

## IMPLEMENTATION OF THE CODE OF PRACTICE ON DISINFORMATION: LESSONS FROM THE ASSESSMENTS AND PROPOSALS FOR THE FUTURE

European Digital Media Observatory (EDMO)

[School of Transnational Governance](#) / [Centre for Media Pluralism and Media Freedom](#), European University Institute

Workshop report<sup>1</sup>

This report summarizes the discussion and key points presented at the workshop on **The first year of implementation of the Code of Practice on Disinformation: lessons from the assessment and proposals for the future**. The workshop, organised by the European Digital Media Observatory (EDMO), took place on 28 October 2020. It brought together representatives of platform signatories of the CoP, European Commission, European Regulators Group for Audiovisual Media Services, Council of Europe, academia, and civil society (for the full list of speakers see Annex).

After the initial 12-months period of application of the Code of Practice on Disinformation, the European Commission published in September 2020 a comprehensive assessment of its implementation and effectiveness ([Staff Working Document \(SWD\(2020\)180](#)). In the assessment, the Code was recognized as a “valuable instrument” in the fight against disinformation but with significant shortcomings that should be further improved, including through commonly-shared definitions of the key concepts, clearer procedures, more precise and more comprehensive commitments, and functional data access provided by platforms to allow for independent monitoring based on transparent key performance indicators (KPIs). The assessment also highlighted that the participation in the CoP should be broadened to include other relevant stakeholders.

The earlier assessment, carried out by the European Regulators Group for Audiovisual Media Services ([ERGA, 2020](#)), drew conclusions along the same lines, especially emphasizing the need for greater transparency about the ways signatories implement the CoP. As noted in the report by ERGA, “The Code relies on self-reporting but lacks a mechanism through which the information from these reports can be independently verified. The information provided by the platforms is generally aggregated for the whole EU, which makes it difficult to evaluate the impact of the Code across the EU. This difficulty is amplified at a national level where language, societal and cultural factors make it the most relevant sphere for monitoring the impact and effectiveness of the Code”.

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<sup>1</sup> The workshop was organised under EDMO Task “Policy research and analysis”. This task is coordinated by CMPF: Dr. Elda Brogi (EDMO Executive Board, [elda.brogi@eui.eu](mailto:elda.brogi@eui.eu))  
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The European Digital Media Observatory ([EDMO](#)) organised this workshop to: (1) engage voices of different stakeholders in the reflection on the shortcomings of the CoP and its implementation; and (2) to discuss possible solutions to these shortcomings, in particular through a methodology to standardise the reporting and by ensuring functional access to data to allow for an independent assessment.

EDMO is financed by the European Commission and it was launched in June 2020 with the aim of:

1. setting-up a secure online platform to support the academic analysis of disinformation campaigns and providing public information to raise awareness about disinformation
2. creating a governance body which ensures public trust regarding the work of the platform and establishing a framework to provide secure access to data of online platforms for research purposes
3. supporting and facilitating the coordination of independent fact-checking activities in Europe, including the mapping of fact-checking activities in Europe and the creation of searchable directories aggregating fact-checks and media literacy material from external repositories
4. supporting and facilitating the coordination of academic research activities on disinformation in Europe and creating a repository with relevant peer-reviewed scientific literature
5. providing support to public authorities in the monitoring of the policies put in place by online platforms to limit the spread and the impact of disinformation.

The Task 5 of EDMO, focusing on policy research and analysis, is carried out by the Centre for Media Pluralism and Media Freedom ([CMPF](#)) at the European University Institute. The key activities include:

- providing support to public authorities, including ERGA, for the monitoring of the implementation and impact of the Code of Practice as well as providing research-based recommendations on potential improvements to the policy responses towards mis- and disinformation;
- cooperating with established EU observatories to report on relevant trends in the online media landscape;
- regularly reporting to the European Commission about the main trends and developments related to research and policy on disinformation.

One of the key objectives of the Task 5 of EDMO (Policy research and analysis) is to develop a sound and feasible methodology that will include key performance indicators (KPIs) to allow for objective, independent and comparable assessment of the performance achieved under the CoP. The CMPF has analysed the key commitments and principles upon which the CoP is based and has developed a draft methodology design, which encompasses a (a) service-level and (b) media system-level assessment.<sup>2</sup>

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<sup>2</sup> In line with the recommendations put forward in the EC's Staff Working Document (SWD (2020)180 Final - Assessment of the Code of Practice on Disinformation); and considering the assessments



The **service-level assessment** is composed of a **qualitative** and **quantitative** aspect. The qualitative aspect requires a meaningful and clear explanation of the definitions/criteria/procedure used to detect or distinguish certain phenomena (such as: trustworthiness, political advertising, purveyors of disinformation, etc.). The quantitative aspect is designed as a set of Key Performance Indicators (KPIs) of progress towards an intended objective of the Code. The KPIs should, on one side, benefit from the collaborative capacities, networks and information provided by EDMO, but, on the other, will also require data provided by the CoP signatories. For example, EDMO could use its network of fact-checkers to identify the key purveyors of disinformation in member states and request from signatories the data on reach and engagement achieved by those websites and/or the data on their advertisement revenue to understand the economic gains of such activities by calculating the share in the total ad revenue for a certain period of time. The national and multi-national EDMO hubs, once established<sup>3</sup>, will also represent a key opportunity to gather data from member states.

The **media system-level assessment** is composed of indicators on vulnerability/resilience of member state-level systems towards mis- and disinformation, based on the secondary data from relevant multi-country research (e.g. the Media Pluralism Monitor, the Digital News Report).

Hereby, EDMO strives to develop and test the methodology that is:

- **Inclusive**: considering current and potential future signatories of the CoP
- **Feasible**: capable of being done or carried out on a regular basis under different forms of regulatory regime (e.g. more effective self-regulation or a potential co-regulation)
- **Mixed methods based**: combining quantitative and qualitative indicators
- **Data informed**: relying on further transparency of platforms and functional data access

The CMPF, in charge of the Task 5, has substantial experience in developing and implementing a holistic but feasible methodology in assessing the state of play of media pluralism in all EU member states and candidate countries on a regular basis since 2014.<sup>4</sup>

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conducted by ERGA (2019, 2020); and the KPIs proposed by a consultancy, Valdani, Vicari and Associates (2020), procured by the EC.

<sup>3</sup> Under this call: <https://ec.europa.eu/digital-single-market/en/news/european-digital-media-observatory-second-phase-call-proposals-creation-national-hubs-digital>

<sup>4</sup> For more details see: <https://cmpf.eui.eu/mpm2020-results/>



## WORKSHOP DISCUSSION - KEY POINTS

### Limited commitments, clarity, and scope of the 2018 Code of Practice

The Code of Practice (2018), as a form of self-regulation of representatives of online platforms and advertisers, initiated by the European Commission, is generally accepted as a necessary and a fruitful first step in an attempt to respond to challenges related to online disinformation. It has structured a dialogue with the platforms but is seen as insufficient in the current arrangement due to several shortcomings. The shortcomings are elaborated in more detail in the EC's Staff Working Document (SWD (2020)180 Final - Assessment of the Code of Practice on Disinformation); and in the assessment conducted by ERGA (2020). Here we will not repeat them all but will reflect on those highlighted during the workshop's discussion as the key ones:

*Lack of harmonisation on definitions, meeting the commitments & reporting about the progress* - this was put forward as one of the major obstacles in evaluating the interventions by platforms, monitoring their practices in a comparative way, and in assessing the impact platforms' actions may have on the information environment and the degree of information accuracy in such an environment. Against this point, the representatives of platforms (signatories of the CoP) and of EDiMA (the association representing online platforms in Europe, in the meantime relaunched as DOT Europe<sup>5</sup>), argued that this lack of harmonization was a design feature of the CoP to cover/attract as many services as possible, considering some major variations in platforms structures, policies, services, users, and databases. Other stakeholders, however, emphasized the need for some level of harmonization and, in particular, for clarity of the key concepts addressed by platforms policies on disinformation. An example here are the definitions of political and issue-based advertising - it is difficult, if at all possible, to evaluate the progress made on increasing transparency of such advertising and in enabling users to understand why they have been targeted by a given advertisement, if the key concepts are not clearly defined. It was emphasized during the workshop that the definitions of the key concepts related to disinformation should not be decided by platforms, but should rather be agreed in a multistakeholder process. ERGA is currently working on providing more clarity in defining relevant concepts.

*Limited commitments* - some relevant issues are left out of the current version of the CoP and the commitments grouped in the five relevant fields addressed by the Code. An example mentioned during the workshop was microtargeting of political and issue-based advertising, but there are other emerging threats related to disinformation problems that could/should fall under the scope of the CoP.

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<sup>5</sup> For more details see: <https://doteurope.eu/news/edima-relaunches-as-dot-europe/>



*Limited participation* - the number of signatories of the CoP has grown over time and it encompasses the most prominent online platforms.<sup>6</sup> However, participation is still limited. Relevant players are missing - other platforms, but other sectors as well, including, for example, advertisers and the advertising industry more broadly.

At the EDMO workshop, it was recalled that the Sounding Board, composed of academics, media and civil society organisations who reviewed the establishment of the CoP in 2018, already then presented a critical view on its content and the commitments laid out by the platforms, stating that it “contains no clear and meaningful commitments, no measurable objectives” and “no compliance or enforcement tool”. From the very beginning, the Commission also explained that the CoP represents a transitional measure and that, depending on the evaluation of their performance in the first 12 months, the EC is supposed to determine the further steps, including the possibility of self-regulation being replaced with another form of regulatory regime.

### **Asymmetry of information**

Current media and information systems, and any attempt to understand or monitor online news and information environments, face big obstacles in an unprecedented asymmetry of information between online platforms (as information holders) and researchers, regulators, journalists, and the public (as information seekers). As emphasized during the workshop, researchers and authorities only know what the platforms let them know, but we need to move forward in order to have a more symmetrical relationship between those who hold the data and the public authorities that are supposed to exercise an independent auditing/oversight of the platforms’ activities. This is recognised as a general problem (at EU and global level). However, it also contains a dimension of regional asymmetry in data access: when some states, public authorities, and researchers obtain better access due to their political power, legal competencies, and research capacities, while others are lagging behind. Considering the importance of building policies on evidence, and having in mind the diversity of political and media systems in the EU member states, the data access provided should be more inclusive, and the local capacities should be strengthened to profit from such access. If regional symmetry in data access and research based on data is not ensured, there is a risk of having a growing number of fragmented policy interventions, which are not based on evidence and may as such represent a risk for fundamental rights (such as freedom of expression).

Functional data access is the key dimension of transparency of platform operations, and the precondition for any meaningful assessment of the impact platforms’ policies may have on information

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<sup>6</sup> For more details see: <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>



environments. With this in mind, EDMO announced its plans to [set up a Working Group](#) on ‘**Access to Data Held by Digital Platforms for the Purposes of Social Scientific Research**’. The working group’s specific task, as envisaged, will be to develop a Code of Conduct under Article 40 of the General Data Protection Regulation that will lay out privacy-compliant processes for data access and in turn create much greater clarity on the issue for platforms, researchers, and regulators alike.

Furthermore, in the [European Democracy Action Plan](#) (EDAP), released early December 2020, the European Commission has put considerable weight behind platform accountability and functional data access. In a key section of the Plan (4.2), the Commission states that “a more robust approach based on clear commitments and subject to appropriate oversight mechanisms is necessary to fight disinformation more effectively”, and that “the GDPR does not a priori and across the board prohibit the sharing of personal data by platforms with researchers”. The Digital Services Act (DSA) will “propose a horizontal framework for regulatory oversight, accountability and transparency of the online space in response to the emerging risks”, but by the time this legislative act is adopted in the member states, the Commission embraces soft interventions, including EDMO's plans to develop a framework for an “effective data disclosure for research on disinformation” (EDAP).

### **Lack of competencies and capacities of national regulators to oversee platforms**

While some countries are extending the legal basis for regulators to act on disinformation (e.g. Germany, France), most national regulators still lack a mandate in this field. For the most part, there are no clear legal grounds on the national or EU level for media regulators to act on disinformation, and there are often conflicts and overlaps between media, competition, data protection, and other regulatory bodies, as the issue of disinformation is multidimensional and often encroaches on all these areas.

The Commission’s 2018 *Communication on Tackling online disinformation: a European Approach*, whose key output is the Code of Practice (CoP), contains cooperation between (different and of the same kind) authorities as one of the key principles and objectives, including at both national and EU level. While the European approach strongly recommends cooperation, it is not easily achievable at a member state level, as it requires significant investment in capacity building and providing structured channels for cooperation. It may also require changes of the legal framework, especially if the cooperation between different kinds of authorities is to be achieved, but also the cooperation of regulators of the same type at the EU level is sometimes hampered by the fact that their competences differ from one member states to another. How to mitigate this huge gap between the reality and policy expectations was one of the key issues pointed out during the workshop, and one of the suggestions was that, if the DSA introduces a form of co-regulation, national regulatory authorities need (1) clear



mandate, (2) non-competing competencies, (3) resources, and (4) investment in safeguarding public interest.

Representatives of ERGA, who took part in the workshop, reminded that the exercise of monitoring the implementation of the CoP was new to ERGA members and no one had legal competencies to do that, especially considering that the lack of transparency and of data access were the key obstacles in the process. In parallel with the release of the EDAP, ERGA had published a press release announcing their adoption of a [new framework for cooperation](#) to strengthen cross-border law enforcement.

### **From self-regulation to co-regulation**

In the workshop, the Commission announced its intent to revise the commitments and the scope of the Code of Practice by spring 2021, which in the new form should also entail a more robust framework for recurrent monitoring of the strengthened Code based on a new methodology which contains Key Performance Indicators (KPIs).

On 15 December 2020, the European Commission released its [proposal for the Digital Services Act](#) (DSA), as a part of a wider legislative package, which is to incorporate the 20 years old e-Commerce Directive. While this proposal is only the beginning of years long legislative process, it already shapes the debate in this area. Especially as it is accompanied by the [European Democracy Action Plan](#) (EDAP), revealed on 3 December 2020, and containing some immediate actions to improve the conditions for informed citizenship by tackling disinformation and manipulation of the public debate, and enhancing electoral integrity, media freedom and pluralism. The DSA is expected to design a horizontal framework for regulatory oversight, accountability, and transparency of platforms. EDAP is already stepping up efforts to revise and strengthen the Code and to transform it from self-regulatory to co-regulatory instrument. This transformation, as announced, should follow a multi-stakeholder approach and should result in the strengthened Code with a wider scope and related KPIs against which to measure the progress and the effectiveness of platforms' policies. This is only possible with stronger transparency obligations for platforms. EDAP has strengthened the remit of EDMO in “developing a framework in line with applicable regulatory requirements and based on the involvement of all relevant stakeholders (and independent from political influence)” ensure an effective data disclosure by platforms for research on disinformation.



**ANNEX: List of speakers**

Richard Allan, European Digital Media Observatory  
Paolo Cesarini, European Commission  
Caroline Greer, TikTok  
Lubos Kuklis, European Regulators Group for Audiovisual Media Services  
Miguel Poiares Maduro, School of Transnational Governance- European University Institute and European Digital Media Observatory  
Marco Pancini, Google  
Oreste Pollicino, Bocconi University  
Krisztina Rozgonyi, University of Vienna  
Matthias Spielkamp AlgorithmWatch  
Damian Tambini, London School of Economics and Political Sciences  
Steven Turner, Twitter  
Urska Umek, Steering Committee on Media and Information Society, Council of Europe

