[192] Here the ECtHR quoted its judgment in *Kwiecień v. Poland*, no. 51744/99, § 55, 9 January 2007.

[193] *Case of Animal Defenders International v. The United Kingdom,* 48876/08, Judgment (Merits and Just Satisfaction), Court (Grand Chamber), 22/04/2013, https://hudoc.echr.coe.int/eng?i=001-119244.

[194] Here the ECtHR quoted its judgments in *Appleby and Others v. the United Kingdom*, no. 44306/98, § 48, ECHR 2003-VI, https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-65638%22]%7D; and *Mouvement raëlien suisse v. Switzerland*, no. 16354/06, §§ 73-75,
https://hudoc.echr.coe.int/app/conversion/pdf/%3Flibrary%3DECHR%26id%3D001-112157%26filename%3D001-112157.pdf).

[195] This is a judgment made in 2013. It is doubtful, however, that the ECtHR would express the same opinion about the influence of the Internet and social media nowadays.

In *Hertel* (1998),[196] the ECtHR considered as not "necessary in a democratic society" an injunction whose effect was "partly to censor the applicant's work and substantially to reduce his ability to put forward in public views which have their place in a public debate whose existence cannot be denied. It matters little that his opinion is a minority one and may appear to be devoid of merit since, in a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas."

5.2. Court of Justice of the EU

5.2.1. The CJEU and the ECtHR

The EU is built on fundamental rights, democracy, and the rule of law. The EU Charter of fundamental rights,[197] which has the same value as the EU Treaties, enshrines the fundamental rights people enjoy in the EU. In its Preamble, the Charter reaffirms the rights as they result from the constitutional traditions and international obligations common to the Member States, the ECHR, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union (CJEU)[198] and of the European Court of Human Rights.[199] Moreover, Article 52(3) of the Charter states that:

> *3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.*[200]

In cases related to freedom of expression, the CJEU follows the jurisprudence of the ECtHR with regards to the interpretation of Article 10 ECHR. For example, in *Connolly* (2001),[201] the CJEU clarified that freedom of expression may be subject to the limitations

---

[196] *Case Of Hertel V. Switzerland*, 25181/94, Judgment (Merits and Just Satisfaction), Court (Chamber), 25/08/1998, https://hudoc.echr.coe.int/eng?i=001-59366.

[197] Charter of Fundamental Rights of the European Union, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT.

[198] https://curia.europa.eu/.

[199] Regarding the (yet uncomplete) accession of the European Union to the ECHR see: https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-completion-of-eu-accession-to-the-echr.

[200] See also Article 53 of the Charter.

[201] Judgment of the Court of 6 March 2001 in Case C-274/99 P, Bernard Connolly, appellant, APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 May 1999 in Joined Cases T-34/96 and T-163/96 *Connolly v Commission* [1999] ECR-SC I-A-87 and II-463, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities,

set out in Article 10(2) ECHR,[202] and that these limitations must be interpreted restrictively. The adjective 'necessary' "involves, for the purposes of Article 10(2) ECHR, a 'pressing social need' and, although '[t]he contracting States have a certain margin of appreciation in assessing whether such a need exists', the interference must be 'proportionate to the legitimate aim pursued' and 'the reasons adduced by the national authorities to justify it' must be 'relevant and sufficient'".[203] Furthermore, "any prior restriction requires particular consideration".[204] On top of this, "the restrictions must be prescribed by legislative provisions which are worded with sufficient precision to enable interested parties to regulate their conduct, taking, if need be, appropriate advice".[205]

---

https://curia.europa.eu/juris/document/document.jsf?text=&docid=46230&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2953381.

[202] See above.

[203] The CJEU quotes here the ECtHR judgments in *Vogt v Germany* of 26 September 1995, Series A no. 323, § 52   https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=002-10097&filename=CEDH.pdf; and *Wille v Liechtenstein* of 28 October 1999, no 28396/95, § 61 to § 63 https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=002-6665&filename=CEDH.pdf.

[204] The CJEU quotes here the ECtHR judgment in *Wingrove v United Kingdom* of 25 November 1996, Reports of Judgments and Decisions 1996-V, p. 1957, § 58 and § 60.

[205] The CJEU quotes here the ECtHR judgment in Sunday Times v United Kingdom of 26 April 1979, Series A no. 30, § 49, https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-62140%22]%7D.

6. State of play

6.1. An ever-evolving fight

In the final report of the Conference on the Future of Europe,[206] citizens proposed to the EU several measures[207] with the aim to tackle disinformation by further promoting media independence and pluralism as well as media literacy. Among them, was a proposal to set up an EU body in charge of addressing and tackling targeted disinformation and interference, increasing situational awareness and strengthening fact-checking organisations as well as independent media. The promotion of citizens' media literacy and awareness about disinformation and unintentional dissemination of fake news was also mentioned, with member states encouraged to provide adequate human and financial resources to this end. Moreover, it was suggested that online platforms should be required to issue clear statements about the algorithms they use (leaving users to decide whether they consent to be subjected to them) and the disinformation risks users are exposed to, while safeguarding the right to legal free speech and the right to privacy.

Above all, these proposals show that citizens are aware of disinformation in all its different forms, and that they require stronger intervention by the EU on this matter. Fact-checking, media literacy, and transparency of algorithms are considered instrumental in the fight against disinformation, as they allow users to make informed choices about the information they receive and share with others.

With regard to EU intervention in this field, the self-regulatory strategy of the Commission through the 2022 Code has been criticised by different stakeholders as not going far enough. It is also worth mentioning that disinformation is a moving target and, as such, the fight against it is an ever-evolving one. After the drafting of the previous chapters of this publication, a number of important developments took place at EU level. The following sections present the stakeholders' reactions to the 2022 Code and recent developments at EU level, rounding up the publication with some concluding remarks.

---

[206] The Conference on the Future of Europe aimed at opening a new space for debate with citizens to address Europe's challenges and priorities, see https://futureu.europa.eu/pages/about.

[207] See Proposal no. 27 of the Report on the final outcome of the Conference on the Future of Europe, May 2022, https://futureu.europa.eu/rails/active_storage/blobs/redirect/eyJfcmFpbHMiOnsibWVzc2FnZSI6IkJBaHBBBN1UzQVE9PSIsImV4cCI6bnVsbCwicHVyIjoiYmxvYl9pZCJ9fQ==--a8e0633a7b60d869ec3b2142f1ac7fd16743eb4b/Book_CoFE_Final_Report_EN_full.pdf.

6.1.1. Stakeholders' reactions to the 2022 Code

6.1.1.1. Self-regulation

The self-regulatory strategy pursued by the European Commission has faced its share of criticism from both the private and the public sector. By way of example:

- The Sounding Board of the Multistakeholder Forum on disinformation online called it "Europe's over-reliance on the good will of systemic players on vital issues", adding that "terms of service and community guidelines cannot be a valid substitute for laws that are inherent to maintaining democratic discourse and public safety". In their view, a co-regulatory sanctions regime "should be put in place to ensure the co-signatories of the CoP have an incentive to act".[208]
- In its resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation,[209] the European Parliament observed that self-regulation systems such as the 2018 Code of Practice on Disinformation had led to improvements, but that "relying on the goodwill of platforms is neither working nor effective" and had produced "little meaningful data on their overall impact". It particularly deplored "the continued self-regulatory nature of the Code of Practice, since self-regulation is insufficient when it comes to protecting the public from interference and manipulation attempts". It welcomed, however, the fact that the EDAP aimed to strengthen the 2018 Code and noted that together with the DSA this constituted "a step away from the self-regulation approach".

Although the 2022 Code is a self-regulatory initiative, it will complement and be aligned with the DSA once it enters into force. The 2022 Code is designed to become a Code of Conduct under Article 35 of the DSA regarding VLOPs that sign up to its commitments and measures. Signing up to all commitments relevant and pertinent to their services should be considered a possible risk mitigation measure under Article 27 of the DSA. Regarding Signatories that provide services that do not qualify as VLOPs, the 2022 Code encourages them to subscribe to commitments that are relevant to their services and to implement them through measures that are proportionate in light of the size and nature of their services and the resources available to them.[210] Given this alignment between the 2022 Code and the DSA, it has been asked to which extent a platform might abandon its voluntary commitments. Whereas Article 35 DSA provides that the codes of conduct are "voluntary", the Commission's explicit endorsement of the 2022 Code, as well as its setup

---

[208] European Federation of Journalists, "The EFJ calls for stronger measures to tackle online platforms' disinformation", 15 June 2020, https://europeanjournalists.org/blog/2020/06/15/the-efj-calls-for-stronger-measures-to-tackle-disinformation-on-online-platforms/.

[209] European Parliament resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0064_EN.html.

[210] See Preamble to the 2022 Code, letters (h) to (k).

"as a possible risk mitigation measure for complying with Article 27a DSA, could mean that it is, in practice, difficult for VLOPs to completely abandon taking any voluntary measures on disinformation".[211]

6.1.1.2.   Notable absences

One further problem that has been voiced concerns the fact that not only are there notable absences among the Big Tech players (as mentioned in Chapter 4 of this publication), but also the 2022 Code has not been signed by some new social media platforms that have become very popular in recent years based on the promise of offering an unregulated space for free speech and that have become a haven for disinformation.[212] The same is said about AdTech entities that may not be classified as VLOPs under the DSA but that may play an outsized role in the distribution of disinformation by providing tools for targeting as well as providing the conduits for creators of disinformation to monetise it.[213]

6.1.1.3.   Cherry-picking

Given that each company has chosen its own set of commitments, this has led to the suggestion that companies are picking and choosing the commitments that are most convenient for them.[214] Regarding user empowerment, L. Gordon Crovitz, co-CEO of NewsGuard,[215] complained in a press op-ed[216] that Europe had "missed a great opportunity", since the strengthened Code continued to "inoculate platforms from the known harms they cause, as each one has now been allowed to pick and choose which sections of the code it will be bound by". As a result, large platforms (except for Microsoft)[217] had "declined to follow key 'user empowerment' steps that would sharply limit the spread of disinformation". Crovitz mentioned in particular Measure 22.1 concerning indicators of trustworthiness. According to Crovitz, platforms "designed their

---

[211] Fahy R., Appelman N., Helberger N., "The EU's regulatory push against disinformation: What happens if platforms refuse to cooperate?", VerfBlog, 5 August 2022, https://verfassungsblog.de/voluntary-disinfo/.

[212] Scott M., "Fringe platforms sidestep Europe's disinformation playbook", Politico, 14 June 2022, https://www.politico.eu/article/european-commission-disinformation-code/.

[213] Lomas N., "EU unveils tougher industry Code to combat disinformation", TechCrunch, 16 June 2022, https://techcrunch.com/2022/06/16/eu-disinformation-code-reboot/.

[214] Lapowsky I., "Here's what's in Big Tech's deal to fight disinformation in Europe", protocol, 16 June 2022, https://www.protocol.com/bulletins/europe-code-of-practice.

[215] NewsGuard is a tool that provides trust ratings for more than 7,500 news and information websites, see https://www.newsguardtech.com/.

[216] Crovitz L. G., "The European Commission's disinformation fail", Politico, 13 July 2022, https://www.politico.eu/article/european-commission-disinformation-fail/. See also "NewsGuard Statement on the Failure of the EU Revised Code of Practice on Disinformation to Empower Consumers", 16 June 2022, https://www.newsguardtech.com/press/newsguard-statement-eu-code-of-practice-failure/.

[217] The end of Crovitz's op-ed notes: "Microsoft Edge uses NewsGuard technology to identify disinformation and is a sponsor of their news literacy program for schools and libraries. The company has signed on to the EU's Strengthened Code of Practice on Disinformation."

products to maximize engagement and boost advertising revenues, regardless of the trustworthiness of the information they spread", and they "know what percentage of their users are getting most of their information from unreliable sources" but sharing this information would "embarrass the platforms as well, which is perhaps why they refuse to provide users or researchers with this data".

6.1.1.4. General failure

In a particularly critical press release,[218] the Association of Commercial Television and Video on Demand Services in Europe (ACT)[219] stated that the strengthened Code of Practice on online disinformation failed to deliver protection for EU citizens, presaging that "the resulting 'commitments' will have little to no effect on stemming the increasing flow of disinformation online". ACT criticised "the lack of transparency that characterised the drafting process", which in its opinion fell short of acceptable standards both as regards "the drafting of self-regulation according to the Commission's own guidelines on self-regulation"[220] and the Commission's guidance on strengthening the Code on several critical points. Among them, the Review of the Code does not offer, in the ACT's view, "an intelligible set of common commitments that European citizens can easily understand and interpret". The ACT added: "Rather it sets out a mixed bag of 'a la carte' commitments, allowing platforms to cherry pick which commitments they wish to follow. The result is a Code that is very unclear for the average reader to understand and lends itself to selective interpretation and enforcement." Regarding democratic oversight, the ACT called on the European Parliament to scrutinise the Strengthened Code and issue a formal opinion, which should help guide regulators and policymakers as they decide whether they wish to legitimise the Strengthened Code by taking part in the foreseen Task Force. Finally, the ACT called on European institutions to move towards "comprehensive, legally binding obligations and accountability measures to be imposed on online platforms through regulation".

---

[218] ACT press release of 16 June 2022, "Review of so-called Code of Practice on online disinformation fails to deliver protection for EU citizens", https://www.acte.be/publication/review-of-so-called-code-of-practice-on-online-disinformation-fails-to-deliver-protection-for-eu-citizens/.
[219] https://www.acte.be/.
[220] Better Regulation Toolbox 2021, Principles for Better Self- and Co-Regulation, p. 130, https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf.

6.1.2. Recent developments

6.1.2.1. Digital literacy

On 11 October 2022, the Commission published Guidelines[221] for teachers and educators in primary and secondary schools, on how to address disinformation and promote digital literacy in their classrooms. The guidelines provide practical support for teachers and educators and include definitions of technical concepts, class exercises and how to encourage healthy online habits. The Guidelines were developed with the support of the Commission expert group on tackling disinformation and promoting digital literacy through education and training.[222]

These Guidelines focus on contributing to the following objectives in education and training:

- Providing insight and useful knowledge about the dynamics and manifestations of disinformation, as well as the defining characteristics of credible information.
- Fostering an understanding of how digital literacy can be achieved.
- Sharing information on how to use digital technologies critically and responsibly.
- Providing insight into how students can be assessed regarding their competences in the field of digital literacy.

The abovementioned expert group also published a report,[223] which analyses the role of education and training in tackling disinformation and presents possible solutions through policy at EU and national level.

6.1.2.2. EMFA

On 16 September 2022, the European Commission adopted the European Media Freedom Act (EMFA),[224] a proposal for a Regulation that aims at protecting media pluralism and

---

[221] European Commission, Directorate-General for Education, Youth, Sport and Culture, "Guidelines for teachers and educators on tackling disinformation and promoting digital literacy through education and training", Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2766/28248.

[222] See https://education.ec.europa.eu/news/kick-off-meeting-of-the-expert-group-on-tackling-disinformation-and-promoting-digital-literacy-through-education-and-training. See press release of the European Commission of 11 October 2022, "Commission steps up action to tackle disinformation and promote digital literacy among young people", https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6048.

[223] European Commission, Directorate-General for Education, Youth, Sport and Culture, "Final report of the Commission expert group on tackling disinformation and promoting digital literacy through education and training ", Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2766/283100.

independence in the EU. The Commission adopted at the same time a complementary Recommendation[225] to encourage internal safeguards for editorial independence.[226]

As such, the EMFA proposal does not focus on user empowerment in concrete terms, but it is indeed part of the EU's efforts to promote democratic participation, address disinformation, and support media freedom and pluralism, as set out under the EDAP. It builds a.o. on the Commission's rule of law reports,[227] the revised Audiovisual Media Services Directive, and the Digital Services Act (DSA) and Digital Markets Act (DMA), as well as the new Code of Practice on Disinformation.[228]

With regard to disinformation, the EMFA proposal argues that: "[T]he integrity of the internal market for media services may also be challenged by providers that systematically engage in disinformation, including information manipulation and interference, and abuse the internal market freedoms, including by state-controlled media service providers financed by certain third countries."[229] It further recalls that quality media services that provide trustworthy information are "an antidote against disinformation, including foreign information manipulation and interference".[230] The EMFA will protect the editorial independence of media, requiring member states to respect the effective editorial freedom of media service providers and improve the protection of journalistic sources. In addition, media service providers will have to ensure transparency of ownership by publicly disclosing such information and take measures with a view to guaranteeing the independence of individual editorial decisions. Moreover, it will protect the independence of public service media (PSM) by requiring that their funding be adequate and stable, that the governance bodies be appointed in a transparent, open and non-discriminatory manner, and that PSM providers provide a plurality of information and opinions, in an impartial manner, in accordance with their public service mission. As regards media content online, the proposed EMFA will build on the DSA, including safeguards against the unjustified removal of media content produced according to

---

[224] Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU (Text with EEA relevance), Brussels, 16 September 2022, COM(2022) 457 final, https://ec.europa.eu/newsroom/dae/redirection/document/89593.

[225] Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector, Brussels, 16 September 2022, C(2022) 6536 final, https://ec.europa.eu/newsroom/dae/redirection/document/89592.

[226] The Recommendation sets out several voluntary best practices collected from the sector and geared at promoting editorial independence and greater ownership transparency. It also provides a toolbox of voluntary measures for media companies to consider, such as the conditions for independent creation of editorial content, through empowering journalists to participate in crucial decisions for the functioning of media outlets, to strategies for ensuring long-term stability of news content production. See press release of the European Commission of 16 September 2022, "European Media Freedom Act: Commission proposes rules to protect media pluralism and independence in the EU", https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5504.

[227] See 2022 Rule of law report, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en.

[228] See Chapter 4 of this publication.

[229] EMFA proposal, Recital 4.

[230] EMFA proposal, Recital 11.

professional standards. However, this will concern cases not involving systemic risks such as disinformation.

Moreover, the EMFA, if adopted, will set up a new independent European Board for Media Services comprised of national media authorities. The Board will a.o. organise a structured dialogue between very large online platforms and the media sector to promote access to diverse media offerings and to monitor platforms' compliance with self-regulatory initiatives, such as the EU Code of Practice on Disinformation.

6.2. Concluding remarks

The user perspective is an essential one in the fight against disinformation. As individuals interact with online services without necessarily mastering them, providing them with the tools to defend themselves from harmful but technically legal disinformation appears to be one of the possible winning strategies available.

Participatory and transparency initiatives launched by social media platforms themselves are an important part of this user empowerment process. In these still early days of the application of the Strengthened Code of Practice on online disinformation, a strong and constant dialogue with stakeholders seems to be a crucial step to encourage them to adopt common indicators on the trustworthiness of the content that is shared on their platforms. This would in turn make media literacy initiatives much more efficient, as they would build up the skills to also decode these kinds of indicators.

In this context, the role of the institutions appears determining in helping build a climate of trust. Having independent and accountable media regulators involved in the monitoring of the media landscape, notably in assessing media as free, diverse, and trustworthy, could close the "trustworthiness circle" and substantially help users identify sources that can be trusted and disregard those disseminating disinformation.

A publication
of the European Audiovisual Observatory

European
Audiovisual
Observatory

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE