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# Human Rights & Disinformation

For the Special  
Rapporteur's  
annual thematic  
report

Claire Pershan

February 12, 2021





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To: Irene Khan  
U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Dear Ms. Khan,

The EU DisinfoLab is pleased to take the opportunity to inform the Special Rapporteur's annual thematic report on disinformation.

The EU DisinfoLab is an independent non-profit organisation focused on tackling sophisticated disinformation campaigns and documenting the disinformation phenomenon in Europe. We seek to address disinformation in all its forms, through an approach grounded in fundamental rights, while advocating for a healthy, safe, and open internet. We aim to serve as a gathering place for experts and organisations to exchange best practices, cooperate, and develop new approaches to countering disinformation. We seek to amplify the voices of our community of partners and contribute collective expertise to policymakers, through research, advocacy, and policy recommendations. Our activities and partnerships are global, but we have a particular focus on EU legislation, EU institutions and EU Member States.

Please find below our responses to the questions provided by the Special Rapporteur.

***What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?***

Though the terms misinformation and disinformation are often used interchangeably, we believe that the distinction is important. Unlike misinformation which lacks intention, disinformation should be understood as deliberately fabricated or manipulated content that is spread for economic, personal, or political gain, or to intentionally deceive the public. We refer to "[The Few Faces of Disinformation](#)" to further understand the different intentions behind disinformation. In our monitoring of digital disinformation activities, we find it particularly necessary to examine the distribution of disinformation, or the structural factors that assist its dissemination. As EU DisinfoLab Executive Director Alexandre Alaphilippe has explained, "[how disinformation diffuses and spreads owes largely to the digital architectures of online platforms.](#)"

Disinformation is a multifaceted and complex issue that can rather be understood as a symptom of a much broader information disorder powered by social media, from which many malicious actors benefit for various and sometimes interrelated purposes. As explained by Gary Machado, our Managing Director, "[uncovering malicious behaviour from state actors is only one facet of disinformation](#)". With this in mind, the majority of disinformation cannot be explained by foreign influence alone. It is increasingly understood that we need to address the business models and financial incentives that [encourage the dissemination](#) of disinformation between and across digital services.

***What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?***

Over the last few years the EU institutions have been paying significant attention to the disinformation challenge and its relationship with the architecture of the social web. Generally the EU has approached disinformation and misinformation - which it perceives as harmful but not illegal content - through self-regulatory initiatives and coordination mechanisms. This includes notably the 2018 Action Plan Against Disinformation which included the establishment of an EU-wide Rapid Alert System, and the Code of Practice on Disinformation, the 2015 launch of the European External Action Service's East StratCom Task Force, the 2017 convening of a High-Level Expert Group on Fake News and Online Disinformation, and efforts to protect the 2019 EU elections. Following the outbreak of Covid-19 and the parallel 'infodemic' the Commission introduced further monitoring and reporting requirements for signatories of the Code of Practice and which has generally taken the approach of promoting authoritative content above dis and misinformation.

In December of last year, the European Democracy Action Plan (EDAP) along with its "twin" regulatory package, the Digital Services Act (DSA), have set the course for co-regulatory approach to disinformation. The DSA proposes several regulatory measures that should discourage the spread of disinformation on digital services, specifically measures related to political advertising, trusted flaggers, know-your-business customer requirements, data access for researchers, and algorithmic accountability. Meanwhile, it seems that a 'strengthened' Code of Practice on Disinformation will be the main tool through which the EU will tackle online ('harmful but legal') disinformation. The EU DisinfoLab has given feedback on the [European Democracy Action Plan](#), the [Digital Services Act](#), and on the Commission's [Covid-19 Joint Communication](#). We were also called on to participate in [the assessment of the Code of Practice](#), conducted by the Commission by an independent contractor.

The European Parliament has also convened a year long committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE), to which the EU DisinfoLab has delivered expert testimony twice. This committee will produce a report with recommendations for future actions.

***What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights?***

The EU's efforts to tackle disinformation are careful to apply within the framework of existing laws of the EU and its Member States, including the EU Charter of Fundamental Rights and the European Convention on Human Rights. The self-regulatory approach to disinformation and the emphasis on transparency reflects an effort to avoid infringing on the fundamental right to freedom of expression and to preserve an open Internet.

At the same time, the Code of Practice has been heavily criticised for its failure to meaningfully curb disinformation. The self-reporting provided by platforms and their collaborations with fact checkers and civil society appear to many, including EU DisinfoLab, as sometimes little more than window dressing. The problem, in our view, is that the code lacks sufficient compliance standards and enforcement mechanisms. We agree with the unanimous final opinion of the Sounding Board of the Multistakeholder Forum on disinformation, which found that the Code of Practice "contains no common approach, no meaningful commitments, no measurable objectives or KPIs, no compliance or enforcement tools and hence no possibility to monitor the implementation process." We are eager to see this situation evolve under the Digital Services Act and the revised Code of Practice.

Crucially, the dynamic between platforms and civil society remains deeply imbalanced. It is therefore still necessary to address the asymmetries between digital services and civil society with respect to information and to labor, through increased information sharing, transparency, accountability, capacity building, and other kinds of support. We feel that this approach of equipping civil society to tackle disinformation is not only aligned with fundamental rights, but that it embodies an inherently rights-based approach to disinformation.

***What policies, procedures or other measures have digital tech companies introduced to address the problem of disinformation?***

Platforms have experimented with and implemented a number of measures. We offer a synthesis here: ["How Platforms are responding to the 'disinfodemic'"](#) (September 2020).

We find that checking efforts are crucial but also limited, as they address the symptom rather than the root cause of the problem. We have also seen platforms try to address the spread of mis and disinformation through the amplification of high-quality or "authoritative" content (see the [EU Commission's latest set of reports from the Covid-19 monitoring programme](#)). Platforms have also experimented with slowing the spread of viral content, through various practices often referred to as "friction". As disinformation expert Renee Diresta has famously said "freedom of speech does not imply freedom of reach". So-called "speed bumps", "friction", or "circuit breakers" slow the spread of content and allow for newly viral content to be temporarily stopped from spreading while it is fact-checked. Friction can come in many forms: imposing fact-checking on highly viral content that passes a certain threshold of views, down-ranking content, temporarily hiding content, limiting the number of times a piece of content can be shared instantaneously, or even offering automated advice or posing a question to the end-user before they share a piece of content. Friction represents a new frontier in content moderation, beyond the binary response of take-down/leave-up which tends to confront the right to freedom of expression; it thereby opens new possibilities for reducing dis and misinformation which respect our fundamental rights. EU DisinfoLab advocates strongly for continued experimentation and widespread employment of different friction techniques.

***To what extent do you find these measures to be fair, transparent and effective in protecting human rights, particularly freedom of opinion and expression?***

Of the measures put in place by platforms, some appear effective (for instance ['debunking'](#) and ['prebunking'](#)) but more data is needed to fully understand their impact. Importantly, the measures taken by platforms are not deployed consistently for all users/across all counties. In our own research into disinformation campaigns, we have found that platforms are more likely to remove disinformation assets on their services when those assets are in the English language or have an impact on US audiences. We have co-signed a letter with other civil society organisations demanding that platforms show more concern for users around the world, ["the other 96% of humanity"](#).

***What procedures exist to address grievances and provide remedies for users, monitor the action of the companies, and how effective are they?***

The Digital Services Act is attentive to protecting consumer rights and the due process rights of end-users. It will place new obligations on "very large platforms", including requiring a point of contact and legal representative, notice and actions obligations to provide information to users, and complaint and redress mechanisms and out of court dispute settlement options, inter alia. Of course, many services

will not fall under the DSA, and it is yet to be seen how effectively the final version of this regulation will be implemented and enforced.

Currently, most high-level discussions taking place on disinformation operate on an ad-hoc and bilateral basis (directly between a government and a platform or between a single academic or a single research institute and platform). While we fully understand their sensitive nature, in our view these discussions must strive to be more transparent and more broadly inclusive of civil society and experts. This is particularly important when it comes to the addressing disinformation campaigns that are not English-language or that are directly related to the US, and may therefore be deprioritized or misperceived.

***Please share information on measures that you believe have been especially effective to protect the right to freedom of opinion and expression while addressing disinformation on social media platforms.***

In Europe, the Rights Equalities and Citizenship programme and Horizon 2020 have both been strong initiatives that have supported civil society efforts to address the many facets of disinformation. These initiatives have helped foster innovation and participation across member states and enabled an active, independent, and resilient civil society ecosystem. The EU DisinfoLab is hopeful that similar programs will continue such efforts to include and empower more of civil society, including those who are tackling disinformation but may fall between the cracks of existing support schemes.

***Please share any suggestions or recommendations you may have for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.***

We feel that disinformation must not be approached exclusively through the lens of the right to freedom of expression and opinion. It must be recalled that disinformation has important implications for other rights, including the right to assembly and to association, the right to employment, the right to education, the right to participate in cultural life, as well as religious freedom. Disinformation is deeply connected to our civil and political rights. (As our research has shown, it can affect the participation of women in political space). It is also linked to many economic, social and cultural rights. (As the “infodemic” has proven, disinformation and misinformation directly influence our right to appropriate health care). Because disinformation is facilitated by the architecture and business models of digital platforms, the majority of which are private companies, the UN Guiding Principles on Business and Human Rights also represent an essential tool for addressing disinformation.

Disinformation is a transversal challenge by which more and more actors find themselves confronted. We feel that a thriving, decentralized civil society ecosystem is key to an effective and rights-respecting response. A decentralized civil society architecture – in which a network of organisations, initiatives, and individuals operate in an agile, harmonised manner – can create multiplier effects and build capacity and resilience among those currently at the periphery of the disinformation threat (climate activists, health professionals, human rights defenders, etc.). EU DisinfoLab has researched the role of civil society in addressing disinformation and provided detailed recommendations regarding the European context, though this is clearly a task for civil society globally.



## Relevant documents

We would like to take the opportunity to highlight some of our research and policy positions, which we feel may nourish the special rapporteur's work in this area.

### Research:

- [Misogyny and Misinformation: an analysis of gendered disinformation tactics during the Covid-19 pandemic](#) (2020)
- [La verdadera izquierda and the sale of accounts on the black market](#) (in cooperation with El Diario) (2020)
- [Indian Chronicles: deep dive into a 15 years operation targeting the UE and UN to serve indian interests](#) (in cooperation with the BBC, Reuters, Le Temps) (2020)
- [How Covid-19 conspiracists and extremists use crowdfunding platforms to fund their activities](#) (2020)
- [Hydroxychloroquine and Facebook: The challenge of moderating scientifically debatable claims](#) (2020)
- [Suavelos case study: How you though you support the animals and you ended up funding white supremacists](#) (in cooperation with Le Monde) (2019)

### Policy:

- [Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression](#) (ITU/UNESCO Broadband Commission Report) (2020)
- [The Many Faces Fighting Disinformation: Safeguarding Civil society's role in the response to information disorders.](#) (2021)
- [Disinformation is evolving to move under the radar.](#) (Brookings) (2021)

We hope that these responses and materials can be of help and interest. We are of course available to discuss these topics in more detail.

Sincerely,

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