

The European Response to False News

26 April 2018

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False news is not a recent phenomenon but Donald Trump's election as President of the United States in 2016 gave a new impetus to the online proliferation of false stories. Social media and digital platforms disseminate unwillingly misleading or false information with unprecedented speed, which not only threatens democratic values and decision-making processes but also questions the liability of digital players.

With the May 2019 European elections fast approaching, the urgency to act is pressing on EU Institutions and Member States – including on the European Commission which published a Communication on Tackling Online Disinformation on 26 April 2018 and announced the creation of an EU-wide Code of Practice on Disinformation by July 2018. However, lawmakers must walk a thin line between combating false news and preserving freedom of speech and media pluralism without imposing censorship.

► What is false news content?

False news falls into a legal grey zone: its content is not *per se* illegal but polarises the public debate and poses a potential threat to democracy. The European Commission set up a High-Level Expert Group on False News and Disinformation, which has defined false news as “*all forms of false, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit*”. To distinguish false news from illegal content or unintentional misinformation of the public, EU authorities and stakeholders prefer to use the term of disinformation.

► A risk of regulatory fragmentation at national level is arising

Member States still have to coordinate on how to tackle disinformation. If some Member States – including Sweden, Italy, the Czech Republic and the United Kingdom – have taken non-binding initiatives to address this issue, others have adopted or are in the process of adopting legislative measures:

- *Germany triggered extensive debates among its European partners by adopting in June 2017 a network enforcement law* requiring social networks with more than 2 million members to remove false news or hate speech content within 24 hours to one week after being reported. Companies face up to €50 million in fines for non-compliance.
- *The French National Assembly tabled a bill on disinformation in March 2018 with the support of the French Government.* If adopted, the bill will impose on platforms extensive



transparency requirements during election campaigns while technical intermediaries will have to provide users with tools to flag false information.

► **The European Union adopts a soft-power approach to false news**

Bulgarian Commissioner for Digital Economy and Society Mariya Gabriel made the fight against disinformation a priority of her political agenda following the June 2017 call of the European Parliament for a legislative framework on false news:

- *The Institution organised a public consultation* on the matter at the end of 2017.
- *The European Commission set up a High-Level Expert Group (HLEG) on False News and Disinformation* gathering representatives from civil society, media organisations, academia and digital platforms to develop a holistic strategy on how to combat false content. The Group published its recommendations and guidelines on 12 March 2018.

The European Commission favours a self-regulatory approach as presented in its non-binding Communication on Tackling Online Disinformation on 26 April 2018. The Communication calls upon online platforms and advertisers to address the spread of false information and enhance the transparency of advertisement placements. The Communication identifies various principles for the fight against disinformation:

- *Creation of an EU-wide Code of Practice* ensuring transparency of sponsored content, political advertising and algorithms of platforms, providing users with tools for false content identification and enabling fact-checkers and public authorities to monitor disinformation;
- *Enhanced transparency* of the digital ecosystem for users to have clear information about news sources and funding;
- *Diversity of information* through the support of a pluralistic and diverse media and increased funding for quality journalism;
- *Credibility of information* through the creation of a European network of fact-checkers and mobilisation of new technologies to tackle false content;
- *Inclusive and long-term solutions* among which improved media literacy of users, support for Member States in securing the electoral process from disinformation and cooperation with the European External Action Service in countering internal and external disinformation threats through strategic communication.

Though supportive of industry-led initiatives, Commissioner Gabriel has already stated that she will consider introducing new regulatory measures by the end of the year if necessary.

► **What will be the impact of the European initiatives on false content?**

Many stakeholders have acknowledged the need to address disinformation and welcomed the initiatives of the European Commission. Nonetheless, concerns have been raised:

- Representatives of the advertising industry welcomed *the promotion of practices such as the 'follow the money' approach*¹ by the High-Level Expert Group on False News and Disinformation. However, the sector stressed the risk of censorship associated with stricter measures and questioned the negative impact this would have on online platforms and advertisers.

¹ The 'follow the money' approach focuses on commercial-scale infringements and cross-border enforcement.

- Stakeholders called for *further analysis of the role played by social media platforms* in light of their business model driven by the use of behavioural data for advertising purposes.
- The digital ecosystem warned against *a possible reopening of the eCommerce Directive* to expand platform liability in light of false news, which would generate legal uncertainty.
- *Interaction with the General Data Protection Regulation* still needs to be defined, especially concerning the transfer of personal data to public authorities to take down false content.

The first clues on whether the EU soft power approach to false news will be successful or not will emerge this summer when the European Commission will convene a multi-stakeholder forum on disinformation gathering representatives from the advertising industry, online platforms and civil society. The high level of stakeholder involvement on the matter suggests that this strategy is likely to be a success, however the timeline for action is very limited.
