ERGA RECOMMENDATIONS FOR THE NEW CODE OF PRACTICE ON DISINFORMATION

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ERGA

European Regulators Group for Audiovisual
Media Services

Executive Summary

The EU's communication on 'Tackling COVID-19 disinformation – Getting the Facts right' resulted regarding the timeframe of the current study - between August 2020 and June 2021[1] - in the provision and publication of 47 monthly transparency reports issued by signatories of the Code of Practice. As noted in previous ERGA Reports, the Code of Practice is a unique, global example of an effort to establish cooperation between private companies hosting digital platforms, public authorities, non-governmental bodies, academia, media, and many other relevant stakeholders to fight disinformation. All these stakeholders have an important role to play in finding transparent solutions to the problem of misinformation and disinformation and ERGA appreciates the input and engagement of all these players since the Code was established. However, the pandemic has shown that massive circulation of disinformation online can cause serious harm to citizens across the EU and beyond. Research published by ERGA since the Code was introduced have highlighted significant weaknesses in the Code that need to be addressed if Code of Practice to become a more effective tool in fighting disinformation.

Commission Guidance on Strengthening the Code of Practice on Disinformation[2] issued in May 2021 reflected several of ERGA's recommendations included in reports published in 2019[3] and 2020[4]. ERGA endorses the Commission's expectations set out in the Guidance regarding a strengthened Code and believes that the outcomes of the most recent monitoring process presented here, further underpins the need for significant changes in the Code as set out in the Guidance. This includes increased transparency and greater accountability in terms of the implementation of the commitments in the Code by the signatories. ERGA is engaging with the other stakeholders in the process to strengthen the Code and welcomes the proposals in the Guidance for an enhanced monitoring framework that also includes representatives from ERGA and EDMO in a permanent Taskforce chaired by the Commission. ERGA believes that such a new forum is needed to ensure that the Code can further evolve and issues related to the Code can be addressed in a more timely and collaborative manner. ERGA believes that the Taskforce should be established as soon as possible to progress discussions about the development and implementation of a suitable monitoring framework for the new Code.

ERGA believes this report and its ten recommendations listed here should contribute to the strengthening of the Code of Practice as envisaged in the European Democracy Action Plan[5] (EDAP) and detailed further in the Guidance.

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[1] This is the timeframe for the considered period of this report. The monitoring programme on COVID-19 disinformation continues.

[2] Commission presents guidance to strengthen the Code of Practice on Disinformation, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2585

[3] Interim Assessment of the Implementation of the Code of Practice on Disinformation, https://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-05_Statement_ERGA_work_on_disinformation-adopted1.pdf

[4] ERGA Report on Disinformation: Assessment of the implementation of the Code of Practice, https://erga-online.eu/wp-content/uploads/2020/05/ERGA-2019-report-published-2020-LQ.pdf

[5] European Democracy Action Plan: making EU democracies stronger, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250

Recommendation 1: Improve the provision of more granular and country-specific data including samples of pieces of content as examples of enforced policies and information on the impact of activities.

Recommendation 2: Agree on a more unified or standardised structure of reports.

Recommendation 3: Set-up a publicly available up to date country-level database of trustworthy and authoritative sources as part of the transparency centre.

Recommendation 4: The Code of Practice should explicitly clarify what forms of content the signatories act upon.

Recommendation 5: Platforms need to set up a central repository for relevant policies within the transparency centre that contains all relevant information regarding all signatories in a centralised manner.

Recommendation 6: The provision of data on the use and performance of automated systems should be an explicit commitment within the Code of Practice.

Recommendation 7: Access to data for independent research should be binding under the Code of Practice.

Recommendation 8: The monitoring framework needs to include standardised procedures verifying the implementation of actions across Member States.

Recommendation 9: The monitoring framework should include a provision for co-operation between the platform signatories and relevant authorities.

Recommendation 10: The commitment by the Signatories to appoint and fund an independent auditor to report on their activities to implement the commitments in the Code should be strengthened.

ERGA notes that the majority of recommendations were also included in its 2020 Report and are addressed in the Commission's Guidance. The recommendations were presented at a stakeholder workshop on October 8th which included signatories, the EU Commission, EDMO, ERGA, researchers, academics and factcheckers. An initial draft was also presented to the Assembly of the signatories of the Code of Practice that is drafting the revised Code where the report and its recommendations were also welcomed as an important input to the revision of the Code.

It is important to stress that in light of the Digital Services Act[6] (DSA) proposal, ERGA sees the strengthened Code as an opportunity to test some of the proposals in the DSA related to access to data, audits, external oversight, or risk-mitigating measures. This report should serve as the initial step in that direction. All of these elements are an inherent part of a co-regulatory approach called for by EDAP and by the EU Guidance, and, in the opinion of ERGA members, adopting this approach may be the best way to address the shortcomings of the Code of Practice in its current form.

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[6] The Digital Services Act: ensuring a safe and accountable online environment, https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en

Background

In June 2020, the European Commission issued a joint communication 'Tackling COVID-19 disinformation – Getting the Facts right'[7] which established a COVID-19 monitoring programme for the six platforms that are signatories of the EU Code of Practice on Disinformation[8]. Signatories were asked to provide monthly transparency reports between September 2020 and June 2021 which would highlight how the platforms were tackling COVID-19 disinformation and these reports were published online[9] by the European Commission. This was the third monitoring programme the Commission had established, having previously carried out targeted monitoring during the European Elections in May 2019 and a first-year assessment[10] of the Code in September 2020. Similar to previous assessment programmes, the Commission requested ERGA to evaluate the platforms transparency reports.

ERGA Monitoring Activity in 2021

As with the previous requests, ERGA established a monitoring group in its Sub-Group working on disinformation and media plurality. Due to limited resources (financial and staffing) and the lack of a clear national mandate in this area, not all ERGA members were in a position to participate in this process. The monitoring group included ERGA members from Croatia, France, Germany, Greece, Hungary, Italy, Ireland, Latvia and Slovakia. The approach adopted in each country was determined by a range of factors including available resources, available information and other relevant activities that were in place nationally to tackle disinformation. In addition, ERGA through the European Commission sent an additional data request to the signatories in April 2021 and held a series of meetings with the signatories to discuss the process. A key focus of this information request was country specific data for the Member States participating in the monitoring process. Unfortunately, no useful information was provided by the signatories by the deadline.

In the majority of cases the monitoring was carried out by the relevant ERGA members in house or through discussions and collaborations with relevant national experts. In May 2021, ERGA issued an interim report which recognised that the platforms appeared to have increased their efforts to tackle COVID-19 disinformation. However, ERGA also noted that due to the lack of country specific data, many of the actions reported by the platform signatories could not be sufficiently assessed.

[7] https://ec.europa.eu/jrc/communities/sites/default/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf

[8] Code of Practice on Disinformation, https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation

[9] First baseline reports – Fighting COVID-19 disinformation Monitoring Programme, https://digital-strategy.ec.europa.eu/en/library/first-baseline-reports-fighting-covid-19-disinformation-monitoring-programme

[10] Assessment of the Code of Practice on Disinformation – Achievements and areas for further improvement, https://digital-strategy.ec.europa.eu/en/library/assessment-code-practice-disinformation-achievements-and-areas-further-improvement

In addition, following a tender process, the Irish regulator, the BAI[11], commissioned researchers at the Institute for Future Media, Democracy and Society (FuJo[12]) at Dublin City University (an EDMO hub) to undertake a detailed monitoring review of all the transparency reports that had been provided by the platform signatories and published by the Commission. This involved a mainly quantitative analysis of the value of the reports at an EU level and some qualitative case studies that were focused on the Irish experience. The emerging report, CovidCheck[13], was published on September 16th 2021. CovidCheck found that while the EU Code has proven a useful instrument in prompting signatories to respond to concerns about disinformation, there are shortcomings in relation to its implementation and scope. Researchers cited difficulties in assessing the timeliness, completeness and impact of the actions undertaken by the signatories. The report (included at Appendix One) sets out nine recommendations for more effective reporting and monitoring of disinformation. The findings and recommendations in the CovidCheck report were endorsed by the ERGA monitoring group as they reflected the general experience in participating Member States and the findings of their own monitoring processes.

In September 2021, the French regulator the CSA also provided information on its second annual assessment[14] of measures taken by platforms to tackle disinformation. This report is a statutory requirement of French law and assesses the measures taken to tackle COVID-19 disinformation based primarily on answers to a questionnaire provided to the CSA by relevant platforms. In the report, the CSA welcomes the increasing quantity and quality of data provided by the platforms and their willingness to cooperate with the regulator. However, it also notes that some major and crucial points still require further collaboration and transparency from the stakeholders. The report issues 16 recommendations and these also helped inform the ERGA group findings.

The ERGA recommendations in this report were presented at a stakeholder workshop on October 8th which included signatories, the EU Commission, EDMO, ERGA, researchers, academics and factcheckers. An initial draft was also presented to the Assembly that is drafting the revised Code where the report and its recommendations were also welcomed as an important input to the revision of the Code.

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[11] New report recommends development of robust procedures for reporting and monitoring online disinformation, https://www.bai.ie/en/new-report-recommends-development-of-robust-procedures-for-reporting-and-monitoring-online-disinformation/

[12] https://fujomedia.eu/

[13] New report recommends development of robust procedures for reporting and monitoring online disinformation - Broadcast Authority of Ireland (bai.ie), https://www.bai.ie/en/new-report-recommends-development-of-robust-procedures-for-reporting-and-monitoring-online-disinformation/

[14] Lutte contre la manipulation de l'information : le CSA publie le bilan des mesures mises en œuvre par les plateformes en ligne en 2020, https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-la-manipulation-de-l-information-le-CSA-publie-le-bilan-des-mesures-mises-en-oeuvre-par-les-plateformes-en-ligne-en-2020. The executive summary in English is available at the bottom of the dedicated page on the CSA's website.

Recommendations for effective monitoring of implementation of Code of Practice on Disinformation

Below are the key findings accompanied by ERGA recommendations, based on ERGA's experiences regarding the monitoring of the implementation of commitments under the Code of Practice. These recommendations aim to improve and strengthen the Code and its monitoring framework.

Finding 1: Insufficient data

ERGA reports published in 2019[15] and 2020[16] highlighted the need for more detailed and in particular country level datasets to support effective monitoring. This has also been highlighted by others who have assessed the impact of the Code including VVA in its report[17] for the Commission. While some additional country level data was provided in the COVID-19 Reports, it lacked detail and consistency. The transparency reports provided some information on policy updates, new activities and new tools relevant to countering COVID-19 disinformation. However, there was a lack of detailed data on engagement with or impact of these initiatives. Such information is required to enable effective monitoring and to improve transparency and public accountability.

Recommendation 1: Improve the provision of more granular and country-specific data including samples of pieces of content as examples of enforced policies and information on the impact of activities.

Detailed country-specific information allowing the NRAs to examine the implementation of the signatories' commitments on a Member State level is essential for effective monitoring. Furthermore, country-specific data is crucial to monitor the effectiveness of the Code throughout the EU, which will be particularly crucial once it becomes a co-regulatory instrument. Such information should be provided in relation to the implementation of policies and other activities countering disinformation and their impact. These datasets should include quantitative and qualitative information and include samples of content acted upon and details of the action taken to allow for verification. It should also contain the content that have been most relayed or that have had the biggest number of impressions. Clear parameters for such the reporting should be defined in the Code and should take account of the proposed requirements in Article 23(2) of the proposed Digital Services Act.

Finding 2: Lack of uniform structure of reports

The Commission Communication set out four main areas for platforms to focus on in their reports, namely: 1) initiatives to promote authoritative content at EU and Member State level; 2) initiatives and tools to improve users' awareness; 3) manipulative behaviour and 4) data on flows of advertising linked to COVID-19 disinformation. While these headings are generally followed in the reports, different structures

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The executive summary in English is available at the bottom of the dedicated page on the CSA's website https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-la-manipulation-de-l-information-le-CSA-publie-le-bilan-des-mesures-mises-en-oeuvre-par-les-plateformes-en-ligne-en-2020 .

[15] Interim Assessment of the Implementation of the Code of Practice on Disinformation, https://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-05_Statement_ERGA_work_on_disinformation-adopted1.pdf

[16] ERGA Report on Disinformation: Assessment of the implementation of the Code of Practice, https://erga-online.eu/wp-content/uploads/2020/05/ERGA-2019-report-published-2020-LQ.pdf

[17] Study for the assessment of the implementation of the Code of Practice on Disinformation, https://digital-strategy.ec.europa.eu/en/library/study-assessment-implementation-code-practice-disinformation

within the sections make comparisons between them almost impossible. In addition, the monitoring showed that the same initiative was reported in a series of reports. While some improvements were noted in later reports, such as the inclusion of an Executive Summary, overall, the lack of a consistent structure made a meaningful monitoring of the Code's effectiveness very difficult.

Recommendation 2: Agree on a more unified or standardised structure of reports

A more unified or standardised structure of reports is required to allow effective monitoring. Any agreement on the structure might reflect the different nature of the signatories' services, but it is essential to find a common structure that allows for effective overview. Signatories, when designing the standard form for their reports, should focus on avoiding unnecessary repetition. Reports should clearly state the specific policy associated with the reported action and the relevance of the action to the Code of Practice. Signatories should make it clear whether the reported action is a new one. When designing a standardised structure of reports, signatories shall include specific information about the regional application and the application across the EU Member States and in different languages.

Finding 3: Need for a publicly available database of authoritative sources

Transparency reports indicate that the signatories focused quite extensively on promoting content from authoritative sources using various strategies and tactics related to their respective services. In order to assess the impact on such activity, a current and updated country-level database of trustworthy and authoritative sources with the corresponding data on engagement with the content (e.g., views/clicks/shares) should be provided.

Recommendation 3: Set-up a publicly available up to date country-level database of trustworthy and authoritative sources as part of the transparency centre

A centralised database where relevant signatories would publish information on trustworthy and authoritative sources whose content they promote as part of their awareness raising activities should be provided. Corresponding data on engagement with this content (e.g., views/clicks/shares) is also required for more effective verification of the claims in the reports. Such a database should be a part of the transparency centre as defined by the Commission's Guidance.

Finding 4: Need for explicit definition of types and forms of content acted upon

It is unclear from the transparency reports whether content reported by the signatories as acted upon includes comments, messages in the messaging applications, videos, pictures, sound recordings etc. There is a clear need for explicit definitions of all types and forms of content hosted on platforms that contribute to the spread of disinformation or other forms of harmful content.

Recommendation 4: The Code of Practice should explicitly clarify what forms of content the signatories act upon

Given the wide range of forms of harmful content that contribute to the spread of disinformation, a broader and clearer set of definitions of relevant content should be specified in the Code of Practice. These definitions should be used for future reporting including statistics on the various types and forms of content demoted, deleted or otherwise acted upon by the Signatories.

Finding 5: No single repository of all relevant information on mis- or disinformation policies and activities is available

While the transparency reports provide an overview of policies and activities related to countering disinformation, it is not clear if these relate specifically to COVID-19. It is also unclear in some instances whether the provided data is related to actions taken against specifically COVID-19 related disinformation or if the data is related to a broader policy issue.

Recommendation 5: Platforms need to set up a central repository for relevant policies within the transparency centre that contains all relevant information regarding all signatories in a centralised manner.

The Guidance asks Signatories to create and maintain a publicly accessible transparency centre featuring among other elements a dashboard displaying relevant KPIs and policies employed with geographical and language coverage. ERGA's experience and reports have demonstrated that an effective monitoring framework requires Signatories to maintain a repository that consolidates and makes generally accessible all their policies and activities to counter disinformation. Dynamic changes in these policies and the fact that these changes are announced in various places make it difficult, if not impossible to effectively assess or monitor their implementation. The availability of such a publicly available repository centralising the relevant policies of all signatories and their services would also make it possible to compare the actions taken at that very time. The information in the repository should be constantly updated to reflect the current situation.

Finding 6: Code of practice does not include enough commitments for reporting on the use of automated systems to combat disinformation

While the signatories report on actions, such as application of generic content labels, the role of automated systems and artificial intelligence in content moderation remains unclear. The monitoring framework should include information on how AI and other automated systems are being deployed to counter disinformation. Such reporting should also address the fact that AI tools are not equally advanced in all EU languages which impacts on how these tools can be effectively deployed across regions and Member States.

Recommendation 6: The provision of data on the use and performance of automated systems should be an explicit commitment within the Code of Practice

Commitments under the Code should include provision of data on the use and performance of automated systems and Artificial Intelligence in particular. Signatories should report on their use of these systems against disinformation including explanations on languages covered and on the types of disinformation these systems are trained to detect as well as provide further technical information if required by the competent NRA. The reports should also include information on risk assessment conducted by the Signatories on these systems.

Finding 7: Access to data for national regulatory authorities and independent researchers supporting the Commission and ERGA in monitoring activities is an essential condition for an effective monitoring framework.

ERGA's Monitoring reports in 2019 and 2020 highlighted the necessity for access to data related to disinformation for the independent researchers. The Digital Services Act introduces obligations for platforms to make data available to "vetted researchers" (Art. 31) and this provision is echoed in the Guidance (8.1). While the existing initiatives of several platforms are welcome, it should not be solely up to platforms to decide what type of data is provided or the format in which the data is presented.

Recommendation 7: Access to data for independent research should be binding under the Code of Practice

The Code should ensure access to data on disinformation for independent researchers. Signatories should also commit to expanding and improving their services that allow researchers to access data (such as Crowdtangle in case of Facebook). Researchers from non-university-affiliated institutions and organisations e.g., Factcheckers should also be included. Verification of the validity of data delivered to researchers, e.g., through an independent audit should be an integral part of the Code.

Finding 8: Actions are not applied consistently and an insufficient monitoring framework

ERGA's monitoring activities confirm that the reported actions are not being applied consistently and the reporting on the engagement metrics needs to be enhanced. Analysis of the self-assessment and the ERGA experience also show there is a significant gap in the monitoring of the Code as it assesses what actions the signatories have reported without the certainty that those actions have been implemented across EU Member States and are working as stated. In addition, the Case Studies in the Irish report, indicated that there is a lack of consistency of applying labels on content containing disinformation and misinformationand that a more consistent approach is required. Verification of the reported actions is included as a requirement in the current draft of the Digital Services Act..

Recommendation 8: The monitoring framework needs to include standardised procedures verifying the implementation of actions across Member States

The strengthened Code needs a permanent monitoring framework that remains open to future changes. Such a framework, including its procedural aspects should be explicitly detailed in the Code of Practice and progressed by the Taskforce envisaged in the Commission Guidance. In addition, as outlined in the Guidance, in order for the new monitoring framework to be effective, it should be built on quantitative and qualitative KPIs capable of measuring the effectiveness of the commitments at an operational and structural level. The Code of Practice should include standardised procedures to verify the implementation of actions for future monitoring. Such procedures, if followed rigorously will ensure consistency in monitoring and provide an important counterpoint to the signatories' reported metrics. ERGA conclusions and experiences with monitoring of the Code in relation to both the European

elections and the COVID-19 disinformation prove that without such procedures, the monitoring is very difficult and, in many instances, even impossible. As laid out in the Guidance, providers of online services that are widely used at EU level and have higher risk profiles with respect to the spread of disinformation should provide their reports within the monitoring framework every six months, while other signatories shall report on a yearly basis.

Recommendation 9: The monitoring framework should include a provision for co-operation between the platform signatories and relevant authorities

More intensive cooperation of signatories with relevant authorities and among the signatories themselves should be considered especially in critical periods such as during electoral campaigns or referendums in each Member State. In order to facilitate such of cooperation, signatories should designate a point of contact. The cooperation should furthermore also be developed on the proper technical expert level, e.g. trust and safety teams, where relevant. Furthermore, the monitoring framework's KPIs should include specific requirements in relation to reporting on key areas including content labels, content and account removals, fact-checking and media literacy campaigns. Relevant data should be made available through the transparency centre and via other adequate channels to the independent researchers for verification and to the other platform signatories.

Recommendation 10: The commitment by the Signatories to appoint and fund an independent auditor to report on their activities to implement the commitments in the Code should be strengthened

The existing Code includes a commitment to appoint a third-party organisation to review the annual self-assessment reports submitted by the relevant Signatories, and to evaluate the level of progress made against the Commitments. This has not been implemented to date. The revised Code should include this commitment and make provision for greater transparency about how this process will be implemented by each of the signatories. The Code should also include a commitment that the signatories will provide adequate resource for this process to the implemented annually. Such audit is crucial for the trust in the Code and the relevant data, and thus for an effective and trustworthy monitoring of the Code.

Appendix One - Covid Check

The CovidCheck Report can be accessed at the link below.

https://www.bai.ie/en/new-report-recommends-development-of-robust-procedures-for-reporting-and-monitoring-online-disinformation/

A video presentation of the findings by the researchers can be accessed at the link below.

https://vimeo.com/606660750