

ARTICLE 19

Spain: Ministerial Order Establishing the National Procedure Against Disinformation

September 2021

Legal analysis

Executive summary

In this analysis, ARTICLE 19 reviews the Spanish Ministerial Order Establishing the National Procedure Against Disinformation (the Ministerial Order) for its compliance with international freedom of expression standards. The Order was approved by the National Security Council of Spain and published on 30 October 2020 by the Minister of the Presidency.

The Ministerial Order provides for the implementation of the 2018 EU Action Plan on Disinformation in Spain. It lays out the actions and processes that Spanish executive authorities should undertake to prevent, detect, monitor, respond, analyse and evaluate disinformation. It also reviews the mandate of the Spanish Permanent Commission against disinformation towards the creation of a National Strategy to fight disinformation.

ARTICLE 19 finds positive that the Ministerial Order does not establish a procedure for restricting disinformation; instead a significant weight is given to public communicational strategies to counter disinformation, as contemplated in the EU Action Plan. We also welcome that it sets the Permanent Commission against Disinformation that will lead various measures to conduct further research on the issues related to disinformation and ensure the coordination and collaboration among the executive authorities involved in the Ministerial Order implementation, civil society and the private sector.

At the same time, ARTICLE 19 has the following concerns about the Ministerial Order from the perspective of international standards on the right to freedom of expression:

- By stressing on the importance of "verified", "truthful", "complete" and "timely" information, the Ministerial Order disregards that false, untrue or misleading content is not in itself a prohibition under international standards; such content can be restricted only if it endangers one of protected aims set in international standards. It is not clear how the Spanish authorities will deal with disinformation that does not pose such threat.
- Disinformation is seen as a national security concern and the Spanish national security agencies will be in charge of the design, oversight and enforcement of the national procedure. The National Security Council will approve and oversee the upcoming National Strategy against Disinformation. Although they are tasked to do so together with the Ministry of the Presidency and other Ministries' communication departments, national security agencies seem to have the final decision about how to conduct the implementation of the action procedure, what authorities should be involved and the tasks assigned to them.
- Technological tools and techniques are considered for the implementation of the national procedure and for exchanging information with the EU task force and Rapid Alert System. It is unclear whether the Spanish government is evaluating the necessity and impact of these tools at different levels of action and preventing the creation of a surveillance monitoring system of online content and users.
- While the Ministerial Order recognises the important role of civil society, the media, independent experts and other relevant stakeholders, their participation seems to depend on executive authorities' discretion. It fails to provide the criteria and processes under which their support may

be selected and requested. Nor does it indicate whether the participation of these stakeholders is part of a comprehensive strategy to fight disinformation.

The Spanish Government should conduct a comprehensive review of the rationale, legal basis and aims of the Ministerial Order and the national action procedure against disinformation to bring them in line with freedom of expression standards under international and regional human rights law. The forthcoming National Strategy against Disinformation is an opportunity of the Spanish government to adopt a human rights compliant approach to disinformation at national and regional level.

Key recommendations

- The Ministerial Order and the national procedure should not rely on national security grounds to address a wide range of forms and manifestations of disinformation. The participation of national security authorities should be limited to those instances where the impacts of disinformation may cause a serious harm to a specific national security interest and when is properly justified under domestic law. A diversified participation of other relevant authorities should be considered depending on the legitimate aim sought under international human rights law.
- A key aim of the national procedure against disinformation should be to provide clear guidance on the role of the government and other stakeholders in addressing the different issues caused by disinformation, assign competences for public bodies and institutions on how to jointly implement disinformation strategies at different levels.
- The Spanish Government should consider including a tiered approach to the action procedure based on the aim sought, the applicable regulatory framework for the protection of each aim and the jurisdiction of each set of actions. This tiered response should also seek to justify the different levels of intervention making a clear distinction between domestic and regional actions.
- Monitoring measures and responses on the basis of disinformation should be limited to instances where content presents a significant threat to a protected aim.
- The Spanish Government should ensure that the implementation of the action procedure against disinformation, including the use of the technological tools and the treatment of the information resulting from its use, is subject to independent oversight and available for public scrutiny.
- The Spanish Government should elaborate more on the actions and avenues for collaboration of civil society, the media, relevant experts, independent fact-checkers and other private actors whose participation and engagement are crucial to any state-based response to disinformation.
- The Permanent Commission against Disinformation should ensure that the forthcoming National Strategy against Disinformation is freedom of expression compliant, designed and developed in close participation and engagement with civil society, journalists and media associations, independent fact-checkers organisations, companies and other relevant private stakeholders able to provide expertise, evidence and contribute towards a multi-stakeholder approach to disinformation.
- The National Strategy against Disinformation should integrate an active role of electoral, health and human rights national institutions in the design, development and implementation of measures to combat disinformation.
- The process of developing the framework of the National Strategy should be inclusive and transparent. It should establish an Advisory Committee responsible for overseeing the implementation of the National Strategy. This Committee should include representation of civil society, the media, independent journalists, companies, academics and freedom of expression experts.
- When developing the objectives and actions of the National Strategy, stakeholders should ensure that veracity is not considered an aim in itself but rather a complementary means to counter

certain types of disinformation that put state sovereignty, democratic processes, rule of law, respect for human rights, and people's lives at risk.

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Introduction

In recent years, the Spanish Government adopted several measures to tackle the spread of disinformation.

First, in March 2019, it adopted the National Protocol against disinformation that was not made public.¹ It was intended to provide an initial response on how to implement the 2018 the EU Action Plan on Disinformation of the European Commission's European External Action Service (the EU Action Plan)² in Spain. The EU Action Plan envisions a set of actions to build up capabilities and strengthen cooperation between Member States and EU institutions to proactively address potential threats to elections and to strengthen the resilience of the Union's democratic system, in relation to disinformation. The coordinated actions should improve detection, analysis and exposure of disinformation, build stronger cooperation and joint responses to disinformation, mobilise the private sector to tackle disinformation, and raise awareness and improve societal resilience.³

Second, in October 2020, it adopted the Ministerial Order PCM/1030/2020 Establishing the National Action Procedure Against Disinformation (the Ministerial Order) which provides an updated version of the Protocol. The Ministerial Order was enacted by the Ministry of the Presidency on 20 October 2020 and approved by the National Security Council.⁴ In order to comply with the 2018 EU Action Plan on Disinformation, the Ministerial Order lays out the actions and processes that various Spanish executive authorities should undertake to prevent, detect, monitor, respond, analyse and evaluate disinformation. The Order also creates the National System to prevent, detect, alert, monitor and respond to disinformation; and reviews the mandate of the Spanish Permanent Commission against Disinformation with a view to create a national strategy to fight disinformation.

ARTICLE 19 recognises that disinformation in various shapes and forms exists and is available in abundance, especially on social media; it can cause serious harm to individuals, society, economy, public health and democracy. However, the policy responses to disinformation should be based on international freedom of expression standards on the right to freedom of expression, including the Ministerial Order. The analysis therefore reviews the Order against these standards.

ARTICLE 19 believes that all efforts to respond to disinformation should not only be fully grounded in respect for human rights and should engage all stakeholders, in particular civil society, the media and social media companies. We hope that this analysis will inform such process and help the Spanish Government ensure that its legal framework on disinformation fully respects international freedom of expression standards.

¹ See e.g. El País, [The Government will monitor the networks and give a political response to the disinformation campaigns](#) (in Spanish), 5 November 2020.

² [Joint communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and The Committee of the Regions, Action Plan against Disinformation](#), 2 December 2018.

³ European Commission, [Action Plan Against Disinformation, Report on Progress](#), June 2019.

⁴ BOE, [Order PCM/1030/2020, of 30 October Establishing the National Procedure Against Disinformation](#) approved by the National Security Council, Ministry of Presidency, Relationship with the Courts and Democratic Memory, 5 November 2020. This analysis is based on the Spanish version of the Ministerial Order.

Applicable international standards

The protection of the right to freedom of expression under international law

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR),⁵ and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁶

The scope of the right to freedom of expression is broad. Article 19 of the ICCPR requires States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice; this also includes the Internet and digital media.⁷ The UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States' compliance with the ICCPR, has affirmed that the scope of the right extends to the expression of opinions and ideas that others may find deeply offensive,⁸ and this may encompass discriminatory expression.

Limitations on the right to freedom of expression

Under international human rights law, States may exceptionally limit freedom of expression under Article 19 para 3 of the ICCPR. The restrictions may be legitimate only under specific circumstances (so called "three-part test"), requiring that limitations must:

- **Be provided by for law:** any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly; assurance of legality on limitations to Article 19 should comprise oversight of independent and impartial judicial authorities;
- **Pursue a legitimate aim:** listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (ordre public), or of public health or morals;
- **Be necessary and proportionate:** requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁹

Thus, any limitation imposed by the State on the right to freedom of expression must conform to the strict requirements of this three-part test. Further, Article 20(2) ICCPR provides that any advocacy of

⁵ Through its adoption in a resolution of the UN General Assembly, the UDHR is not strictly binding on States. However, many of its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

⁶ International Covenant on Civil and Political Rights, 16 December 1966, [UN Doc. A/6316](#), Spain ratified the ICCPR on 27 April 1977.

⁷ Human Rights Committee, [General Comment No. 34](#) on Article 19: on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011. See also Human Rights Council, Resolution: [The promotion, protection and enjoyment of human rights on the Internet](#), A/HRC/20/L.13, 29 June 2012.

⁸ *Ibid.*, para 11.

⁹ *Ibid.*, para 22.

national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law.

The HR Committee has also made clear that limitations on electronic forms of communication or expression disseminated over the Internet must be justified according to the same criteria as non-electronic or “offline” communications, as set out above, while taking into account the differences between these media.¹⁰

Restricting ‘disinformation’

The term ‘disinformation’ and similar concepts (e.g. ‘false information’ or ‘misinformation’) are not defined under international human rights law; while protecting persons from ‘disinformation’ is not, as such, a legitimate aim for justifying restrictions on the right to freedom of expression under Article 19 para 3 of the ICCPR or Article 10 of the European Convention on Human Rights.

The four international mandates on freedom of expression stated in their 2017 Joint Declaration that:

General prohibitions on the dissemination of information based on vague and ambiguous ideas should be abolished, including “false news” or “non-objective information” insofar as they are incompatible with international standards for restrictions on freedom of expression.¹¹

They also cautioned that such prohibitions are increasingly being used by persons in positions of power to denigrate and intimidate the media and independent voices, increasing the risk of such persons to threats of violence, and undermining public trust in the media.¹²

In her report to the Human Rights Council, the UN Special Rapporteur on freedom of expression, Irene Khan (the Special Rapporteur), noted that many laws or regulations restricting ‘disinformation’ fail to meet the three-part test of legitimacy, legality, and necessity and proportionality and that:

They often do not define with sufficient precision what constitutes false information or what harm they seek to prevent, nor do they require the establishment of a concrete and strong nexus between the act committed and the harm caused.¹³

The Special Rapporteur also highlighted that “the human right to impart information is not limited to ‘correct statements’, [and] that the right also protects information and ideas that may shock, offend or disturb, irrespective of the truth or falsehood of the content.¹⁴ She recognised that the impossibility of drawing clear lines between fact and falsehood and between the absence and presence of intent to

¹⁰ General Comment No. 34, *op cit.*, paras 12, 39 and 43.

¹¹ [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), adopted by the UN Special Rapporteur on Freedom of Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 March 2017.

¹² *Ibid.*

¹³ UN Special Rapporteur on Freedom of Expression, [Disinformation and freedom of opinion and expression](#), A/HRC/47/25, 13 April 2021, para 54.

¹⁴ *Ibid.*, para 37.

cause harm is part of the problem on attempting to adopt a strict legal definition of ‘disinformation.’¹⁵ The Special Rapporteur emphasised that "disinformation is not the cause but the consequence of societal crises and the breakdown of public trust in institutions."¹⁶ Therefore, the approach to tackling disinformation cannot be under a one type measure, responses require a multidimensional and multi-stakeholder approach whose actions and measures are well grounded in the full range of human rights and the proactive engagement of States, companies, international organizations, civil society and the media.¹⁷

Role of the private sector

While international human rights law places obligations on States to protect, promote and respect human rights, it is widely recognised that business enterprises also have a responsibility to respect human rights.¹⁸ In meeting their obligations, States may have to regulate the behaviour of private actors in order to ensure the effective exercise of the right of freedom of expression.

Importantly, the Special Rapporteur has long held that censorship measures should never be delegated to private entities.¹⁹ In the June 2016 report to the HRC,²⁰ the Special Rapporteur, enjoined States not to require or otherwise pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression, whether through laws, policies, or extra-legal means. The Special Rapporteur further recognised that “private intermediaries are typically ill-equipped to make determinations of content illegality,”²¹ and reiterated criticism of notice and takedown frameworks for “incentivising questionable claims and for failing to provide adequate protection for the intermediaries that seek to apply fair and human rights-sensitive standards to content regulation,” i.e. the danger of “self- or over-removal.”²²

The Special Rapporteur also recommended that any demands, requests and other measures to take down digital content must be based on validly enacted law, subject to external and independent oversight, and demonstrate a necessary and proportionate means of achieving one or more aims under Article 19 para 3 of the ICCPR.²³

The international freedom of expression mandates have further expressed concerns at “attempts by some governments to suppress dissent and to control public communications through [...] efforts to ‘privatise’ control measures by pressuring intermediaries to take action to restrict content.”²⁴ Their 2017 Joint Declaration emphasises that:

¹⁵ *Ibid.*, paras 10 and 11.

¹⁶ *Ibid.*, para 21.

¹⁷ *Ibid.*, para 87.

¹⁸ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (The Ruggie Principles), A/HRC/17/31, 21 March 2011, Annex. The UN Human Rights Council endorsed the guiding principles in HRC resolution 17/4, A/HRC/RES/17/14, 16 June 2011.

¹⁹ Report of the Special Rapporteur on freedom of expression, 16 May 2011, A/HRC/17/27, paras. 75-76.

²⁰ Report of the Special Rapporteur on freedom of expression, 11 May 2016, A/HRC/32/38; para 40 – 44,

²¹ *Ibid.*

²² *Ibid.*, para 43.

²³ *Ibid.*

²⁴ 2017 Joint Declaration, *op. cit.*, Preamble.

[I]ntermediaries should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that.²⁵

They also outlined the responsibilities of intermediaries regarding the transparency of and need for due process in their content-removal processes.²⁶

²⁵ *Ibid.*, para 1 d).

²⁶ [Manilla Principles on Intermediary Liability](#), May 2015.

Analysis of the Ministerial Order

Purposes and legal basis

The Ministerial Order aims to establish national actions and processes to comply with the 2018 EU Action Plan on Disinformation. It refers to the EU's concerns on the impacts of disinformation campaigns in the context of elections and the COVID-19 pandemic response as well as to the European Commission's 2018 Communication to the European institutions on Tackling Online disinformation (the Communication).²⁷

The Communication defined 'disinformation' "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."²⁸ Although the Ministerial Order does not explicitly state that this definition should guide the measures in Spain, ARTICLE 19 notes that the Order provides no further guidance as for what disinformation campaigns should entail, nor does it specify the type of content that the authorities should address. In any instance, the definition of the European Commission should not be considered legally binding on authorities to proactively monitor and restrict expression. In particular, we highlight the following:

- First, the Ministerial Order is an administrative norm whose primary purpose is to operationalise national strategy on disinformation. It cannot be used as basis for restricting freedom of expression as under the first leg of the three part-test (see above), the requirement of legality requires restrictions to be set in the law, not by executive and national security authorities. This also requires that any regulation be formulated with sufficient precision to enable individuals to regulate their conduct accordingly. The scope of what it means for information to be 'verifiably false,' without clarifying who should provide such "verification" is an entirely subjective one.
- Second, false, untrue or misleading content is not in itself prohibited under international standards and these standards explicitly enumerate the legitimate interests under which the State can restrict information. Here, the Order highlights "public harm" without any reference to the restricted aims under Article 19 para 3 of the ICCPR and Article 10 para 2 of the European Convention. The Ministerial Order is granted under national security powers and refers to the EU concerns on disinformation in the context of elections and COVID-19 responses. The EU Action Plan stipulates that public harm includes threats to democratic processes as well as to public goods such as the Union's citizens health, environment or security.²⁹ It is not clear if the Ministerial Order requires these as basis for monitoring and limiting the expression or if it allows for information to cause another unspecified "harm."
- Third, the Ministerial Order does not specify that even if the disinformation causes threat to national security or public health, responses and restrictions still need to be necessary and proportionate.

27 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, 26 April 2018.

²⁸ *Ibid.*, para 2.1.

²⁹ European Commission, Action Plan against Disinformation, 2018, *op. cit.*, p. 2.

Recommendations

- The aim of the Ministerial Order should be limited to the procedural coordination and collaboration among different ministries, authorities and other stakeholders on the operationalisation of the national strategy against disinformation. It should not seek to define disinformation.
- The Spanish Government should not rely on approaches that determine what is true and false, instead, the Ministerial Order should provide guidance on measures to address disinformation under a counter-narrative approach.

Objectives of and authorities involved in the National Action Procedure against Disinformation

The Order states a number of objectives of the National Action Procedure against Disinformation. These include setting up “prevention, detection, early warning, analysis, response, and evaluation of disinformation,” identification of public bodies, agencies and authorities of the national system to have a role in tackling disinformation and set specific tasks for them as well as mechanisms for exchange of information between them and other institutional measures (e.g. setting up an *ad hoc* work team for the preparation and review of a National Strategy to Fight Disinformation). It also defines the National Security System, divided into six categories. These include the Secretary of State for Communication (who is responsible also for crisis management and the EU with regard to combating disinformation) and the Permanent Commission against disinformation. The Commission should, *inter alia*, facilitate the inter-ministerial coordination at operational level.

The Order also states that the private sector and civil society, including the media, digital platforms, academia and the technology sector, play an essential role in the fight against disinformation. It highlights their role in promotion of awareness-raising activities and training or the development of tools to prevent them from spreading in the digital environment, among others. Competent authorities can request the collaboration of these organisations or people whose contribution is considered timely and relevant in the context of the fight against disinformation.

Further, the Ministerial Order establishes four activation levels of the action procedure aimed to detect disinformation campaigns, analyse their potential impacts on national security, and to support crisis management of situations where there could be an impact derived from said campaigns. In the annex, the Ministerial Order provides the list of authorities, public bodies and actions involved in each activation level.

ARTICLE 19 finds that the objectives and levels of activation of the action procedure present timely responses to threats posed by disinformation at both domestic and regional level, as required by the EU Action Plan. Further, we find positive that the national procedure prefers the public communicational strategies to counter disinformation, as opposed to a restriction-based approach.

At the same time, we are concerned that the national procedure confers surveillance powers to various executive authorities to monitor and examine online content and interactions. This is planned without a clear indication of how and why a disinformation campaign needs to be detected and examined. This is problematic for the following reasons:

- **National security authorities are responsible for the design, oversight and enforcement of the action procedure:** This approach indicates that disinformation is seen as a national security concern. While we recognise that State-led and organised disinformation and propaganda campaigns are especially dangerous to State sovereignty, democratic processes, rule of law, respect for human rights and have even more serious consequences than those stemming from other sources, there are other dangers of disinformation. For instance, some disinformation can cause danger to public health or to certain minorities. We question why these issues would be equated with national security. It seems more appropriate to arrange a cross sectoral approach.
- **Indistinct legitimate aims at regional and national level:** The objectives, actions and levels of the National Procedure fail to determine the aim they sought to protect. Whether it concerns the integrity of elections, as raised in the EU Action Plan, or the spread of health-related information that puts people's lives at risk, the purpose guiding each process under the national procedure should be clearly stated and narrowly construed. Further, the national procedure fails to differentiate the competences and actions at national and regional level. Hence, there is no causal connection between the actions of the procedure and the aim pursued at national level as opposed to those aimed to cooperate with the EU at regional level. While the aims may be similar, the legal framework and relevant authorities may vary. For instance, the EU Action Plan states that where disinformation concerns elections or the functioning of democratic institutions, EU national contact points should work in close collaboration with national electoral networks.³⁰ Unfortunately, the action procedure fails to make these distinctions and to consider applying existing regulatory frameworks and institutions that may be more appropriate to deal with specific issues connected to disinformation at domestic level – e.g. electoral or public health regulatory frameworks and institutions.
- **Technological infrastructure:** It is unclear what technological tools and techniques will be used to detect disinformation and whether an assessment is carried out to determine if they have a direct or indirect impact on the exercise of the right to freedom of expression and privacy. According to the implementation of the Communication on "Tackling Disinformation online: a European approach" – recommended in the context of the EU Action Plan – the use of disinformation-detection technology, content verification tools, and "services for the secure identification and authentication of suppliers of information (websites, natural and legal entities)" is foreseen and promoted for the EU Action Plan.³¹ These measures may constitute obstacles to the exercise of the right of freedom of expression and privacy and should comply with the tripartite test under international human rights law. However, it is undiscernible whether the tools and techniques used by the Spanish government are under evaluation of their necessity and impact at different levels of action.
- **Oversight:** The absence of a statutory basis generates additional uncertainty over the oversight of both the use of technological tools and the results thereof, either under parliamentary or independent oversight.
- **Multi-stakeholder approach to disinformation:** While the Ministerial Order recognises the important role of civil society, the media, independent experts and other relevant stakeholders,

³⁰ Action Plan against Disinformation, *op. cit.*, p. 7.

³¹ See Actions 2.1.3 Fostering online accountability and 2.1.4 Harnessing new technologies of the Commission report on Action Plan, *op.cit.*

their participation seems to depend on executive authorities' discretion. It fails to provide the criteria and processes under which their support may be selected and requested. Nor does it indicate whether the participation of these stakeholders is part of a comprehensive strategy to fight disinformation.

Recommendations

- A key aim of the National Action Procedure against Disinformation should be to provide clear guidance on the role of the government and other stakeholders in addressing the different issues caused by disinformation, delimit public bodies and institutions competences on the basis of a legality and necessity assessment, and on how to jointly implement disinformation strategies at different levels.
- The Spanish Government should consider a tiered approach to the action procedure based on the aim sought, the applicable regulatory framework for the protection of each aim and the jurisdiction of each set of actions. This tiered response should also seek to justify the different levels of intervention making a clear distinction between domestic and regional actions. It should also provide the causal relationship between the speech and the harm that requires special attention.
- Monitoring and response measures on the basis of disinformation should be limited to instances where the problem creates a significant threat to the protected aim that requires public authorities to urgently respond.
- The Spanish Government should ensure that the implementation of the action procedure against disinformation, including the use of the technological tools and the treatment of the information resulting from its use, is subject to independent oversight and available for public scrutiny.
- The Spanish Government should elaborate more on the actions and avenues for collaboration of civil society, the media, relevant experts, independent fact-checkers and other private actors whose participation and engagement are crucial to any State-based response to disinformation.
- The participation of national security authorities should be limited to those instances where the impacts of disinformation may cause a serious harm to a specific national security interest and when is properly justified under domestic law. A diversified participation of other relevant authorities should be considered depending on the legitimate aim sought under international human rights law.

Spanish Permanent Commission against Disinformation

In Annex II, the Ministerial Order lays out the objectives and operational scope of the Permanent Commission against Disinformation. This Commission will ensure the inter-ministerial operation of the action procedure. It is coordinated by the Secretary of State for Communication and chaired by the Director of the National Security Department, who will perform under the functions of the Secretary.

The functions of the Permanent Commission will be to:

- Support the decision-making of the Secretary of State for Communication in the fight against disinformation through the analysis, study and proposal of initiatives at the national, European and international levels.
- Support the actions of the Secretary of State for Communication in reinforcing coordination, collaboration and cooperation among the different public authorities with mandates related to communication, as well as between the public and private sectors.
- Support the performance of the technical and operational assessment of risks and threats through aggregated reports.

- Analyse and study the availability of existing resources and the needs to fight against disinformation, and formulate proposals regarding the allocation of resources and prioritisation for the identified actions.
- Verify the execution of the planned actions and examine the need to create and maintain support working groups.
- Raise recommendations and proposals to the National Security Council, in relation to the agencies and bodies with assigned tasks, based on the guidelines received from the Council.
- Prepare the proposal for the National Strategy against Disinformation to the National Security Council, as well as ensure timely review and evaluation.
- Support research on the aspects of disinformation in a context of collaboration with the private sector and civil society.

ARTICLE 19 appreciates that the Annex includes a number of measures that will support further research on the issues related to disinformation, as well as ensure the coordination and collaboration between executive authorities involved in the Ministerial Order implementation, civil society and the private sector. At the same time, we are concerned that national security authorities seem to have the power (i) to recommend and make final decisions about the tasks assigned to which body, (ii) to oversee the application of the action procedure and (iii) to approve the forthcoming National Strategy Against Disinformation.

As noted earlier, any action aimed at addressing disinformation at national and regional level should be accompanied with a clear justification and assessment of the legitimate aim it seeks to protect, and the necessity and proportionality of each action. A national security-based approach to disinformation should be exceptional, require a narrow scope of application and strict oversight. Hence, in the absence of these components, ARTICLE 19 considers that the Ministerial Order should examine the extent to which this national security approach is justified and consider distributing the decision-making powers among relevant authorities and the participation of other stakeholders.

Moreover, the National Security Council should not be the body authorising or overseeing the National Strategy against Disinformation. Instead, the forthcoming National Strategy against Disinformation should be freedom of expression compliant and give due regard to the following considerations:

- The National Strategy against Disinformation should be designed and developed in close participation and engagement with civil society, journalists and media associations, independent fact-checkers organisations, companies and other relevant private stakeholders able to provide expertise, evidence and contribute towards a multi-stakeholder approach to disinformation.
- Disinformation should be seen in the context of reduced pluralism and diversity of information accessible online. Therefore, the National Strategy should promote and include measures that ensure a free, independent and diverse communications environment, including media diversity and media literacy as key means of addressing disinformation. It should adopt an approach under which an open media landscape is materialised and considered as key to addressing the different issues of disinformation.
- Partnerships among diverse entities to promote diverse and reliable content should be considered as a measure to limit the spread of disinformation that has a significant impact in the audience and in public debates. These partnerships should involve public and private entities, as well as national institutions.

- It should consider integrating an active role of electoral, health and human rights national institutions in the design, development and implementation of measures to combat disinformation. They should be tasked with comprehensive studies about the impact of disinformation within their policy and legal mandates. This evidence should inform the actions to combat disinformation.
- The National Strategy should incorporate measures that ensure access to public information and strengthen the application of the principles of maximum transparency of public administration.
- The framework of the National Strategy should be comprehensive ensuring that the process is inclusive and transparent. It should establish an Advisory Committee responsible of overseeing the implementation of the National Strategy. This Committee should include representation of civil society, the media, independent journalists, companies, academics and freedom of expression experts.
- When developing the objectives and actions of the National Strategy, stakeholders should ensure that veracity is not considered an aim in itself. Instead, the aim should be to remove threats that certain types of disinformation cause to state sovereignty, democratic processes, rule of law, respect for human rights, and people's lives.
- Problems and challenges posed by disinformation should not be attributed solely to technology. Attention should be paid to underlying social causes, in particular economic deprivation of large groups of people, market downturns and resulting vast increases of social inequality.
- The National Strategy should incorporate a permanent evaluation process of its actions and results in order to keep the objectives under a legitimate and limited scope of application.
- The National Strategy should include extensive proactive disclosure strategies to support strategies to counter disinformation and engage in efforts towards strengthening and resourcing public communication campaigns to counterbalance the narratives of disinformation that cause harm to the public.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, under implementation in domestic legal systems. The organisation has produced a number of standard setting publications which outline international and comparative law and best practice areas such as defamation law, freedom of expression and equality, access to information and broadcast regulations.

On the basis of this publications and ARTICLE 19's overall legal expertise, the organisation published a number of legal analysis each year, comment on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform effort worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <https://www.article19.org/law-and-policy/>.

If you would like discuss this analysis further, or if you a matter you would like to bring to the attention of the ARTICLE 19 Law and Policy Team, you can contact us by email at legal@article19.org. For more information about ARTICLE 19's work in Spain, contact the Europe and Central Asia Team at eca@article19.org.