

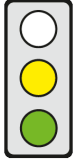
TACKLING COVID-19 DISINFORMATION

cepPolicyBrief No. 2020-13

KEY ISSUES

Objective of the Communication: The Commission presents several measures and tools to fight COVID-19 disinformation on online platforms without intending to infringe upon fundamental rights.

Affected parties: Citizens, online platforms, advertisers, fact-checkers.



Pro: (1) A joint European approach on tackling disinformation is appropriate in view of the cross-border nature of online disinformation.

(2) The Communication creates no requirement that curtails freedom of expression nor obligations for companies that interfere with their freedom to conduct a business.

Contra: (1) The proposed monthly reports should also provide information on content wrongfully removed, including details on how swiftly redress took place.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Joint Communication from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission **JOIN(2020) 8** of 10 June 2020: **Tackling COVID-19 disinformation – Getting the facts right**

Brief Summary

► Context and challenges of the COVID-19 “infodemic”

- The COVID-19 pandemic has been accompanied by an “unprecedented infodemic”, i.e. an excessive amount of information about the disease, often false or inaccurate, quickly spread over social media (p. 1).
- Gaps in knowledge of the virus are an ideal breeding ground for false or misleading narratives (p. 1).
- False and misleading content can be categorised as (p. 3):
 - illegal as defined by law, which requires direct action by law enforcement agencies, or
 - harmful, when, albeit not illegal, it can endanger lives or undermine the efforts of public authorities to contain the pandemic.
- Furthermore, illegal or harmful content can be defined as (p. 3-4):
 - misinformation, when there is no intention to spread false information, or
 - disinformation, when there is the intention to deceive in order to cause public harm or make economic gain.
- Disinformation and misinformation relating to COVID-19 have taken many forms, inter alia (p. 3):
 - dangerous hoaxes and misleading health claims, such as “it doesn’t help to wash your hands”,
 - conspiracy theories that might endanger human health, and lead to social unrest and violence, such as myths about 5G installations spreading COVID-19,
 - illegal hate speech, e.g. about certain groups allegedly spreading COVID-19, and
 - consumer fraud, such as selling miracle products with unsupported health claims.
- These forms of disinformation and misinformation can, inter alia, be used to carry out
 - acts of cybercrime, such as spreading malware using COVID-19 related links, and
 - targeted disinformation campaigns, aimed at exacerbating social polarisation in the EU and its neighbourhood, performed by foreign actors and third Countries, “in particular Russia and China”.

► Need for a calibrated response to the individual challenges (p. 4)

- A calibrated response is needed from all parts of society to address the challenges of disinformation and misinformation, depending on the degree of harm, the intent and form of dissemination, and the actors involved.
- All remedies should be implemented in full respect of fundamental rights.
- The High Representative and the Commission propose a set of remedies which entail short-term actions
 - to empower citizens and
 - to cooperate better within the EU, i.e. between the EU institutions, Member States, and other relevant stakeholders, and with partners such as the WHO.

► Strengthen strategic communication and cooperation within and outside the EU

- Throughout the COVID-19 pandemic, access to accurate information about COVID-19 has helped to protect citizens’ health (p. 5).

- The EU has contributed in providing accurate information about COVID-19 in the Member States, the neighbourhood and beyond.
 - A [webpage](#), launched by the Commission, addresses false claims related to COVID-19.
 - The [EU Rapid Alert System](#), established by the Action Plan against Disinformation (hereinafter “Action Plan”) [see [cepPolicyBrief No. 2019-14](#)] enables EU institutions and Member States to share insights on COVID-19 disinformation.
 - Europol is monitoring the impact of the COVID-19 pandemic on cybercrime and has released a [report](#).
- The Commission and the High Representative will:
 - create a special section in the Rapid Alert System to better exchange COVID-19 related information (p. 5 f),
 - play a more active role in national debates with fact-based information (p. 6),
 - further invest in their strategic communication capabilities, (p. 5) and
 - intensify the exchange of best practices in fighting disinformation and targeted disinformation campaigns by foreign actors globally (p. 7).
- ▶ **Increase the transparency of online platforms**
 - Cooperation with online platforms is a key element in developing both a comprehensive assessment of the challenge and an effective response to the “infodemic”.
 - Online platforms, notably the signatories of the self-regulatory Code of Practice against Disinformation (hereinafter “Code”), which is part of the Commission’s Action Plan, have adjusted their policies to address the COVID-19 disinformation threat (p. 8).
 - They have notably
 - promoted authoritative content about COVID-19 from the WHO, national health authorities and media outlets,
 - demoted content that is fact-checked as false or misleading,
 - limited ads that promote false products and services, and
 - removed content that could harm citizens’ health or public safety, according to their “community standards”.
 - Online platforms need to ensure full implementation of their commitments under the Code.
 - The Commission intends to establish a monitoring and reporting programme (hereinafter “programme”) under the Code. In monthly reports, online platforms are called to provide data on (p. 9)
 - policies taken to limit advertising placements containing COVID-19 disinformation (including advertisements hosted on third party websites), where possible broken down by Member State,
 - action taken to promote information from national and international health agencies, national and EU authorities, as well as professional media,
 - the implementation of their policies to inform users when they interact with disinformation, and
 - all instances of social media manipulation and malign influence operations.

The programme should include online platforms that are not signatories to the Code, e.g. WhatsApp (p. 8).

 - The Commission (p. 10)
 - calls on online platforms to broaden and intensify their cooperation with fact-checkers, and to offer actively access to their fact-checking programmes to organisations in all EU Member States, and
 - will support fact-checking and research activities, e.g. on COVID-19 misinformation in social networks and will consider making available to the fact checking community some of the tools it has developed to detect misleading narratives and unreliable online sources.
- ▶ **Ensure freedom of expression and a pluralistic debate**
 - Measures designed to tackle the “infodemic” can be used as a pretext to undermine fundamental rights and freedoms, such as freedom of expression, in and outside the EU (p. 10).
 - Many Member States already have legislation, including criminal law provisions, related to disinformation. Laws which define these crimes in too broad terms or with disproportionate penalties attached can constrain sources’ willingness to speak to journalists, and lead to self-censorship (p. 11).
 - Moreover, the crisis has amplified the already difficult economic situation of journalism due to a drastic fall in advertising income, despite increased audience (p. 11).
 - In order to support independent media and journalists in the EU and beyond, the Commission will:
 - continue co-funding projects in the area of journalism, media freedom, and to ensure a pluralistic debate,
 - propose action to strengthen media freedom and pluralism as part of the European Democracy Action Plan,
 - present a Media and Audiovisual Action Plan to further support the digital transformation and competitiveness of these sectors, and raise awareness and critical thinking among different groups, notably young people.
- ▶ **Protect public health and consumers’ rights (p. 14 f)**
 - Manipulation, deceptive marketing techniques and scams are illegal whenever they infringe consumer protection law and, therefore, require a response by the competent authorities, whether or not they contain disinformation.
 - The Commission invited major platform providers to cooperate with consumer authorities and take proactive measures to counter scams. Such cooperation will have to be pursued under the future Digital Services Act.
 - Platforms should regularly report on the effectiveness of their measures and on new trends.

Policy Context

The Communication builds on the Action Plan against Disinformation [cf. [cepPolicyBrief No. 2019-14](#)] and will feed into the European Democracy Action Plan and the Digital Services Act [cf. [cepStudy Liability for Illegal Content Online](#)].

ASSESSMENT

Economic impact assessment

The “infodemic” surrounding the COVID-19 pandemic is especially problematic due to the numerous forms that disinformation and misinformation have taken, and to how quickly they can spread, notably over social media (see [OECD PolicyBrief](#)). As information are the basis for rational decision making, a huge volume of false and misleading information circulating about COVID-19 can lead internet users to make sub-optimal – or even wrong – decisions. Such wrong decisions can threaten individual and public health, national security, and even the democratic process. Therefore, it is appropriate that the Commission asks for a calibrated response. Nevertheless, as the Commission rightfully notices, remedies to the “infodemic” need to be carefully designed, so to fully respect fundamental rights, such as the freedom of expression and the freedom to conduct a business.

The Commission addresses the trade-off between limiting the spread of disinformation and misinformation on the one hand, and interfering with fundamental rights on the other, by taking a hands-off approach which safeguards the latter: As the remedies introduced are non-binding in nature, the relevant stakeholders can autonomously decide whether to implement them or not. In this way, **the Communication creates no requirement that curtails freedom of expression nor obligations for companies that interfere with their freedom to conduct a business.**

The Commission rightly recognises that different local agencies, fact-checkers, journalists, national governments, and online platforms are best placed to counteract the “infodemic” in their specific field. Centralising the huge volume of expertise needed to counteract the numerous forms of disinformation and misinformation would not be feasible.

As disinformation and misinformation are spread in a similar fashion all over the EU, it is efficient that the High Representative and the Commission promote cooperation between authoritative actors within the EU and globally and support the Member States in counteracting the “infodemic”. Thus, the creation of a COVID-19 specific section in the Rapid Alert System that promotes the sharing of information between national authorities is appropriate. Nevertheless, the effectiveness of the Rapid Alert System depends on how Member States react to an alert.

The Commission’s intention to play a more active role in national debates can help debunk false or misleading narratives that some Member States might have no incentive to tackle, such as “the government is doing the best it can, given that EU solidarity disappeared in the middle of the pandemic”.

The Code establishes common rules across the EU and thus reduces the risk of legal fragmentation due to diverging national rules for online platforms. As platforms like WhatsApp and Telegram that have not signed the Code are major distributors of disinformation and misinformation the Commission’s request to them of adhering to the Code is appropriate.

The Commission’s request to publish monthly reports on policies and measures introduced by online platforms to counteract the “infodemic” can burden online platforms. However, this is not an obligation, as they freely decide whether to be part of the Code. These reports would allow users, national governments, the media, and fact-checkers alike to assess how disinformation is spread over the internet and how users might interact with such information, thus increasing the volume and quality of information based on which internet users make decisions. This will become even more apparent if such data are broken down by Member State, albeit increasing the costs of compliance for the online platforms.

To comprehensively assess the measures introduced by online platforms to counteract the “infodemic”, **the proposed monthly reports should also provide information on the instances in which content has been wrongfully demoted or removed, including details on how swiftly redress took place**, provided that it did. Although drafting comprehensive reports can be costly, online platforms have an interest in providing transparent information about the measures they have introduced to tackle the “infodemic”, as such reports can convince the Commission that legislative measures against disinformation and misinformation spread over online platforms, e.g. in the Digital Services Act, are not warranted.

By supporting fact-checking and research activities, inter alia through making available tools developed by the Commission, the Commission enables fact-checkers to deploy their resources more efficiently. This is especially important as, due to the huge amount of information circulating online, fact-checkers can only process a fraction of the content that needs to be screened.

By co-funding independent projects in the area of journalism, e.g. [facilitating access to loans](#) for creative businesses, the Commission is limiting the spread of false and misleading information, as independent media are important to keep national governments, businesses, and other media accountable, thus counteracting the spread of false and misleading information.

Rising awareness and critical thinking about the phenomenon of false and misleading information is very important, as it is up to the end user of information to critically decide what to believe in.

The Commission's request for online platforms to cooperate with consumer authorities and take proactive measures to counter scams may help to protect consumers from harmful practices that can damage their health. As not all platform providers have the technical capabilities to monitor products sold or advertised on their platform, it is appropriate that such cooperation is voluntary.

Legal assessment

Legislative Competence of the EU

Unproblematic. The actions announced in the Communication are not legislative and do not pose other problems of competence either.

Subsidiarity

Unproblematic. Notably, **a joint European approach on tackling disinformation is appropriate in view of the cross-border nature of online disinformation**. Also, the concerns of the entire EU are more likely to be sufficiently heard by large tech companies – even if stated in non-binding form – than the concerns of individual Member States.

Proportionality with respect to Member States

Unproblematic because no legal obligations for Member States are created.

Compatibility with EU Law in other Respects

The Commission's call on platforms to submit reports on their policies and actions to address COVID-19 related disinformation and to broaden and intensify their cooperation with fact-checkers falls within the scope of the freedom to conduct a business [Art. 16 Charter of Fundamental Rights of the European Union (CFR)]. However, no obligation is created. Neither is there any other sufficiently direct and significant effect on the freedom to conduct a business. Therefore, the freedom to conduct a business is not interfered with. Likewise, the Communication does not interfere with the freedom of expression and information (Art. 11 CFR). For the Communication does not call on platforms to moderate content nor creates any other sufficiently direct and significant effect on the freedom of expression and information. In comparison with the Action Plan, it is to be welcomed that the Communication refrains from threatening to turn the Code into law [cf. [cepPolicyBrief No. 2019-14](#)].

Summary and assessment

The Communication creates no requirement that curtails freedom of expression nor obligations for companies that interfere with their freedom to conduct a business. A joint European approach on tackling disinformation is appropriate in view of the cross-border nature of online disinformation. The proposed monthly reports should also provide information on content wrongfully removed, including details on how swiftly redress took place.