



European Commission Consultation on the Guidance on tackling disinformation

ARTICLE 19's submission

ARTICLE 19 is an international human rights organisation defending freedom of expression globally. We welcome the opportunity to submit feedback on [the Guidance on tackling disinformation](#). As the Commission plans to update the current Code of Practice on Disinformation (the Code) and turn it into a “more robust instrument” with “an appropriate oversight mechanism” for its implementation, we believe that this must be done consistently with international freedom of expression standards. More than ever, in the context of the COVID-19 pandemic, it is crucial to maintain an enabling environment for freedom of expression and information, which includes promoting, protecting and supporting diverse media and sources of information, and ensuring that any restrictions fully comply with international human rights standards.

ARTICLE 19 has had the benefit of reading the recommendations made by Access Now, Civil Liberties Union for Europe and EDRi and agree with them. In addition, we urge the Commission to consider the following issues when furthering its work in this area:

1. The Code must have the protection of freedom of expression as a core objective

Overall, ARTICLE 19 considers that the Code has failed to balance its objectives with the protection of the fundamental right to freedom of expression. First, the definition of disinformation in the Code is overly broad: it extends beyond verifiably false information to misleading information, i.e. information - whether true or not - that gives the wrong impression or may cause someone to believe something that is not true. Public harm is also defined broadly as mere threats to democratic or political processes and includes certain public goods that are not listed exhaustively. It is only required that the information ‘may’ cause public harm, i.e. the risk of harm occurring could be very low. More generally, the Code of Practice appears to have been implemented in such a way that it is not limited to *disinformation* as defined in the Code but is more broadly applicable to *misinformation*, a broader category that would include false information disseminated without intent to cause ‘public harm’. A lot of COVID-19 information would fall within that category.

ARTICLE 19 understands the concerns related to the dissemination of misinformation. However, we are skeptical of attempts to eliminate all misinformation; just as the existence of public broadcasters and reputable newspapers did not prevent a small minority from believing in conspiracy theories, access to quality journalism online will not eradicate fringe beliefs and this should not be the end goal of any regulatory framework. Instead, we believe that the aim should be to develop more guidance for States

and dominant companies on how to promote high quality information and digital media literacy as well as diverse, independent media sources to ensure that a plurality of political or scientific views is heard. This should involve support for independent, diverse, and adequate public service media outlets, as well as media literacy education.

2. Business model, monetisation of disinformation and data protection

ARTICLE 19 appreciates that the Commission intends to develop guidance “on reducing monetisation of disinformation linked to sponsored content.” However, the Guidance should not be limited to advertisement on online platforms and third-party websites and ads on websites that are ‘purveyors of disinformation’. Instead, it should seek to address the business model of platforms that relies on the collection of troves of data about users and underpins recommender systems. For this reason, explicit reference should be made in the Code to the need for compliance with EU data protection instruments such as the GDPR. We also understand that the Commission will link the Guidance and the Code to the regulation outlined in the Digital Services Act. However, there is currently no provision in the DSA that seeks to address the business model of platforms based on behavioural advertising. This must be urgently remedied.

We also believe that the Commission should explore *ex ante* measures to address problems in content moderation and curation and mandate the unbundling of hosting from content curation (for more information, see [ARTICLE 19](#)’s detailed proposal). In our view, this would foster real exposure diversity and better choices for users.

3. Promoting visibility of authoritative information in public interest and fact checkers

As noted above, ARTICLE 19 supports the objectives of promoting trustworthy and reliable information. However, we note the intrinsic tension between promoting authoritative sources and promoting a plurality of viewpoints. The development of any ‘trustworthiness indicators’ should ensure that users have access to a diverse pool of information rather than being limited to existing media incumbents. There is a risk that compliance with ‘trustworthiness indicators’ may lead to independent journalists and communicators, small local newspapers or minority voices not being heard or being made less visible. In some countries, the promotion of ‘authoritative’ information will almost inevitably be government sources in the absence of a diverse media. Any measures in this area should also not be made mandatory, turn public authorities into arbiters of truth or reliable information, or be subject to penalties.

Similarly, any efforts to amplify reliable information should also not become a substitute for removal of ‘borderline’ content, i.e. content that is lawful and does not fall foul of company community standards but is controversial. We are concerned that the development and use of KPIs, e.g. on labelling, suspension, amplification, demotion or demonetisation, could also incentivise the over-removal of content. Content which is flagged or labelled as potential misinformation or does not respond to ‘trustworthiness or signals could simply be drowned out. This would effectively suppress debate on controversial issues. Instead, users should be given contextualised information.

We also question plans to step up reliance on fact-checking services. The Commission should recognise the inherent limitations of fact-checking, such as the inability to verify the factual basis of all content, the disputed effectiveness of fact-checking and the value-driven nature of some information that makes it impossible to objectively verify their underlying factual assertions.

4. Transparency requirements

As a member of the European Partnership for Democracy, ARTICLE 19 has [submitted detailed comments](#) on the EU proposal for an initiative on greater transparency in sponsored political content. In particular, we strongly support the use and improvement of online ad libraries. Given the difficulties of identifying what amounts to political ads, we further believe that ad libraries should be available across the board.

More generally, ARTICLE 19 supports greater transparency in the way in which companies implement the Code and enable access to data for researchers, NGOs and others with a view to holding companies to account for their commitments in the Code. The assessment of compliance with the Code should not just be based on quantitative data but also qualitative information. In particular, far more information is needed on the way in which algorithms are used to amplify or drown out certain types of information. Whilst we would welcome a more harmonised presentation of transparency reports to enable a degree of comparison between the response of different companies, this should not be at the expense of diversity of platforms or their terms of service.