



THE EU CODE OF PRACTICE ON DISINFORMATION

An Example of the Self-Regulatory Trend in International and European Law

CARLOS ESPALIÚ BERDUD ¹

¹ Universidad Antonio de Nebrija, Spain

KEYWORDS

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ABSTRACT

Among the instruments that the EU has promoted in the fight against disinformation, the Code of Practice on Disinformation, which was drafted by the major online platforms in 2018 and was essentially self-regulatory in nature, stands out. After its implementation, some weaknesses were identified, which were addressed by drafting a new, strengthened version of the code in 2022. Although it responds to the same characteristics as the 2018 Code, its potential effectiveness is strengthened by being framed within a broader legal framework, in conjunction with the DSA among other instruments. In fact, we believe that only a joint effort by private actors in this field, together with national and international public authorities, and following a multidisciplinary approach, will guarantee the ability to confront the monster of disinformation that terrorises contemporary societies. Without forgetting respect for the essential freedoms of information and expression.

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1. Introduction

For decades, attacks aimed at changing public opinion and thereby undermining the democratic functioning of states and international organisations have been multiplying around the world. Such actions are known as "disinformation" campaigns. More precisely, this term can be defined as "orchestrated dissemination of untruthful news or data through any type of communication channels, whether traditional –printed press, radio, television– or horizontal – social net-works, etc.– with the intention of obtaining an economic, social, or strategic benefit, or of harming rivals, whether individuals, societies, institutions, or states" (Espaliú Berdud, 2023, p. 5; Olmo & Romero, 2019, p. 4).

In this context, it should be emphasized that although deception techniques have always been used for political or war purposes (National Cryptologic Centre, 2019, p. 5), today, due to the technological revolution that has taken place worldwide, their danger and scope have multiplied and they represent a serious global risk (Shao et al., 2028, p. 2). Indeed, the substitution of traditional media with social networks as reliable channels of information weakens the defensive capacity of recipients because, as several experts have warned, one consequence of the social network empire is that, by gathering stories from multiple sources, attention is focused on the story rather than its source, and because consensus and recommendations – rather than traditional media gatekeepers or ingrained reading habits – guide readers on social networks (National Cryptologic Centre, 2019, pp. 5-8; Messing & Westwood., 2012, p. 1044; Wardle & Derakhshan, 2017, p. 12).

In this context, Member States or the European Union (EU) itself increasingly recognize that they are subject to massive disinformation campaigns, especially in electoral or political contexts, either by national groups, as in the recent case of the German election campaigns (Delcker, 2021), or by third countries, specifically to discredit and delegitimize elections (European Commission, 2018b, p. 16). For that reason, and little by little, both Member States and the EU have tried to devise strategies to react against this scourge. In particular, as far as the EU is concerned, in March 2015, the European Council requested that the High Representative of the European Union for Foreign Affairs and Security Policy prepare an action plan on strategic communication (European Council, 2015, point 13), which led to the establishment of the East StratCom Task Force, operational since September 2015 and part of the Information Analysis and Strategic Communications Division of the European External Action Service (EEAS). Since then, the EU has adopted an arsenal of instruments and measures whose description would be beyond the scope and purpose of this paper.

However, in that trajectory, it will be of great significance for our research to highlight the fact that, in January 2018, the European Commission set up a high-level expert group to advise on policy initiatives to counter fake news and disinformation circulating online, which is crucial for the development of EU action in this area. Its final report, published on 12 March 2018, reviewed best practices based on core principles and the appropriate responses arising from these principles, suggesting to the European Commission a multi-pronged approach to the problem (Renda, 2018, p. 21), seeking to involve all stakeholders in any future action and highlighting the need for self-regulation.

The report also recommends several other measures, such as promoting media literacy among the population, developing tools to enable consumers and journalists to combat the phenomenon of misinformation, and protecting the diversity and sustainability of European media. As a measure aimed particularly at private actors, the panel's report recommends the development of a code of principles to be adopted by online platforms and social networks, including, for example, the need to ensure transparency in explaining how their algorithms select the news presented. In terms of monitoring the implementation of the proposed measures, the report suggests the creation of a multi-stakeholder coalition to ensure that all agreed measures are implemented, monitored, and regularly reviewed (European Commission, 2018a). Among all these elements, we must draw attention to the total absence of recommendations to EU bodies on the adoption of binding legal standards for Member States (Jiménez-Cruz et al., 2018).

In response to these proposals, the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy developed an Action Plan against Disinformation in March 2018, which was endorsed by the European Council in December of the

same year (European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, 2018).

This Action Plan is based on the recognition of the need for political determination and unified action between EU institutions, Member States, civil society and the private sector, in particular online platforms. This unified action should be based on four pillars: (i) improving the capacity of EU institutions to detect, analyse and expose disinformation; (ii) strengthening coordinated and joint responses to disinformation; (iii) mobilising the private sector to fight disinformation; and (iv) raising awareness and strengthening societal resilience. In this sense, it should be noted that, as stated by Fonseca-Morillo in the conception of the plan, media literacy goes beyond the knowledge of information technologies: it is about developing the critical thinking skills necessary to analyse complex realities and distinguish facts from opinions or create content responsibly (Fonseca Morillo, 2020, p. 2).

As a result of the implementation of the 2018 Action Plan, the EU's Rapid Alert System was set up between EU institutions and Member States to facilitate the exchange of information on disinformation campaigns and coordinate responses. The Rapid Alert System is based on open-source information and draws on the expertise of academics, fact-checkers, online platforms and international partners.

In the same vein, in April 2018, the European Commission proposed a Code of Practice (European Commission, 2018b) to engage private actors (representatives of online platforms, leading tech companies and players in the advertising industry) in a self-regulatory -or co-regulatory for some (Pagano, 2019, p. 151)- instrument to tackle the spread of online disinformation globally. The proposal was well received and a Multistakeholder Forum was convened by the Commission to draft the Code. That Forum consisted of a "Working Group" composed of the major online platforms and associations from the advertising sector as well as a "Sounding Board" composed of representatives of the media, academia and civil society. The Working Group drafted the Code, and the Sounding Board provided advice and an Opinion on the Code (European Commission, 2020, p. 2). Finally, the Code of Practice on Disinformation was published on 26 September 2018 (European Commission, 2018c).

This instrument, which takes on board the indications of the final report of the high-level expert group of March 2018 outlined above, is the focus of our research. In our opinion, it can be seen as an important example of the growing self-regulatory or soft-law trends in international and European law. That is, as has been defined by doctrine, as a process in which "the rules governing market behaviour are made and enforced by the governed themselves" (Borz et al., 2024, p. 2; Latzer et al., 2013, p. 376).

Regarding more specifically the European Law, it should be noted that since the 2003 Interinstitutional Agreement on Better Lawmaking (European Union, 2003), which proposes the use of alternative regulatory mechanisms, the European Union institutions, and in particular the Commission, have increased their reliance on codes of conduct for self- or co-regulation through non-legislative or private acts (Borz et al., 2024, pp. 3-4).

Returning to the 2018 Code of Practice on Disinformation, it should be stressed that the European Commission carried out a comprehensive evaluation of this instrument at the end of its first 12-month period of application and published a report in September 2020 highlighting achievements and areas for further improvement (European Commission, 2020). On this basis, in May 2021, the European Commission adopted a document entitled "Commission Guidance on Strengthening the Code of Practice on Disinformation" (European Commission, 2021a). And because of these developments, on 16 June 2022, a revised form of the Code was presented by 34 signatories who participated in this revision process of the 2018 Code, under the name "2022 Strengthened Code of Practice on Disinformation" (European Commission, 2022a).

Our main objective in this article will be to measure the effectiveness of the Code of Practice in the fight against disinformation. This will necessarily provide us with an insight into the ability of soft law means to complement or replace hard law regulatory instruments in international and European law. To carry out that task, in the following section we will analyse the features of the 2018 Code of Practice and how it was applied. In the subsequent section, we will address the changes introduced in the 2022 Code of Practice and consider how it has been implemented so far.

2.The 2018 Code of Practice on Disinformation and the assessment of its effectiveness.

The 2018 Code was the world's first self-regulatory instrument to combat disinformation (European Commission, 2022d). In fact, it was an instrument drafted by the signatories and consists of a main text and two annexes that form an integral part of the Code. The main text includes a Preamble, a statement of Purposes, and a set of 15 Commitments grouped under five pillars: A. Scrutiny of ad placements B. Political advertising and issue-based advertising C. Integrity of services D. Empowering consumers E. Empowering the research community. In addition to these essential elements, the main text contains other sections dealing with other aspects that are so important to the life and implementation of the Code, such as measuring and monitoring the effectiveness of the Code, the evaluation period, signatories and entry into force.

The 2018 Code begins, in the preamble, by acknowledging that “[...] 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” (European Commission, 2018c, Preamble). This is important because these freedoms lie at the heart of democratic life in the EU and its Member States.

In this regard, it should be recalled that the European Court of Human Rights (ECtHR) has reiterated in its jurisprudence that “freedom of expression [...] constitutes one of the essential foundations of a democratic society and one of the primary conditions for its progress” (ECtHR, 1992, *Castells v. Spain*, paragraph 42). As a matter of fact, this reality is enshrined in the fundamental rules of the Union. For instance, Article 2 of the Treaty on European Union (TEU) states that democracy is one of the fundamental values of the Union and is based on the existence of free and independent media, the functioning of which requires the full exercise of freedom of expression and information. This freedom is in turn guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union. It should be recalled that, according to this provision, freedom of expression and information includes freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers, as well as freedom of the media and their pluralism. Article 10 of the European Convention on Human Rights (ECHR), which is also part of EU law, recognises the right to freedom of expression. It states that: “This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. Nevertheless, the text makes it clear that the authorities may, in the interests of national security or other public interests, impose certain formal requirements and restrictions on this freedom (Article 10 ECHR, paragraphs 1-2). Meanwhile, European jurisprudence, both of the Court of Justice of the European Union (CJEU) and of the ECtHR, in interpreting and applying this right, has reiterated that any restriction on freedom of expression must be interpreted restrictively and that any restriction must be imposed by law (CJEU, 2001, *Connolly v. European Commission*, paragraph 42). The case law takes this interpretation to the extreme when it warns public authorities that they cannot silence opinions even if they are contrary to the official view (*ibid.*, paragraph 43). Even for the ECtHR, Article 10 of the ECHR:

[...] does not prohibit the discussion or dissemination of information received even if there is a strong suspicion that such information may not be true. To hold otherwise would deprive persons of the right to express their views and opinions on statements made in the mass media and would thus constitute an unreasonable restriction on the freedom of expression enshrined in Article 10 of the Convention (ECtHR, 2005, *Salov v. Ukraine*, paragraph 103).

Moreover, and with specific reference to the Internet channel, the ECtHR, in *Ahmet Yildirim v. Turkey*, in a case in which the applicant claimed, inter alia, that the blocking of access to his website by the Turkish national authorities -on the ground that the website contained statements insulting the memory of Atatürk- amounted to an unjustified violation of his rights under the ECHR, stated that:

[...] the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest (ECtHR, 2012, para. 54).

Referring back to the Code, it should be noted that its purpose was to identify actions that signatories could take to address the challenges posed by disinformation. Among other things, it specifically referred to: efforts to improve ad verification to reduce the revenues of disinformation purveyors; ensuring transparency of political and issue-based advertising, including to enable users to understand why they have been targeted by a particular ad; and increasing and demonstrating the effectiveness of efforts to shut down fake accounts.

In terms of commitments, as we have already noted, the Code itself contained 15 commitments in five pillars. Nevertheless, signatories to the Code were not obliged to sign up to all the commitments but could only accept those that were consistent with their role in the creation and distribution of the content in question.

About the possibility of becoming a party to the Code, it was established that any stakeholder could sign the Code at any time and choose to accept all or any of the commitments contained therein. At the same time, signatories could withdraw from the Code or decide not to accept any of the commitments. The first signatories were Facebook, Google, Twitter and Mozilla, as well as the trade association representing online platforms (EDIMA) and trade associations representing the advertising industry and advertisers (the European Association of Communications Agencies (EACA), IAB Europe and the World Federation of Advertisers (WFA), as well as the Belgian national association of the WFA, the Union of Belgian Advertisers) (European Commission, 2020, p. 3). Other signatories gradually joined, bringing the total number of signatories to 43, who have now signed up to the strengthened 2022 version (European Commission, 2022b).

With regard to the assessment, the signatories agreed to meet regularly for a period of one year to review the progress, implementation and operation of the Code. At the end of this period, they would meet to evaluate its effectiveness. While a system of self-measurement of the Code's effectiveness was established, the signatories agreed to give the European Commission a complementary role of accompanying and monitoring the smooth implementation of the Code. Nevertheless, this role could not be considered as that of a controller or watchdog of the steps taken.

Regarding the measuring and monitoring the Code's effectiveness, the signatories agreed to commit themselves "[...] to write an annual account of their work to counter Disinformation in the form of a publicly available report reviewable by a third party" (European Commission, 2018c, Commitment 16).

Alongside this, an interesting means of resolving disputes is introduced, in line with the self-regulatory nature of the Code. It was foreseen that any of the signatories could draw the attention of any other signatory to its failure to comply with its obligations. The matter could be discussed in a plenary of the signatories, and, on objective grounds, the non-compliant entity could even be "invited" to leave the Code (*ibid.*, V. Signatories).

As can be seen, an alternative dispute resolution system, which has been very much in vogue in recent decades (Sander, 1985, p.2), has been established.

Finally, it was agreed that the Code would become effective and would enter into force one month from its signature" (European Commission, 2018c, VI. Entry into force).

In short, the 2018 code constituted an instrument of great flexibility in the assumption of obligations, crowned by an alternative dispute resolution system, instead of a legal instrument containing strong obligations, rigid enforcement mechanisms and institutionalized dispute settlement procedures. At the root of the motivations that prompted the European Commission to opt for this regulatory model, in addition to those we saw above related to soft law trends in international and European law, others have been advanced by the doctrine. For example, the complexity of demanding responsibility and accountability from digital companies for the creation of disinformation (Borz et al., 2024, p. 5). Or the European Commission's reluctance to create a situation of politically dictated 'censorship', indicating here a willingness to avoid the controversies of previous so-called fake-news laws, for example in Germany (Hurcombe & Meese, 2022, p. 299).

As regards evaluation, at the end of the first year of the Code's application, the Commission received annual self-assessment reports from the online platforms and technology companies Google, Facebook, Twitter, Microsoft and Mozilla, as well as from the trade association signatories to the Code. In addition to the reports previously submitted by the signatories, the Commission's assessment took into account the report of the third-party organisation selected by the signatories, as provided for in the Code, and was assisted by the European Regulators Group for Audio-Visual Media Services (ERGA) and an

independent consultant (Valdani, Vicari and Associates) (European Commission, 2019). On 10 September 2023, the European Commission published its Staff Working Document (SWD (2020)180), which set out the key findings of the Commission services' assessment of the implementation and effectiveness of the Code of Practice on Disinformation during its initial 12-months period of operation (European Commission, 2020).

In essence, for the Commissions services in charge of the assessment, the 2018 Code had provided a framework for a structured dialogue between relevant industry stakeholders, the Commission and the ERGA authorities, and for greater transparency of platforms' policies against disinformation in the EU. This framework has set general policy objectives, identified relevant requirements for appropriate measures, and allowed for the public disclosure of information on the implementation of these measures, thereby contributing to increased accountability of platforms. This represents significant progress compared to the situation prior to the entry into force of the Code. As a result of the Code, signatories have introduced new policies to achieve the agreed objectives, amended or clarified their terms of service accordingly, and engaged in supporting activities such as working with fact-checkers and media literacy initiatives (European Commission, 2020, p. 4).

The drafters of the assessment went on to point out the achievements of the signatories of the Code in each of the pillars in which the commitments were grouped. For instance, regarding pillar A of the Code (scrutiny of ad placements), the report underlined that signatory platforms had enforced policies to prevent their services from being used to spread misrepresentative or misleading advertisements and have blocked or suspended ad accounts of "imposter websites". In that regard, examples were given of those actions, like the fact that, during the period under review, Facebook took action against over 600.000 ads each month in the EU which violated its policies on low quality or disruptive content, misleading or false content and circumvention of its systems; or that Google reported 314.288 actions taken against EU-based Google Ads accounts for violations of its Google Ads Misrepresentation policy, and 55.876 actions for violations of its Google Ads Original Content policy (*ibid.*, pp. 4-5). With regard to Pillar B of the Code (Transparency of political and issue-based advertising), it was acknowledged that, for the first time in the EU, the main signatory platforms introduced systems to increase the transparency and public disclosure of political advertising in the run-up to the 2019 European Parliament elections. These systems included a requirement for all political advertising to be clearly labelled as sponsored content, with candidates, political parties or sponsors clearly identified (*ibid.*, p. 5). Regarding Pillar C of the Code (Integrity of Services), it was noted that signatory platforms had taken action against accounts that use manipulative techniques to artificially amplify the reach and impact of false or misleading information. In this context, it was noted that platforms had used artificial intelligence to detect and block hundreds of millions of fake accounts (*ibid.*, p. 5). In relation to Pillar D of the Code (empowering consumers), the Commission services noted, inter alia, that platforms had invested significantly in technology to promote trusted sources of information in their content ranking and recommendation systems, and had also promoted the development of trustworthiness and credibility indicators for online sources (e.g. through the Trust Project or the Credibility Coalition (*ibid.*, p. 6). Finally, with respect to Pillar E of the Code (empowering the research community), the authors of the assessment presented some actions taken by signatories, such as the fact that in April 2018, Facebook launched a partnership with Social Science One, a group of 83 academic researchers, to share data with the academic research community while maintaining strong privacy protections (*ibid.*).

Notwithstanding these achievements, the Commission identified a number of shortcomings in the implementation of the Code. These include inconsistent and incomplete application of the Code across platforms and Member States, limitations inherent in the self-regulatory nature of the Code, and gaps in the coverage of the Code's commitments. The assessment also highlighted the lack of an appropriate monitoring mechanism, including key performance indicators (KPIs), the lack of commitments on access to platforms' data for research on disinformation, and the limited participation of stakeholders, in particular from the advertising sector (European Commission, 2021a, p. 1). The Commission highlighted one area where the Code has not made sufficient progress, namely in the area of demonetisation of disinformation, where online advertising continues to facilitate the spread of disinformation (*ibid.*, p. 2).

For our part, we must draw attention to the lack of robust measures, such as the imposition of fines or other sanctions, on those responsible for resorting to disinformation campaigns. This is the case, for instance, of the particularly serious introduction of fake news in the context of the pandemic. In that

regard, among other examples, Youtube acknowledges that its Community Guidelines prohibit content that promotes dangerous or illegal activities with a risk of serious physical harm or death, including certain types of medical disinformation. As the pandemic situation evolved, in close cooperation with local and international medical authorities, efforts were made to ensure the removal of content which contravened the Community Guidelines and which contained information likely to cause extremely serious harm to the health of the population (Google, 2020, p. 6). As can be seen, there is no mention of the imposition of sanctions other than the closure of the channel in question. In fact, if one goes to Youtube's Community Guidelines and look at the misinformation policy, one will see that it states that if a particular piece of content is found to be in violation of the policy, Youtube will remove the content and send an email to the author of the content to let him or her know. The Community Guidelines go on to say that if this is the first time the person has violated the Community Guidelines, they will likely receive a warning with no penalty to the channel. If it's not, Youtube may issue a strike against the channel. If the channel owner receives 3 strikes within 90 days, the channel will be terminated. Youtube may terminate a channel or account for repeated violations of the Community Guidelines or the Terms of Use. Youtube may also terminate the channel or account after a single instance of severe abuse or if the channel is dedicated to violating the policies (Youtube, Community Guidelines, Misinformation Policies, 2024).

In light of the shortcomings identified and the opportunities for improvement, the European Commission announced that it would issue guidelines to strengthen the 2018 Code of Practice as part of comprehensive measures to combat disinformation in the online environment, and that it would present specific legislation on the transparency of political advertising (European Commission, 2021a, pp. 1-2). These guidelines were finally published on 26 of May 2021 under the title "European Commission Guidance on Strengthening the Code of Practice on Disinformation".

In general terms, the 2021 European Commission document called for the Code of Practice to be developed into a strong, stable and flexible instrument that makes online platforms more transparent, accountable and responsible by design (*ibid.*, p.3). More specifically, the Guidelines underlined the need to strengthen the Code of Practice on Disinformation in the following areas to ensure a full and consistent application across stakeholders and EU countries: wider participation with tailored commitments; better demonetisation of disinformation; ensuring the integrity of services; improving user empowerment; broadening the scope of fact-checking and increasing access to data for researchers; and creating a more robust monitoring framework.

2. The 2022 Strengthened Code of Practice on Disinformation and assessment of its effectiveness.

It is interesting to note that the first experiences of codes of practice, especially the 2018 EU one, which had been drafted following the indications of the 2018 report of the high-level expert group to advise on policy initiatives to counter fake news and disinformation circulating online and trying not to encroach on freedom of the press and freedom of expression, did not turn out to be very successful.

Indeed, it is striking that alongside the Commission's own perception of the lack of teeth and effectiveness of the 2018 Code of Practice on Disinformation, comparative doctrine also echoes a widespread skepticism about the effectiveness of self-regulatory institutions in general and press councils in particular, even among journalists themselves (Cavaliere, 2020, p. 149). As a result, there have been many voices in favor of the implementation of more stringent measures channeled through hard law instruments, both at national and EU level (Kobernjuk & Kasper, 2021, pp. 186-195).

In this context, the signatories of the 2018 Code of Practice, together with some new entities, drafted a new instrument, which was published on 16 June 2022 under the name: "The Strengthened Code of Practice on Disinformation 2022" (European Commission, 2022a). The new code seeks to embrace a broader spectrum of entities than the previous 2018 instrument, of which mainly large online platforms as well as major trade associations from the European advertising sector were part. Therefore, the new Code brings together a wide range of actors, including players from the advertising ecosystem, ad tech companies, fact-checkers, emerging or specialised platforms, civil society and third-party organisations with specific expertise in disinformation (European Commission, 2022b).

The strengthened Code aims to address the shortcomings of the previous Code through more robust and detailed commitments and measures, which are based on operational lessons learned in recent years. Some of those lessons were the COVID pandemic and the Russia's use of disinformation for military purposes as part of its plan to invade Ukraine, such as Věra Jourová, Commission Vice-President for Values and Transparency, pointed out during the Commission presentation of the new Code of Practice (European Commission, 2022c).

The 2022 Strengthen Code contains 44 commitments and 128 specific measures, in nine pillars, four more than the 2018 version. Those pillars are: A. Scrutiny of ad placements; B. Political advertising; C. Integrity of services; D. Empowering users; E. Empowering the research community; F. Empowering the fact-checking community; G. Creation a common Transparency Centre website; H. Setting up a permanent Task-force. I. Monitoring of the Code.

As can be seen, the new Code picks up the gauntlet thrown down by the Commission and addresses all the issues raised for signatories in the 2021 Guidance on Strengthening the Code of Practice on Disinformation (European Commission, 2021a). However, it retains the self-regulatory nature of the previous 2018 Code of Practice.

As in the 2018 Code, in the new system of the 2022 Code, signatories agree to sign up to commitments and measures that are relevant to the products, activities and services that they and their subsidiaries offer (European Commission, 2022a, Preamble (f)).

In assessing the effectiveness of the new instrument, we are particularly interested in the measures relating to the governance of the Code and the monitoring of its implementation. Thus, according to the drafters, the envisaged creation of a Transparency Centre, accessible to all citizens, will provide an overview of the implementation of the Code's measures, generating greater transparency (European Commission, 2022a, Commitments 34-36). On the other hand, the new permanent Task-force will also keep the Code future-proof and fit for purpose by providing a forum, inter alia, to review and adapt the commitments in the light of technological, social, market and legislative developments. To this end, the Task-force is composed of representatives of signatories, the ERGA, the European Digital Media Observatory (EDMO) and the EEAS, and is chaired by the Commission (*ibid.*, Commitment 37). In my view, the fact that the Task Force's Board includes representatives of various EU bodies, even though the Code remains self-regulatory in nature, provides an additional guarantee for its implementation.

As regards the monitoring framework, it should be noted that the Code includes Service Level Indicators to measure the implementation of the Code across the EU and at Member State level. In this context, it was envisaged that, in early 2023, signatories would provide the Commission with the first baseline reports on their implementation of the Code. Thereafter, very large online platforms, as defined in the Digital Services Act (DSA) (European Parliament and Council of the European Union, 2022, Article 33), would report every six months, while other signatories would report annually. The strengthened Code also contains a clear commitment to work towards establishing structural indicators to measure the overall impact of the Code on disinformation (European Commission, 2022a, Commitments 38-42).

Regarding the enforcement of the Code, it is worth mentioning that it will be part of a broader regulatory framework, in combination with the legislation on transparency and targeting of political advertising and the DSA. In relation to the legislation on transparency and targeting of political advertising, it should be noted that a new regulation is on its way to be adopted by the European Parliament and the Council (Council of the European Union, 2022). The European Commission's 2021 guidance foresees that the Code of Practice will evolve into a Code of Conduct as part of this co-regulatory framework (European Commission 2022d).

Therefore, in addition to the burdens assumed in compliance with the Code of Practice (European Parliament and Council of the European Union, 2022, Article 45), the DSA imposes heavy obligations on large online platforms and search engines. As previously announced, the DSA classifies platforms or search engines with more than 45 million users per month in the EU as very large online platforms (VLOPs) or very large online search engines (VLOSEs) (*ibid.*, Article 33). These companies should, among other things, report criminal offences; have user-friendly terms and conditions; be transparent about advertising, recommender systems or content moderation decisions; and demonstrate a proactive profile in seeking out systemic risks associated with their services in terms of illegal content, public security, fundamental rights, etc (*ibid.*, Articles 34-43). And, very importantly for the effectiveness of the obligations imposed, in the event of non-compliance with key obligations of the DSA, fines of up to 6% of worldwide annual turnover or temporary suspension of the service may be imposed (*ibid.*, Article

52). Obviously, the hard law normative character of the DSA contrasts with the soft law character of the Strengthened Code, although it complements and supports it, as Thierry Breton, Commissioner for the Internal Market, pointed out when the Commission presented the Strengthened Code on 16 June 2022 (European Commission, 2022c).

According to the European Commission, very large platforms will benefit from participating in the 2022 Strengthened Code in anticipation of new mandatory obligations applicable to them under the proposed DSA. In particular, in relation to risk assessment, risk mitigation, user empowerment and advertising transparency. As such, the strengthened Code provides an early opportunity to develop appropriate measures to address one of the key risks posed by platform services in light of the proposed framework of the DSA. Smaller platforms and other stakeholders would also benefit from signing up to appropriate commitments in the strengthened Code, in order to benefit from its best practices and protect themselves from the reputational risks posed by the misuse of their systems to spread disinformation (European Commission 2022d).

Since the publication of the 2022 Code of Conduct, the Task Force has been established, the Transparency Centre¹ has been set up and work is underway to develop structural indicators, as required by Commitment 41 of the Code, to assess the effectiveness of the Code in reducing the spread of online disinformation for each relevant signatory and for the whole online ecosystem at EU and Member State level (Nenadić et al., 2023/2024; TrustLab, 2023).

And since January 2023, signatories are issuing their compliance reports, in relation to the 2022 Code of Practice as a whole and to each of the commitments they have made by signing the Code². Thus, in January 2023, the signatories were due to submit their first reports, and although most of them did so (27 out of 34), it is worth noting the lack of compliance of a good number of them already. Among the signatories that presented their reports, it is worth highlighting that Google, for example, indicated that in the first half of 2023 it prevented more than €31 million in advertising from going to disinformation actors in the EU and that it rejected 141.823 political ads for failing to comply with identity verification procedures (European Commission, 2023b). In the same vein, it should be noted that TikTok, for example, highlighted that in the same period, 140.635 videos with more than 1 billion views were removed from the platform for violating its misinformation policy (*ibid.*). Google's January 2023 report is of particular interest because it contains information about the Russian government's use of disinformation for war purposes even before the invasion of Ukraine and NATO member states (Google, 2023a, Section 1, Government-backed attackers; Google, 2023b).

As a member of the Task-force, ERGA published its first assessment of the implementation of the new Code by the signatories in June 2023. This was based on their baseline reports or their failure to report. In that report, ERGA showed already its concern about the missing data on the Member State level in several reports and for several measures. (ERGA, 2023, p. 4). It also stated that while the signatories' reports provided more insight than ever before into the disinformation-related actions of the platforms, the reports submitted by the signatories fall short of the quality, comprehensiveness and comparability of the actions taken to tackle the problem of disinformation in the Member States (*ibid.*). In addition, ERGA's assessment also found a lack of compliance with Measure 36.1 of the Code, which requires signatories to provide timely updates on relevant policy changes and implementation actions, but several signatories had failed to do so in a timely manner (*ibid.*). At the same time, ERGA appreciated the efforts of the signatories to empower the research community as set out in the Code, in particular Commitment 27.4. However, ERGA stressed that it continued to believe that its recommendation to provide access to data for independent research had not been sufficiently implemented by all platforms, as access to data was only available to vetted researchers affiliated with universities. In this sense, ERGA's June 2023 report recommended that all platforms should build a research ecosystem based on access to application programming interfaces for research purposes. In addition, ERGA recommended that internal processes should be developed to identify young and independent researchers from non-university institutions and organisations and to provide them with access to relevant data (*ibid.*, pp. 4 5).

¹ Transparency Centre.

<https://disinfocode.eu/#:~:text=The%20road%20that%20led%20to%20the%202022%20Strengthened%20Code&text=At%20the%20core%20of%20the, and%20the%20war%20in%20Ukraine.>

² Transparency Centre. Report Archive. <https://disinfocode.eu/reports-archive/?years=2024>.

For its part, in September 2023, Commission Vice-President Jurova welcomed the efforts of the signatories to implement the Code of Practice, underlining the importance of the tasks in a context where “Russian war against Ukraine, and the upcoming EU elections next year, are particularly relevant, because the risk of disinformation is particularly serious.” (European Commission, 2023a). And she went on to say that: “The Russian state has engaged in the war of ideas to pollute our information space with half-truth and lies to create a false image that democracy is no better than autocracy” (*ibid.*). As examples of the implementation of the Code commitments, in particular with regard to disinformation emanating from Russia, she pointed to the fact that in the first month of 2023, Youtube had taken down more than 400 channels involved in coordinated influence operations linked to the Russian state-sponsored Internet Research Agency (IRA). Another positive example put forward was the case of Google, which removed ads from nearly 300 sites linked to state-sponsored propaganda sites (*ibid.*). However, as a negative finding regarding the implementation of the Code of Practice, he pointed to the decision of Twitter, now X, to cease to be a signatory to the Code (*ibid.*).

4. Conclusions

Faced with the scourge of disinformation, which is threatening our societies, in particular their democratic life, and which is sometimes even used as a weapon in geopolitical rivalry, states and international organisations have had to try to defend themselves by various means. However, this is not an easy task in the digital age (Winger et al., 2023, p. 608), because the phenomenon itself is difficult to measure (TrustLab, 2023, p. 5), and because this struggle is necessarily unequal, as it must respect fundamental rights and freedoms of expression and demonstration, which are essential values in a democracy.

Along these lines, each state and each international organisation has been developing its own policies and adopting the measures it considers most appropriate to implement these policies. The EU is no exception and has been addressing the issue and proposing policies and actions, within the framework of its competences, since 2015.

Among other instruments, and in line with a current trend of resorting to soft regulatory means, it promoted in 2018 a Code of Practice on Disinformation, which was drafted and embraced by large online platforms, leading tech companies and players in the advertising industry. Each of the signatories to the code, which was open to all actors in the digital world, undertook to fulfil all or some of the commitments that made up the code, and could withdraw from it at any time.

In terms of control mechanisms, it was established that the implementation of the Code would be examined periodically through meetings of the signatories and the obligation to issue periodic reports that could be verified by an external entity. At the same time, a complementary role was given to the European Commission in accompanying the implementation process, without, however, recognising its capacity to impose any type of sanctions if it found negligence or non-compliance.

In addition, and in accordance with the self-regulatory nature of the Code of Practice, an interesting mechanism for the peaceful settlement of disputes that might arise within the framework of its application was envisaged. Thus, any of the signatory entities could indicate to any of the others its failure to comply with some of the obligations it had assumed. And if they could not agree among themselves on the issue, the problem could be dealt with in a plenary meeting of the signatories, with a decision to expel the non-compliant entity from the Code as a last resort.

Following the operation of the Code, signatories began to implement their obligations and within a year the first evaluations of the Code's effectiveness were carried out, including by the European Commission. The Commission's assessment recognized the usefulness of the Code as a platform for dialogue between the signatories and as a catalyst for transparency on platforms' policies against disinformation in the EU. Despite these achievements, the Commission identified a number of shortcomings in the implementation of the Code. These include inconsistent and incomplete implementation of the Code across platforms and Member States, or lack of commitments on access to platform data for research on misinformation, and limited involvement of stakeholders, in particular from the advertising industry. The evaluation also highlighted the lack of an adequate monitoring mechanism, including key performance indicators. In particular, the Commission drew attention to one area where the Code had not made sufficient progress, namely the demonetisation of disinformation, where online advertising continued to facilitate the spread of disinformation.

In the light of widespread impressions of the lack of effectiveness of the Code, also among the doctrine that examined it, a process of reform of the Code was undertaken, in which the Commission's document of 2021 entitled "European Commission Guidelines for strengthening the Code of Best Practice on Disinformation" played an important role.

That process was crowned with the publication in June 2022 of a strengthened version of the Code of Practice on Disinformation, which is still in force today. The new code, of course, seeks to address the shortcomings identified in the previous code, especially in terms of control and mechanisms to make it effective. To this end, a Task-force was set up composed of representatives of signatories, the ERGA, the EDMO and the EEAS, and chaired by the Commission. In addition, the creation of a Transparency Centre, accessible to all citizens, was envisaged to provide an overview of the implementation of the Code's measures, generating greater transparency. Moreover, the new Code contains a greater number of obligations, while still retaining the characteristics of soft law instruments.

However, one element is decisive in the overall architecture of the Code's implementation, and that is that it is framed within a set of European regulations, including the DSA. This reinforces the possibilities of compliance with the obligations included in the Code, as it requires a greater commitment from large online platforms and search engines, which is guaranteed by the possibility of heavy fines and sanctions in case of non-compliance. This fact, in my view, somewhat limits the self-regulatory nature and introduces elements of co-regulation. The latter is understood as a regulatory model in which private entities develop - individually or collectively - mechanisms to regulate their own users, which in turn must be approved by democratically legitimised state regulators or legislators, who also oversee their effectiveness (Marsden et al., 2020, p.1).

Indeed, we believe that given the scale and complexity of the problem of disinformation, only a multidisciplinary, scientific, economic, political, and legal approach (Lund, 2012, pp. 170-186; Mezei & Szentgáli-Tóth, 2023, p. 47) that takes into account the protection of fundamental freedoms of expression and information can succeed. This can only be guaranteed by the joint efforts of the major private players in the digital sector and public authorities, both national and international. This balance is essential. Excessive public regulation may be inapplicable if it does not count on the opinion and collaboration of private actors, giants in this field, and absolute and necessary protagonists if we want to achieve results in the fight against disinformation. However, a lack of public institutional support can lead to a weakening of the guarantees of respect for freedom of information and freedom of expression (Kuczerawy, 2021, p. 301; Monti, 2021, p. 219).

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