

EU Code of Practice on Disinformation

PREAMBLE

In light of the European Commission Communication "Tackling online disinformation: a European approach"^[1] (hereafter the "Communication"), the Report of the High Level Expert Group^[2], the Council Conclusions of 28 June 2018^[3], and the various important initiatives taking place across Europe^[4] to address the challenges posed by the dissemination of disinformation, the companies and associations listed on Annex 1 ("Signatories") of this code of practice (the "Code") recognise their role in contributing to solutions to the challenges posed by disinformation.

As provided under the Commission's Communication, for the purpose of this Code, the Commission as well as the High Level Expert Group in its report define "Disinformation" as "verifiably false or misleading information" which, cumulatively,

- (a) "Is created, presented and disseminated for economic gain or to intentionally deceive the public"; and
- (b) "May cause public harm", intended as "threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens' health, the environment or security".^[5]

The notion of "Disinformation" does not include misleading advertising, reporting errors, satire and parody, or clearly identified partisan news and commentary, and is without prejudice to binding legal obligations, self-regulatory advertising codes, and standards regarding misleading advertising.

The Signatories recognise and agree with the Commission's conclusions that "the exposure of citizens to large scale Disinformation, including misleading or outright false information, is a major challenge for Europe. Our open democratic societies depend on public debates that allow well-informed citizens to express their will through free and fair political processes".^[6]

As the Commission repeatedly acknowledges in the Communication,^[7] the Signatories are mindful of the fundamental right to freedom of expression and to an open Internet, and the delicate balance which any efforts to limit the spread and impact of otherwise lawful content must strike.

In recognition that the dissemination of Disinformation has many facets and is facilitated by and impacts a very broad segment of actors in the ecosystem, all stakeholders have roles to play in countering the spread of Disinformation.

It is in this spirit that the Signatories have drafted the present Code and its Annexes, which is an integral part of this Code, and hereby commit themselves to adhere to the relevant commitments listed next to their name. Given the breadth of the commitments outlined in the Code and the heterogeneous range of stakeholders involved, Signatories will sign up only to commitments which correspond to the product and/or service they offer, their role in the value chain, their technical

capabilities and their liability regimes as provided under EU Law, which vary depending on the role they play in the creation and dissemination of the content at stake. Hence, the Code refers to the individual Signatory that has accepted certain commitments as indicated on Annex 1 with the expression "Relevant Signatory". This does not commit all Signatories of the Code to sign up to every commitment. Annex 2 sets out existing best practices. Signatories agree that the Annex might periodically be amended in the light of market, technical and other developments.

The Signatories recognize that because the various Signatories operate differently, with different purposes, technologies and audiences, the Code allows for different approaches to accomplishing the spirit of the provisions herein.

The Signatories recognise that trade associations that have signed this Code are not entering into obligations on behalf of their members. However, these associations commit to make their members fully aware of this Code, and encourage them to join it or respect its principles, as appropriate.

The application of this Code is limited for each Signatory to services provided in the States that are Contracting Parties to the European Economic Area.

Signatories, including signatory associations, commit to undertake the actions provided for by this Code in a manner that ensures full compliance with EU and national competition law. By way of example, Signatories must not discuss, communicate or exchange any commercially sensitive information. This includes non-public information on: prices; marketing and advertising strategy; costs and revenues; trading terms and conditions with third parties (including purchasing strategy); terms of supply; trade programmes or distribution strategy.

The Code shall apply within the framework of existing laws of the EU and its Member States and must not be construed in any way as replacing or interpreting the existing legal framework, and, in particular (but not limited to):

- The EU Charter of Fundamental Rights;
- The European Convention on Human Rights;
- Directive 2000/31/EC, with particular reference to Articles 12 to 15, which shall apply to any obligation of this Code targeting or assumed by mere conduits, caching providers, or hosting providers such as providers of network, search engines, browsers, online blogging platforms, online forums, video-sharing platforms, social media, etc.;
- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market;
- Directive 2006/114/EC concerning misleading and comparative advertising;

- The case law of the CJEU and ECHR on the proportionality of measures designed to limit access to and circulation of harmful content.

I. PURPOSES

The purpose of this Code is to identify the actions that Signatories could put in place in order to address the challenges related to "Disinformation"

In line with the Commission's Communication, the Signatories of the Code of Practice recognise the importance of efforts to:

- (i) Include safeguards against Disinformation;
- (ii) Improve the scrutiny of advertisement placements to reduce revenues of the purveyors of disinformation;
- (iii) Ensure transparency about political and issue-based advertising, also with a view to enabling users to understand why they have been targeted by a given advertisement;
- (iv) Implement and promote reasonable policies against misrepresentation;
- (v) Intensify and demonstrate the effectiveness of efforts to close fake accounts and establish clear marking systems and rules for bots to ensure their activities cannot be confused with human interactions;
- (vi) Intensify and communicate on the effectiveness of efforts to ensure the integrity of services with regards to accounts whose purpose and intent is to spread Disinformation, as per specifics assessed and determined by the Relevant Signatory, and consistently with Article 8 of the European Convention on Human Rights, the fundamental right of anonymity and pseudonymity, and the proportionality principle.
- (vii) Consistently with Article 10 of the European Convention on Human Rights and the principle of freedom of opinion, invest in technological means to prioritize relevant, authentic, and accurate and authoritative information where appropriate in search, feeds, or other automatically ranked distribution channels. Be that as it may, Signatories should not be compelled by governments, nor should they adopt voluntary policies, to delete or prevent access to otherwise lawful content or messages solely on the basis that they are thought to be "false".
- (viii) Ensure transparency with a view to enabling users to understand why they have been targeted by a given political or issue-based advertisement, also through indicators of the trustworthiness of content sources, media ownership and/or verified identity.
- (ix) Dilute the visibility of disinformation by improving the findability of trustworthy content.
- (x) Consider empowering users with tools enabling a customized and interactive online experience so as to facilitate content discovery and access to different news sources

- representing alternative viewpoints, also providing them with easily-accessible tools to report Disinformation.
- (xi) Take the reasonable measures to enable privacy-compliant access to data for fact-checking and research activities and to cooperate by providing relevant data on the functioning of their services including data for independent investigation by academic researchers and general information on algorithms.

This Code is without prejudice to other initiatives aiming at tackling Disinformation on platforms.

This Code is agreed in good faith between the Signatories, building on a fair and honest representation of their intentions. For the sake of allowing a more comprehensive understanding of the Code, the commitments listed in the following paragraph are introduced by an explanation of the detailed purposes and context related to each group of commitments in the five relevant fields addressed by the Code.

II. COMMITMENTS

II.A. Scrutiny of ad placements

Whereas:

- The Signatories recognise the objectives outlined in the Communication, and bearing in mind that the commercial aspect is only one of the many facets of Disinformation, the Signatories acknowledge the need to "significantly improve the scrutiny of advertisement placements, notably in order to reduce revenues of the purveyors of Disinformation".^[8]
- Relevant Signatories will use commercially reasonable efforts to implement policies and processes; not to accept remuneration from, or otherwise promote accounts and websites which consistently misrepresent information about themselves.
- The Signatories recognise that all parties involved in the buying and selling of online advertising and the provision of advertising-related services need to work together to improve transparency across the online advertising ecosystem and thereby to effectively scrutinise, control and limit the placement of advertising on accounts and websites belonging to purveyors of Disinformation.
- Avoiding the misplacement of advertising on online Disinformation sites requires further refinement of already widely used brand safety tools to successfully continue to meet this challenge, in recognition of the nature of this content.^[9]
- The signatories recognise that indicators of trustworthiness and information from fact checking organizations and the new independent network of fact checkers facilitated by the European Commission upon its establishment can provide additional data points on purveyors of disinformation.

Therefore, the Signatories of this Code commit to the following:

1. Relevant Signatories commit to deploy policies and processes to disrupt advertising and monetization incentives for relevant behaviours, such as misrepresenting material information about oneself or the purpose of one's properties. These policies and processes can include, for example, the restriction of advertising services or limiting paid placements, and could potentially take place in partnership with fact-checking organizations. Such policies and processes may, as appropriate:
 - (a) Promote and/or include the use of brand safety and verification tools;
 - (b) Enable engagement with third party verification companies;
 - (c) Assist and/or allow advertisers to assess media buying strategies and online reputational risks;
 - (d) Provide advertisers with necessary access to client-specific accounts to help enable them to monitor the placement of ads and make choices regarding where ads are placed.

II.B. Political advertising and issue-based advertising

Whereas:

- The Signatories acknowledge the Communication's call to recognise the importance of ensuring transparency about political and issue-based advertising.
- Such transparency should be ensured also with a view to enabling users to understand why they have been targeted by a given advertisement
- Signatories recognize that approaches to issue-based advertising developed should be reflective of the European market for political and issue-based advertising, and take note of the European Commission Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament

Therefore, the Signatories of this Code commit to the following:

2. Signatories commit to keep complying with the requirement set by EU and national laws, and outlined in self-regulatory Codes,^[10] that all advertisements should be clearly distinguishable from editorial content, including news, whatever their form and whatever the medium used. When an advertisement appears in a medium containing news or editorial matter, it should be presented in such a way as to be readily recognisable as a paid-for communication or labelled as such.
3. Relevant Signatories commit to enable public disclosure of political advertising (defined as advertisements advocating for or against the election of a candidate or passage of referenda in national and European elections), which could include actual sponsor identity and amounts spent.
4. Relevant Signatories commit to use reasonable efforts towards devising approaches to publicly disclose "issue-based advertising". Such efforts will include the development of a working definition of "issue-based advertising" which does not limit reporting on political discussion and the publishing of political opinion and excludes commercial

advertising. Given the implications related to freedom of expression, Signatories encourage engagement with expert stakeholders to explore approaches that both achieve transparency but also uphold fundamental rights. The work to develop this definition shall not interfere with the areas covered by advertising self-regulatory organisations.

II.C. Integrity of services

Whereas:

- In line with the European Commission Communication, the Signatories recognise "the importance of intensifying and demonstrating the effectiveness of efforts to close fake accounts" as well as the importance of establishing "clear marking systems and rules for bots to ensure their activities cannot be confused with human interactions".^[11]
- Relevant Signatories recognise the importance of ensuring that online services include and promote safeguards against Disinformation.
- Relevant Signatories underline an ongoing commitment that, before launching new services, they consider implementing and promoting safeguards against misrepresentation.
- Relevant Signatories consider reviewing existing services to ensure that such safeguards are likewise implemented, to the extent possible.
- Relevant Signatories should intensify and demonstrate the effectiveness of efforts to ensure the integrity of services with regards to accounts whose purpose and intent is to spread Disinformation whose specifics should be assessed and determined by the Relevant Signatory.
- Consistently with Article 8 of the European Convention on Human Rights,^[12] Signatories should not be prohibited from enabling anonymous or pseudonymous use of accounts and services.

Therefore, the Signatories of this Code commit to the following:

5. Relevant Signatories commit to put in place clear policies regarding identity and the misuse of automated bots on their services and to enforce these policies within the EU. Such measures could include some of the measures in the Annex 2 to this Code.
6. Relevant Signatories commit to put in place policies on what constitutes impermissible use of automated systems and to make this policy publicly available on the platform and accessible to EU users.

II.D. Empowering consumers

Whereas:

- Consistently with Article 10 of the European Convention on Human Rights^[13] and the principle of freedom of opinion, Signatories should not be compelled by governments, nor should they adopt voluntary policies, to delete or prevent access to otherwise lawful content or messages solely on the basis that they are thought to be "false".

- The Signatories of this Code recognise the importance of diluting the visibility of Disinformation by improving the findability of trustworthy content and consider that users should be empowered with tools enabling a customized and interactive online experience so as to facilitate content discovery and access to different news sources representing alternative viewpoints, and should be provided with easily-accessible tools to report Disinformation, as referred to in the Communication.
- Relevant Signatories should invest in technological means to prioritize relevant, authentic, and authoritative information where appropriate in search, feeds, or other automatically ranked distribution channels.
- The Signatories of this Code recognise that transparency should be ensured with a view to enabling users to understand why they have been targeted by a given political or issue-based advertisement.
- Such transparency should reflect the importance of facilitating the assessment of content through indicators of the trustworthiness of content sources, media ownership and verified identity. These indicators should be based on objective criteria and endorsed by news media associations, in line with journalistic principles and processes.
- The signatories recognise the ongoing legislative work to develop standards for transparency about the main parameters of ranking included in the draft Platform to Business Regulation as well as the work being carried out by the EU Artificial Intelligence Expert Group as well as the EU consumer acquis.

Therefore, the Signatories of this Code commit to the following:

7. Relevant Signatories commit to invest in products, technologies and programs such as those referred to in Annex 2 to help people make informed decisions when they encounter online news that may be false, including by supporting efforts to develop and implement effective indicators of trustworthiness in collaboration with the news ecosystem.
8. Relevant Signatories commit to invest in technological means to prioritize relevant, authentic and authoritative information where appropriate in search, feeds, or other automatically ranked distribution channels.
9. Relevant Signatories commit to invest in features and tools that make it easier for people to find diverse perspectives about topics of public interest.
10. Signatories commit to partner with civil society, governments, editorial institutions, and other stakeholders to support efforts aimed at improving critical thinking and digital media literacy.
11. Signatories commit to encourage market uptake of tools that help consumers understand why they are seeing particular advertisements.

II.E. Empowering the research community

Whereas:

- In line with the HLEG Report and the Communication, the Signatories of this Code acknowledge the importance to "take the necessary measures to enable privacy-compliant access to data for fact-checking and research activities" and to "cooperate by providing relevant data on the functioning of their services, including data for independent investigation by academic researchers and general information on algorithms."^[14]

Therefore, the Signatories of this Code commit to the following:

12. Relevant Signatories commit to support good faith independent efforts to track Disinformation and understand its impact, including the independent network of fact-checkers facilitated by the European Commission upon its establishment. This will include sharing privacy protected datasets, undertaking joint research, or otherwise partnering with academics and civil society organizations if relevant and possible.
13. Relevant Signatories commit not to prohibit or discourage good faith research into Disinformation and political advertising on their platforms.
14. Relevant Signatories commit to encourage research into Disinformation and political advertising.
15. Relevant Signatories commit to convene an annual event to foster discussions within academia, the fact-checking community and members of the value chain.

III. MEASURING AND MONITORING THE CODE'S EFFECTIVENESS

The following set of Key Performance Indicators shall apply to the Relevant Signatories with respect to their respective commitments.

16. Relevant Signatories commit to write an annual account of their work to counter Disinformation in the form of a publicly available report reviewable by a third party. The report may include details of any measures taken and the progress made by the Signatories to improve transparency regarding Disinformation, such as:
 - a. In line with the Commitment under No. 1 above, policies and enforcement activities in relation to reducing monetisation opportunities for providers of disinformation;
 - b. In line with Commitments under paragraph II.B. above, measures to improve the visibility to consumers of instances of political advertising;
 - c. In line with Commitments under paragraphs II.C. above, measures to integrate and roll-out policies in relation to the integrity of their services in the context of Disinformation;
 - d. In line with Commitments under paragraph II.D. above, measures to empower consumers with products, tools, technologies and programmes;

- e. In line with Commitments under paragraph II.D., "measurement of consumer awareness/concerns about disinformation";
 - f. In line with Commitment Under No. 9 above, provide people with tools to find diverse perspectives about topics of public interest;
 - g. In accordance with the Commitment under paragraph II.E. above measures to improve the ability of researchers and civil society groups to monitor the scope and scale of political advertising;
 - h. In line with Commitment under No. 10 above, to encourage training of people in critical thinking and digital media and skills;
 - i. In line with Commitments under paragraph II.E. above, efforts to support good faith research and/or the network of fact-checkers in a given year by Relevant Signatories.
17. In the specific case of advertisers, the World Federation of Advertisers (WFA) will provide aggregated reporting to track and identify the different brand safety activities and policies employed by brand owners.
18. In the specific case of advertising agencies, the European Association of Communications Agencies (EACA) will provide aggregated reporting to track and identify the different brand safety activities and policies employed by advertising agencies, including the promotion of relevant tools, collaboration with third party verification companies, as well as methods to assess media buying strategies and to make choices about ad placements relative to the associated online disinformation risk.
19. IAB Europe will provide aggregated reporting to track and identify different brand safety activities and policies used by its members and those of European National IABs, which include stakeholders from across the online advertising ecosystem.
20. Signatories commit to select an objective 3rd party organization to review the annual self-assessment reports submitted by the Relevant Signatories, and evaluate the level of progress made against the Commitments, which would include accounting for commitments signed on to.
21. In line with Commitment II. B No. 4, Relevant Signatories shall work with the European Commission and other key stakeholders to endeavour to develop a working definition, which will inform the most effective approaches that both achieve transparency but also uphold fundamental rights in order to make meaningful progress towards devising approaches to publicly disclose "issue-based advertising".

IV. ASSESSMENT PERIOD

The signature of the Code of Practice will be followed by an assessment period of 12 months, during which the Signatories will meet regularly to analyse its progress, implementation and functioning.

The Signatories will meet at the end of the assessment period to evaluate the effectiveness of the Code of Practice in connection with each of the commitments set forth above. They will discuss the continuation of the Code and, if appropriate, discuss and propose follow-up actions. These follow-up actions may include changes to how the Signatories' efforts under the Code, and Code's impact on Disinformation, are monitored. The results of this evaluation will be summarised in a report, which will include conclusions on the Relevant Signatories' own commitments and KPIs.

After the assessment period, the Signatories will meet annually to review the Code and to take further steps if necessary. They may meet more frequently, should they deem it necessary, to discuss the functioning of the Code. Reports may be drawn up to take stock of the Code's functioning and effectiveness.

The Signatories agree to cooperate with the European Commission in assessing the reporting on the functioning of the Code. This cooperation may include:

- Making available appropriate information upon request;
- Informing the Commission of the signature or withdrawal of any Signatories;
- Responding to the Commission's questions and consultations;
- Discussing the above-mentioned assessment and reports in meetings of the Signatories; and
- Inviting the Commission to all such meetings.

V. SIGNATORIES

This Code only applies to the Signatories. Additional signatories may sign the Code at any time. Candidate signatories must present their activities to the existing Signatories and indicate how they intend to comply with the Code's requirements.

A Signatory may withdraw from the Code or from specific commitments within the Code at any time, by notifying the European Commission and the other Signatories. Such a withdrawal will not have the effect of terminating the Code between the other Signatories.

Each Signatory may at any time inform the other Signatories that it believes a Signatory is not complying with its commitments under the Code, and of the grounds for this belief. The Signatories may decide to consider the matter in a plenary meeting. Having heard the Signatory concerned, and after concluding on objective grounds that this Signatory is not willing to respect its commitments under the Code, after all reasonable avenues have been explored, the Signatories may invite such a Signatory to withdraw from the Code. The Signatories will inform the European Commission of this decision.

The Signatories may indicate on their websites or in commercial or other communications that they have signed the code. They can take all reasonable measures to make their business contacts aware of the existence of the Code.

VI. ENTRY INTO FORCE

This Code will become effective and will enter into force one month from its signature.

Any changes to this Code must be agreed by all the Signatories.

The Code has an indefinite duration, subject to the Signatories' agreement to continue following their annual review of the Code.

Signed in Brussels, on xx September 2018

^[1] http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51804.

^[2] <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>.

^[3] <http://www.consilium.europa.eu//media/35936/28-euco-final-conclusions-en.pdf>.

^[4] Measures taken by the European Union, its Member States and other relevant stakeholders should limit the incidence and impact of online disinformation and must be taken within the legal framework provided by the Charter of Fundamental Rights of the European Union (CFREU) and the European Convention on Human Rights (ECHR). In particular, Freedom of expression is enshrined in Article 11 of the CFREU and Article 10 of the ECHR as an indispensable enabler of sound decision-making in free and democratic societies. Freedom of expression extends to print, broadcast and online media and includes the right to hold opinions and to receive and impart information and ideas "without interference by public authorities and regardless of frontiers," as well as the integral, corollary values of media freedom and media pluralism.

^[5] Communication, paragraph 2.1.

^[6] Communication, paragraph 1.

^[7] See, e.g., the Communication, paragraph 3.1.1, where the Commission states that all actions taken to challenge Disinformation "should strictly respect freedom of expression and include safeguards that prevent their misuse, for example, the censoring of critical, satirical, dissenting, or shocking speech. They should also strictly respect the Commission's commitment to an open, safe and reliable Internet".

^[8] Communication, paragraph 3.1.1.

^[9] Communication 'Tackling online Disinformation: a European Approach',
http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51804.

^[10] Such as the ICC Advertising and Marketing Communications Code (<https://cdn.iccwbo.org/content/uploads/sites/3/2011/08/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-English.pdf>) or the advertising Codes of conduct enforced by self-regulatory organisations at national level.

^[11] Communication, paragraph 3.1.1.

^[12] Article 8 ECHR, "Right to respect for private and family life".

^[13] Article 10 ECHR, "Freedom of expression".

^[14] HLEG Report.