

# **EU AGAINST FAKE NEWS – THE NEED FOR POLICY ACTION COUNTERING ONLINE DISINFORMATION**

***Asst. Prof. Hristina Runcheva Tasev, PhD***

***Asst. Prof. Milena Apostolovska-Stepanoska, PhD***

***Faculty of Law “Iustinianus Primus”, Skopje, North Macedonia***

## ***Abstract***

*The EU is facing one of the major and evolving challenges of the digital era: the exposure of citizens to large-scale disinformation or fake news. This phenomenon has a bigger impact than ever, as everyone can easily post and share news online and social media contribute towards effortless speeding up the spread of news. This may negatively influence the democratic processes and societal debates.*

*Comprehensive policy response ahead of European Parliament elections is necessary to avoid the risks of integrity of information and to the integrity of elections. The paper argues that the policy initiatives of the European Commission have a significant impact, but a coordinated, joint and sustainable action is needed for a comprehensive response to the evolving online news market.*

*The paper identifies the various actors involved in the dissemination of disinformation and it addresses the possible policy actions at the EU level. It refers to the legal basis for possible policy measures to counter disinformation operations, where the right to freedom of expression must be balanced with the right to be properly informed. The authors recommend actions based on: i) media policy based on media pluralism and diversity of sources; ii) media education and media literacy on citizens' empowerment; and iii) promotion of responsible informing behavior.*

## ***Key words***

*disinformation, fake news, media policy, media literacy, freedom of expression.*

## Introduction

Fake news is not a new phenomenon. It is considered to be as old as the humankind. In Homer's *Iliad*, the Trojans received a fake horse. Centuries later, Yellow Journalism appeared and existed long before the 'fake news' term appeared. Propaganda was more familiar and used. During the World War II, the United States used propaganda on American citizens to rally the country. And Adolf Hitler was a master of 'fake news'. According to Adolf Hitler's propaganda minister in Nazi Germany, Joseph Goebbels, if you tell a lie big enough and keep repeating it, people will eventually come to believe it.

False information is nothing new in the public sphere. New technology however, is the new channel through which it is now massively displayed and shared, and protected by the first amendment in the US, the Universal Declaration of Human Rights, and any Constitution of a liberal democracy. Besides being legally impossible to prevent false information from spreading, it is also difficult to draw the line of what would stay and what would go online, as well as the question *who* would draw it. There is a fine line between censorship due to fake news versus autocratic governance, as much as there is a fine line between free speech and fake news. Education and political participation is still the "deal breaker" regarding how things would evolve, as it was in the past.

Today, fake news is disseminated over the Internet. The new online media is relativizing truth and accuracy, as central categories of the decision-making process. That gives additional complexity to the process of relevant informing. The impact of social media on the democracy and politics in general shouldn't be underestimated. Additionally, according to a major MIT study (Vosoughi et al., 2019), false rumors have affected stock prices and the motivation for large-scale investments. Everything from natural disasters to terrorist attacks has been disrupted by the spread of false news online. Their data show that for an eleven-year period (2006-2017) of Twitter history, they observed more than 126 000 stories shared by three million people over 4.5 million times, classifying news as true or false based on fact checking organizations. False news were more likely to be disseminated "farther, faster, deeper, and more broadly than the truth in all categories" (Vosoughi et al. 2019). It is interesting to emphasize that the fake political news spread faster than any other news related to terrorism, natural disaster, science, financial information, etc. This process is due to new technologies where Facebook, Twitter or Instagram produce rapid content sharing and

large scale information “cascades” spreading misinformation or inaccurate information.

Disinformation – or fake news – consists of verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm.

The citizens are frequently exposed to a large-scale disinformation and it causes a serious challenge for the European Union. The vulnerability of the Internet has been confirmed with the scandals such as Cambridge Analytica and the US presidential elections for Donald Trump. They have pushed the accelerator in an already ongoing trend, particularly in Europe and that is “the transition from a neutrality-based model of the Internet, in which intermediaries were not held liable for their users’ conduct, towards a new model based on the responsible cooperation between public authorities and platforms, and the partial responsibility (or at least, the commitment) of large internet intermediaries for filtering out of their platforms undesired content such as hate speech, child pornography, elements of pro-terrorism guidance or proselytism; and possibly also “fake news” (Renda, 2018).

Facebook and Twitter occasionally remove fake accounts and ban trolls tied to certain political context like the connections to Russia, Venezuela, or Iran. Their messages have been considered as “significantly less influential than those during the 2016 presidential campaign”, but still they appear frequently and may affect the public (O’Sullivan, 2019).

Misleading or false information is a significant challenge for Europe. It has reached the point where the EU has decided to take initiatives to protect citizens. The policy initiatives of the European Commission undertaken during the past few years have a significant impact, but a coordinated, joint and sustainable action is needed for a comprehensive response to the evolving online news market. The paper focuses on the policy response ahead of European Parliament elections that was necessary to avoid the risks of integrity of information and to the integrity of elections.

## **The Power of (Dis)Information**

Many have predicted that the explosion of information would fuel a democratic revolution of knowledge and active citizenship. If information is power, power can now be within the grasp of everyone (HMSO, 2000). Free Internet has provided a platform for multiple sources of informing and many sides of the truth. However, the general public has not given up on

the traditional way of informing, using the mainstream media. Furthermore, the Internet was allegedly supposed to lead to the production of more news, more diverse news, and increased public participation in news processes. A major outcome, however, was homogeneity shaped as one-dimensional picture of online news.

According to a recent research in Germany, the young generation is generally informed by the network, using links of newspapers in Facebook or WhatsApp, or algorithms of YouTube decide what news can get through them. What used to be the news story today is a mix of news portal articles and blog posts, comments and tweets, excerpts from news broadcasts, and private mobile movies. An individual Infosoup on the smartphone (Spiewak, 2018).

The euphoric predictions that pluralism in informing will bring democratization to our societies turned out to be widely exaggerated. Much news on global level do not necessarily increase democracy, but instead they cause decrease of their value, victory of speed over truth, less investigative journalism etc. The multiple sources of informing created increased political awareness and objectivism, but also they contributed towards losing focus on what is important, a lot of fake news, instrumentalization of social media by state-directed counterfeiters. According to the former constitutional judge Udo Di Fabio, "With centrality, the public loses its inner order and reliability. Journalistic research is replaced by the snapped instantaneous knowledge of states of excitement, and public opinion becomes more volatile and seducible. In the end, the public will collapse into a collection of digital root tables, each with their own political truth. That would be the beginning of the end of democracy." (Spiewak, 2018).

Public today relies on the media more heavily than ever before, in particular with the wide Internet access worldwide. But as Heywood emphasizes, there are many pros and cons for this process of profound impact of new digital or computer technologies on society and politics. ICT can be a motor for decentralization and democracy, but it may debase politics and threaten freedom. New technologies massively enlarge citizens' access to information, making possible, for the first time, a truly free exchange of ideas and views. The internet makes available to private citizens specialist information that was once only available to governments. (Heywood, 2013). Access to information by online sources is almost instantaneous and exposes the public to a rich diversity of views, including radical and dissident ones. But, besides the fact that knowledge is power, there are numerous dangers of 'information anarchy'. The new media opened up spaces that were instantly

attacked by the certain views and style of expression that conflicts the liberal and democratic standards of society. In the process of struggle to attract public attention, the Internet was used as a place for the attitudes of the racist, religious fundamentalists, ethnic nationalists and numerous extremists.

## **Fake News and the Legal Basis in the EU**

Due to the fast technological development, the ongoing debate about what content of the mass media should and what should not be available to the general public is inevitable. ‘Mankind, in general, judge more by their eyes than their hands; for all can see the appearance, but few can touch the reality.’ (Machiavelli, 1532) The media are much more than a channel of communication because they affect the society and life in general, and very often they become part of them.

In this *information apocalypse* it is becoming almost impossible for ordinary people to detect manipulation made by photoshopping and video manipulation. In the need for sixth sense, we will have to develop techniques to make a difference between what is real and what is fake. Innovation is not always morally neutral. The technological development has a “dual use”. Nuclear physics have given us both energy and bombs. What *is* new is the democratization of advanced IT, the fact that anyone with a computer can now engage in the weaponization of information (Shariatmadari, 2018). Internet conspiracy theories and lies were used for both Brexit and Donald Trump in 2016. With new computer programs developed at Stanford University, there is an opportunity to make public figures pronounce words that they have never said. As an effect, will the public believe them or not? We will become unable to trust what we see or hear. Misinformation became part of our human interaction and therefore it became a target of critics about exploitation of news and misleading stories going around the internet. With the popularization of hundreds of social media outlets, the problem has become even worse.

The online media has perpetuated the fake news dissemination. There are several reasons for this. One of them is the absence of editorial control for the quality of content flowing on Internet platforms. It determined a lack of quality and originality checks without any responsibility. The almost unmanaged circulation of information on social media, mostly among peers, diluted the possibility to check the authenticity of news sources (Turk 2018). Second, disinformation in the Internet age is easily produced and spread

because it is cheaper, faster and easier than any other channel. This process developed without any improvement in the field of the media literacy. Over the past decade, the need to promote the enhancement of digital skills and the ability to discern original, authoritative content from fake or non-verified information has become a key concern of EU institutions (Renda, 2018).

Media literacy has become a center of gravity for countering “fake news”. (Bulger&Davison, 2018). According to the Center for Media Literacy, it is a 21<sup>st</sup> century approach to education. It provides a framework to access, analyze, evaluate, create and participate with messages in a variety of forms – from print to video to the Internet. Media literacy builds an understanding of the role of media in society as well as essential skills of inquiry and self-expression necessary for the citizens of a democracy. It provides techniques to use critical thinking skills to recognize differences between real and “fake” news. However, media literacy is nothing new, and neither is fake news. In fact, human beings have manipulated and fabricated information for centuries – to persuade, confuse, and entertain.

“Media literacy is as central to active and full citizenship as literacy was at the beginning of the 19th century,” considers Information Society and Media Commissioner Viviane Reding. This new form of literacy is expected to detect fake from real in this *information apocalypse*.

While critical literacy is about questioning information, authority and power, it is not sufficient in the digital age. Familiarity with digital features and design can also come in handy when evaluating information. More importantly, “critical digital literacy is not only about evaluating online content but also understanding the internet’s production and consumption processes, its democratising potential and its structural constraints” (Polizzi, 2017).

The legal basis for possible policy measures to counter disinformation operations finds a key constraint in the existence of a fundamental right to freedom of expression. This right must be balanced with the right of the public to be properly informed. There are two basic legal documents that regulate this issue in the EU, the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

Article 11(1) of the Charter of Fundamental Rights of the European Union (2000/C 364/01) recognizes the freedom of expression and information: “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.” In a similar way, Article 10 of the European Convention on Human Rights

(hereinafter, ECHR) states: “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 Justice has restated the importance of this right and its application to all information and ideas (Connolly / Commission (C-274/99)). Any limitations to the freedom of expression must be interpreted “restrictively”. Further, any restriction “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” (Sunday Times v United Kingdom judgment of 26 April 1979).

The European Court of Human Rights (hereinafter, ECtHR) has stated unequivocally that governments (and by extension the Union and the EU Review) cannot silence speech because it is “questioning the official view, being mindful that one of the main goals of freedom of expression was to protect minority views capable of contributing to a debate on questions of general interest which were not fully settled.”

In the case when the content is false, the ECtHR has stated that Article 10 of ECHR “does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful.”

There is a fine line between censorship due to fake news versus autocratic governance, as much as there is a fine line between free speech and fake news. The balance between freedom of expression and the right to be properly informed might be created by common commitment by various actors. Namely, the state actors should work on promoting responsible behavior of the media spreading information. Media pluralism is also a way of conveying diverse content to end users and it can be reached by proactive

media policy. And last, but very crucial is the improvement in media literacy, which might enable end users to recognize the non-verified content.

The European Commission has undertaken numerous actions and initiatives in order to provide “multi-dimensional” approach to the problem of disinformation (Final Report of the HLEG).

## **European Commission initiatives against fake news**

The European Union was taking steps to protect democracies and public debate ahead of the elections in May to the European Parliament as well as before the elections in the Member States throughout 2020. At the beginning of 2019, the European Union states decided to activate an “early warning” channel on the spread of false news as part of a wider campaign against disinformation.

There are few reasons for the latest EU action and its boosted budget. The first reason is the elections on the European Parliament and the vulnerability of the polls to false information because of a combination of a feeble turnout, low candidate recognition and protest voting (Peel&Khan, 2018). Another reason has been revealed by Andrus Ansip, Vice-President of the Commission, who has emphasized the Russia’s role in disinformation campaigns: “We need a united front to address the threat posed by Russia’s disinformation campaigns. We are talking about state-led disinformation activities, on an industrial scale, meant to undermine our democracy and interfere in our elections.” Additionally, some actors claim that the battle against misinformation was actually a battle against Eurosceptics. They saw European Commission’s action in this fight as defending the EU and its institutions because the EU is often a target of disinformation campaigns designed to undermine its institutions, policies, actions and values.

The data sharing and analysis on propaganda campaigns system will promote what the bloc says will be objective communications about its values and policies. The plan boosts the Commission's budget to tackle disinformation and raise awareness from €1.9 million (S\$3 million) to €5 million. This budget allows for an increase in staff and equipment in Brussels and among EU delegations to third countries. The Commission has asked Facebook, Google, Twitter and Mozilla, as well as online and advertising trade associations to "swiftly and effectively" act on pledges to fight disinformation. The tech firms and industry associations must update the commission on their efforts (The Straits Time, 2018).

This activity followed after numerous initiatives of the European Commission in the process of defining a comprehensive policy response to the threat of disinformation. The Commission supports a multi-stakeholders process, involving platforms, news media, research and civil society organizations in order to find the right solutions consistent with fundamental principles and applicable coherently across the European Union.

The European Union has outlined an Action plan (Action plan against disinformation) to step up efforts to counter disinformation in Europe and beyond focusing on four key areas. This plan serves to build EU's capabilities and strengthen cooperation between Member States by improving detection and analysis, having a coordinated and joint response to threats, collaboration with online platforms, industry and private sector, as well as raising awareness and empowering citizens.

The Action Plan complements the Communication "Tackling online disinformation: a European approach". This document puts forward self-regulatory tools to tackle the spread and impact of online disinformation in Europe, and ensures the protection of European values and democratic systems. It is based on four key principles, such as improving transparency regarding the way information is produced or sponsored, diversity and credibility of information and inclusive solutions with broad stakeholder involvement.

In this Communication, disinformation is defined as "verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm". The latter comprises "threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens' health, the environment or security". Additionally, the Communication distinguishes three phases of disinformation operations, including: (i) creation which includes recent, powerful forms of "deep fakes" which entail the use of false pictures and audio-visual content; (ii) amplification through social and other online media, which can be algorithm-based, advertising-driven and/or technology-enabled; and (iii) dissemination by users, who, as it has been already mentioned – appear to be attracted by disinformation and more likely to share it compared to non-fakes.

The Communication announces a list of initiatives, which has a great potential to become an effective tool countering online disinformation. The document refers to the following initiatives:

- A **multi-stakeholder forum on disinformation**, which will provide a framework for an efficient cooperation among relevant stakeholders

and will develop an EU-wide Code of Practice on Disinformation to be published by July 2018, with a view to producing measurable effects already by October 2018;

- **A study to examine the applicability of EU rules and possible gaps in relation to the identification of online sponsored content**, which will also include the assessment of possible identification tools for online sponsored content.
- The **creation of an independent European network of fact-checkers** to establish common working methods, exchange best practices, achieve the broadest possible coverage across the EU, and participate in joint fact-checking and related activities.
- The launch of a **secure European online platform on disinformation** to support the independent European network of fact-checkers, and enable them to act as trusted flaggers.
- The promotion, through the eIDAS Cooperation Network and in cooperation with platforms, of **voluntary online systems allowing the identification of suppliers of information** based on trustworthy electronic identification and authentication means, including verified pseudonyms, as provided under the Regulation on electronic identification.
- The promotion of research on ways to apply **new technologies such as artificial intelligence and blockchain to the issue of disinformation**, mostly through Horizon 2020 funds. A call will also be launched for the production and dissemination of quality news content on the EU affairs through data-driven news media.
- The launch of a **plethora of new initiatives** to raise awareness and promote media literacy and education.
- New initiatives involving the European External Action Service to **counter cyber attacks** involving disinformation operations.

The Communication has been developed as a follow-up to the previous extensive consultation with citizens and stakeholders. It is based on public consultation that has gathered views of wide range of stakeholders on fake news; multi-stakeholder conference and a colloquium on fake news to define the problem, its boundaries and assess the effectiveness of the solutions and future action. Also, a High Level Group has been established with a role to advise on policy initiatives countering the spread of disinformation online. In addition, a self-regulatory Code of Practice has been adopted to address the spread of online disinformation and fake news as a step forward to ensure transparency and fairness in online campaigns. The implementation of

the Code of Practice has been reinforced by individual roadmaps by online platforms and the advertising industry to implement the Code of Practice.

By April 2019, Facebook, Google and Twitter have worked on increasing their transparency ahead of the European Elections and their efforts were recognized by the European Commission (EC Statement, 23 April 2019). They have started labelling political advertisements on their platforms. In particular, Facebook and Twitter have made political advertisement libraries publicly accessible, while Google's library has entered a testing phase. This provides the public with more transparency around political ads (Mariya Gabriel, 2019). The Code of Practice created an encouraging environment for the three platforms to take further action to ensure the integrity of their services and fight against malicious bots and fake accounts. Google has launched cooperation with fact-checking organizations and networks.

The platforms have even launched initiatives to promote media literacy and provide training to journalists and campaign staff. As part of the implementation of the Code of Practice, the platforms met with national regulatory authorities, part of the European Regulators Group for Audiovisual Media Services (ERGA) on 16 April 2019 to discuss the functionality of their political ads repositories.

It is expected that the Commission will carry out a comprehensive assessment of the Code's initial 12-month period by the end of 2019. Should the results prove unsatisfactory, the Commission may propose further actions, including of a regulatory nature (EC Statement, 23 April 2019).

Although all these measures are focused on fighting disinformation properly, crucial instruments are missing. The European Commission does not provide any audit tools for checking the processes of implementation of the Code of practice, neither it provides any instruments for monitoring of the transparency of the algorithms and practices of social media and their providers. The lack of a mechanism preventing fake news dissemination might remain as a long-term persisting problem.

The EU approach should avoid the fragmentation of the internet and protect and promote freedom of expression, media freedom and pluralism. The EU and its Member States need to make much more of an effort in actively supporting independent journalism in Europe (Papagiannes, 2019). This is necessary to be guaranteed since the sustainability of the media sector is hardly addressed in the Action Plan. The transformation of the media will be a long process, highly dependent on the artificial intelligence and robotics. Technically, the Internet is one small episode in the ever-evolving

parade of technology, soon to be outmoded. Culturally and economically, however, the Internet seems to be a phenomenon nearly unprecedented in human history (Moore, 1999).

## **Conclusions: What can be done**

Fake news is a product of the weakened state of the media. The spread of disinformation requires actions by multiple stakeholders in order for positive results to be achieved. The policy initiatives launched by the European Commission to counter the phenomenon of disinformation are multifunctional, appropriate and comprehensive. Still, it is hard to define the proportionality of measures and their compatibility with the legal provisions, as outlined above. Most of the proposed measures of the European Union refer to self-regulatory mechanisms, which should be monitored by the public authorities. These actions remain unclearly defined, without precise principles of conduct and implementation.

The proposals often include the need for responsibility of online platforms, but this won't be sufficient to prevent the spread of disinformation without proactive media policy, responsible users and reinforcement of media education.

Declarative commitment stated in the documents of the European Commission, without any bounding provisions wouldn't result in the expected outcomes.

The authors recommend actions based on i) media policy based on media pluralism and diversity of sources ii) media education and media literacy citizens' empowerment; and iii) promotion of responsible informing behavior.

i) More control on disinformation provided by the platforms will not result in quality checks of news that are shared online. Platforms cannot be forced to become overnight "neutral" and objective in displaying content and keep the pluralism of news. Neutrality of news will result in algorithms showing the most majoritarian content without giving space for less popular content. Not all the relevant content has the chance to be seen. The EU media policy can develop solutions that may provide media pluralism and diversity of sources of non-majoritarian content. The Recommendation of the Council of Europe from 2018 (CM/Rec(2018)1) promotes the same principles. This measure, if well combined with enforced media literacy, may result in a critical approach that might make a clear difference between real and fake news.

ii) Media literacy programs are essential to improve the resilience of the EU citizens against the growing risk of disinformation. Renee Hobbs, who is a Leading media literacy theorist, in a body of work spanning over three decades, describes media literacy as a fluid practice that is both individual and communal and not simply an inoculation against negative messaging but empowerment to engage with media as citizens (Hobbs, 1998; Hobbs, 2010; Hobbs, 2017). This view of media literacy as a multi-faceted, flexible, and empowering response is reflected in media literacy programs throughout the US across five thematic areas: youth participation, teacher training, parental support, policy initiatives, and evidence bases (Bulger&Davison, 2018).

Media literacy has to become an inevitable part of our children's education. The education system needs to be based on training teachers and providing resources for stimulating students' ability to question the information they receive. The media literacy can be included in the curriculum of different subjects, such as native language, history, citizenship education or computer science lessons. They can affect students to develop critical attitude towards online and offline information, which is crucial for clear understanding of the digital environment. Media literacy or media education is already implemented in many countries such as Germany, Austria, the UK, the USA and their success in education is based in cross-discipline nature of media literacy which is provided by different school subjects coverage. The education system has to be supported by the role of the parents, who have a hard task to keep the balance between the protection of their children from online risks and allowing them to use online opportunities. Parents also need media education, so that they can reflect their knowledge and become better educators for their children. The process of learning can be provided both for parents and children, so that they can reach the common goal.

iii) The responsible informing behavior can rely on a few actions. One is the power of the journalists and their sources. Namely, trusted journalists who use credible information sources, and their content are based on investigative journalism can prevent the spread of disinformation. This must be done in cooperation with online platforms without any limitation on the right of freedom of expression, but just transparency obligations. These obligations would include the provision to public authorities of information on the identity of advertisers, in particular, of those that sponsored ads containing politically relevant or sensitive content, in line with what proposed in countries like France (Renda, 2018). In addition, any provided enforcement measures should be directed towards the sponsoring entities, with no

involvement of Internet intermediaries. High-tech companies are expected to work on technological fixes by producing algorithms that can detect fake news. This is very problematic due to the fact that it is hard to define what is misinformation, how to grade reliability and scrutinize content.

The machines today are not ready to distinguish the content between satire and deliberately or inadvertently fabricated. Additionally, technological fixes and monitoring beg questions about transparency and privacy. And it is not just social media networks like Facebook and Twitter that spread fake news. Recently, the Blue Whale suicide game was leading young people towards death and the fact-checking platforms failed to find evidence for this damage. The high-tech companies may work on programs for real-time fact-checking where a social network like Twitter or Facebook, or a search engine like Google incorporate in their news feeds and search queries the possibility of launching a real-time fact-checking. Another tool is the use of “cybernudges” to induce end users to reflect before sharing. Setting limitations or warnings by the social networks when it comes to sharing a content coming from an unreliable source can provide this process. This action may be considered as partially censoring, but leads towards greater responsibility of the citizens.

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