



Paris, 18 March 2021

POLITICAL OPINION

on online disinformation and attacks on electoral processes

- ① The Senate European Affairs Committee,
- ② Having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Article 16,
- ③ Having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 7, 8, 11, 21 and 54,
- ④ Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2000/C 364/01, in particular Articles 8, 9, 10, 11, 14, 16 and 17, its additional Protocol, in particular Article 3, and Protocol 12,
- ⑤ Having regard to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and its additional protocol of 8 November 2001 ('Convention 108 +'), in particular Article 6,
- ⑥ Having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on Electronic Commerce'),
- ⑦ Having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the

processing of personal data and the protection of privacy in the electronic communications sector,

- ⑧ Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), in particular Article 9,
- ⑨ Having regard to the Joint Communication to the European Parliament and the Council of 6 April 2016 entitled 'Joint Framework on countering hybrid threats. A European Union response', JOIN(2016) 18,
- ⑩ Having regard to the Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 26 April 2018 entitled 'Tackling online disinformation: a European Approach', COM(2018) 236,
- ⑪ Having regards to the Commission guidance of 12 September 2018 on the application of Union data protection law in the electoral context, COM(2018) 638,
- ⑫ Having regard to the report from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 5 December 2018 on the implementation of the Communication 'Tackling online disinformation: a European Approach', COM(2018) 794,
- ⑬ Having regard to the Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 5 December 2018 entitled 'Action Plan against Disinformation', JOIN(2018) 36,
- ⑭ Having regard to the Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 14 June 2019 entitled 'Report on the implementation of the Action Plan Against Disinformation', JOIN(2019) 12,

- ⑮ Having regard to the Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 February 2020 entitled 'Shaping Europe's digital future', COM(2020) 67,
- ⑯ Having regard to the Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 10 June 2020 entitled 'Tackling COVID-19 disinformation - Getting the facts right', JOIN(2020) 8,
- ⑰ Having regard to the Commission Communication to the European Parliament, the Council and the European Economic and Social Committee of 19 June 2020 entitled 'Report on the 2019 elections to the European Parliament', COM(2020) 252,
- ⑱ Having regard to the Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 3 December 2020 on the European democracy action plan, COM(2020) 790,
- ⑲ Having regard to the European Parliament resolution of 25 October 2018 on the use of Facebook users' data by *Cambridge Analytica* and the impact on data protection (2018/2855(RSP)),
- ⑳ Having regard to the European Parliament resolution of 10 October 2019 on foreign electoral interference and disinformation in national and European democratic processes (2019/2810(RSP)),
- ㉑ Having regard to the Article 29 Working Party guidelines of 3 October 2017 on automated individual decision-making and profiling for the purposes of Regulation (EU) 2016/679, as amended,
- ㉒ Having regard to the opinion of the European Data Protection Supervisor (EDPS) 3/2018 of 19 March 2018 on online manipulation and personal data,
- ㉓ Having regard to the contribution of the European Data Protection Supervisor (EDPS) on the evaluation of the general data protection regulation adopted on 18 February 2020,

- ②④ Having regard to guidelines 08/2020 of the European Data Protection Supervisor of 2 September 2020 on the targeting of social media users,
- ②⑤ Having regard to the opinion of the European Data Protection Supervisor (EDPS) 1/2021 of 10 February 2021 on the Proposal for a Digital Services Act,
- ②⑥ Having regard to the *Code of Practice on Disinformation* of 26 October 2018,
- ②⑦ Having regard to the report of the Council of Europe entitled 'Challenges and opportunities for news media and journalism in an increasingly digital, mobile, and social media environment', (DGI(2016) 18),
- ②⑧ Having regard to the report of the Council of Europe entitled 'Information disorder. Toward an interdisciplinary framework for research and policy making', (DGI(2017) 09),
- ②⑨ Having regard to the report of the Council of Europe entitled 'Internet and Electoral Campaigns. Study on the use of internet in electoral campaigns', (DGI(2017) 11),
- ③⑩ Having regard to the report of the Council of Europe entitled 'Prioritisation uncovered. The Discoverability of Public Interest Content Online', (DGI(2020) 19),
- ③⑪ Having regard to the evaluation from the European Regulators Group for Audiovisual Media Services (ERGA) of the *Code of Practice on Disinformation Online*, entitled '*ERGA Report on disinformation: Assessment of the implementation of the Code of Practice*' (May 2020),
- ③⑫ Having regard to the report of the ERGA entitled '*Notions of disinformation and related concepts*' (2020),
- ③⑬ Having regard to the report of the Observatory of the European Union on the Online Platform Economy entitled '*Uncovering blindspots in the policy debate on platform power*' (February 2021),
- ③⑭ Having regard to the report of the Observatory of the European Union on the Online Platform Economy entitled '*Market power and transparency in open display advertising – a case study*' (February 2021),

- ③⑤ Having regard to the Senate information report '*L'Union européenne, colonie du monde numérique ?*' (no. 443, 2012-2013) - 20 March 2013 - by Ms Catherine Morin-Desailly, produced on behalf of the European Affairs Committee,
- ③⑥ Having regard to the information report '*L'Europe au secours de l'Internet : démocratiser la gouvernance de l'Internet en s'appuyant sur une ambition politique et industrielle européenne*' (no. 696, 2013-2014) - 8 July 2014 - by Ms Catherine Morin-Desailly, produced on behalf of the joint fact-finding mission on the global governance of Internet,
- ③⑦ Having regard to the report on the member's bill on tackling false information (report no. 677, 2017-2018) - 18 July 2018 - by Ms Catherine Morin-Desailly, produced on behalf of the Culture, Education and Communication Committee,
- ③⑧ Having regard to the report of the British Information Commissioner's Office (ICO) entitled '*Democracy disrupted? Personal information and political influence*', (11 July 2018),
- ③⑨ Having regard to the report of the Digital, Culture, Media and Sport Committee of the House of Commons entitled '*Disinformation and "fake news": Final Report*', (HC 1791 - 14 February 2019),
- ④⑩ Having regard to the report by the *Conseil supérieur de l'audiovisuel* (CSA) entitled '*Lutte contre la diffusion de fausses informations sur les plateformes en ligne : bilan de l'application et de l'effectivité des mesures mises en œuvre par les opérateurs en 2019*' (July 2020),
- ④⑪ Having regard to the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), COM(2017) 10,
- ④⑫ Having regard to the Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act) of 25 November 2020, COM(2020) 767,

④③ Having regard to the Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC of 15 December 2020, COM(2020) 825 final,

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④⑤ Whereas digital tools, and in particular social media platforms, are playing an increasingly important role in accessing information;

④⑥ Whereas online platforms, especially the large social media platforms, have become major places of public debate, given their significant audience and despite their private nature; they constitute, for political parties and public authorities, unavoidable means of communicating with citizens; in general, they are contributing to a new organisation of social interaction and the public sphere;

④⑦ Whereas, consequently, the public debate held on these platforms, including political debate, must be regulated in such a way that everything that is allowed offline is allowed online, and everything that is prohibited offline is prohibited online; the specific methods for broadcasting content on these platforms as well as the cross-border nature of their services require appropriate regulation that cannot be strictly copied from the current regulation applied to traditional media at the European and national level;

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④⑧ Whereas the major share of online advertising is in the hands of a few players who benefit from their high rate of market penetration, their ability to micro-target advertising and their moderate prices thanks to economies of scale, players who do not invest in the production of information but simply allow for its dissemination and consumption, which contributes to the erosion of advertising revenue for traditional media;

④⑨ Whereas the prioritisation of certain content performed by the algorithms used by online platforms, in particular those acting as gatekeepers, increases that content's accessibility and, thus, its audience, artificially increasing its significance in public debate, while other content is made almost inaccessible by the algorithms; consequently, the use of recommendation and content categorisation algorithms may exercise considerable influence over the type of information made available to citizens and seriously impact their political choices;

⑤⑩ Whereas the prioritisation criteria that are used obey a logic of commercial profitability; the business model of the major online platforms, which relies on the attention economy and the exploitation of their users' personal data, mechanically increases the spread of divisive and questionable content; the reputational risk related to the spread of illegal or prejudicial content and the withdrawal of certain advertisers from the online platforms in question have only as yet had a marginal impact on the business model and profitability of these platforms;

⑤⑪ Whereas, as a consequence, the methods and criteria of content accessibility are at least as important as the content itself and therefore regulation models based on the withdrawal of illegal or prejudicial content are not capable of addressing the main challenge posed by the virality and algorithmic amplification of content;

⑤⑫ Whereas holding the authors of disinformation responsible and improving the transparency of the sources of published content does not obviate the responsibility of digital players who benefit from spreading this content;

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⑤③ Whereas the use by the platforms of their users' personal data and micro-targeting, by providing real-time information on individual and collective behaviour, produces asymmetries in information between the platforms and their users; this asymmetry increases the influence that these platforms have over their users; this influence may not only have consequences in terms of economic behaviour, but affect the freedom and sincerity of their political choices;

⑤④ Whereas political campaigns rely increasingly on techniques of big data analysis and micro-targeting developed by the business sector;

⑤⑤ Whereas the ability to micro-target political advertising online mechanically favours controversial or divisive issues in the campaigns, and the lack of dissemination of this type of advertising outside the scope of the targeted persons prevents third parties from verifying the accuracy of the alleged facts;

⑤⑥ Whereas the microtargeting of political advertising deprives certain citizens of information useful to the free exercise of their political choices and, consequently, risks exacerbating the polarisation of voters;

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⑤⑦ Whereas the excessive market power of large digital players makes them *de facto* moderators of a significant share of public debate, particularly imperilling democracy;

⑤⑧ Whereas Europe is highly dependent on foreign, especially American, digital players, which places it in a particularly vulnerable situation both in relation to these players and to potential foreign interference in elections;

⑤⑨ Whereas, consequently, the European Union's ability to regulate large global players in digital technology is a crucial challenge in terms of sovereignty and democracy;

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⑥⑩ Whereas the context of internet has changed considerably in the twenty years or so since the 'E-commerce' Directive in Europe enshrined the principle of the non-liability of hosting providers;

⑥1 Whereas public opinion is increasingly aware, especially in Europe, of the dangers related to the systemic risks represented by large platforms, particularly in terms of the free access to information;

⑥2 Whereas, even though the variety of risks and the fragmentation of the media landscapes in the different Member States restricts the effectiveness of online platforms' fight against false information, the reliability of the algorithms used to detect disinformation content has significantly improved in recent years; additionally, the Covid-19 crisis has shown platforms' ability to work to fight disinformation and questionable content and promote reliable content from journalists and government sources;

⑥3 Whereas, in order to remain operational for a long time, future European regulations must be flexible enough to adapt to rapid changes in the digital environment and the scopes of activity of the players concerned;

⑥4 Whereas the processing of online disinformation is complex and sensitive given that the Internet is a particularly valuable space for freedom of information in States where traditional media are subject to censure; the specific rules in terms of removing or prioritising content must be defined in law in strict compliance with the rule of law;

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⑥6 Recalls that the digital revolution, by allowing notably for new forms of engagement and facilitating access to information, has had a positive impact on the participation of citizens, particularly young people, in public life and democratic debate;

⑥7 ***On the need to overhaul the Code of Practice on Disinformation***

⑥8 Highlights the benefits of having a shared legal instrument to address disinformation at the European level on an issue that is cross-border by nature;

⑥9 Considers that the logic of self-regulation that prevailed with the *Code of Practice on Disinformation* of 2018, while its initial results were satisfactory, is insufficient to prevent the rise of online disinformation, and that a logic of co-regulation must now prevail

by imposing an obligation of means and transparency on online platform operators;

⑦⑩ Calls to reinforce monitoring by national regulators and the European Commission of implementation of the commitments by signatories of the *Code*, through greater transparency from platforms on their fight against disinformation, in particular through reports for each country and performance indicators to allow national regulatory authorities to verify the commitments made in this area;

⑦⑪ Highlights the need to expand platforms' adhesion to the *Code*, in particular very large platforms, as provided for in Article 35 of the proposed *Digital Services Act*;

⑦⑫ ***On the measures provided in the proposal for a Digital Services Act***

⑦⑬ *On tackling the risks of online disinformation*

⑦⑭ Welcomes the proposed *Digital Services Act* that seeks to regulate online platforms' content moderation methods at the European level and to mitigate the risks that result from the services these platforms offer;

⑦⑮ Approves the logic of graduated obligations according to the size of the targeted players and the specific consideration of the systemic risks represented by very large platforms;

⑦⑯ Welcomes the European Commission's proposal to require very large platforms to conduct an annual assessment of the systemic risks stemming from the functioning and use of their services within the Union, where these risks may impact public health, civic discourse or electoral processes (Art. 26), as well as an annual independent audit of all their obligations in regard to the regulations and codes of conduct to which they have signed up (Art. 28);

⑦⑰ Questions the limitation of the assessment of these systemic risks to cases of '*intentional*' manipulation of their service (Art. 26.1.c) and the omission of the negative effects on democratic processes that may result from the very functioning and business models of these platforms, which rely on monetising content;

- ⑦⑧ Calls, in compliance with the principle of proportionality, for the obligations to implement measures to mitigate the systemic risks in terms of disinformation to not be limited solely to 'very large platforms' within the meaning of the Regulation, and to extend the criteria used to define the 'systemic' character of certain platforms, in particular by including the penetration rate in a given market, the existence of mass network effects, the nature of the activity performed and, ultimately, the impact of the platforms in question on public debate;
- ⑦⑨ Invites the Commission to require very large platforms to implement minimum risk mitigation measures (Art. 27), if need be in the framework of the guidelines mentioned in Article 27(3), or at least performance indicators;
- ⑧⑩ Calls for very large platforms to mitigate systemic risks by cooperating with '*trusted flaggers*', as provided in Article 27, in particular in the field of disinformation;
- ⑧⑪ Suggests, given the rise of voluntary disinformation campaigns, that it should be possible to subject accounts that disseminate false information to the same sanctions as those provided in Article 20 of the proposed *Digital Services Act* for accounts that frequently post illicit content, i.e., a temporary or permanent suspension of access to the service;
- ⑧⑫ Recalls that tackling the viral nature of disinformation content must be done in compliance with the freedom of expression and without generalised monitoring of content, in accordance with the 'E-commerce' Directive;
- ⑧⑬ Insists on the need, in order to prevent excessive censorship by platforms, to provide redress possibilities following the removal of content, including disinformation content, whether the removal was performed by an algorithmic process or human moderation;
- ⑧⑭ *On managing risks related to using algorithmic systems*
- ⑧⑮ Approves the obligation for very large platforms, in the systemic risk assessment, to take into account 'how their...recommender systems and systems for selecting and displaying advertisement' influence these risks, 'including the potentially rapid and wide dissemination...of information that is incompatible with their terms and conditions' (Art. 26); welcomes

the fact that the adjustment of their recommender systems by very large platforms appears among the systemic risk mitigation measures mentioned in Art. 27;

- ⑧⑥ Insists on the need more generally to minimise the impact of 'filter bubbles' by allowing users the possibility of choosing the algorithmic parameters applied to them and allowing them to see information without recommendation algorithms taking it into account;
- ⑧⑦ Supports, therefore, the obligation placed on very large platforms by Article 29 of the proposed *Digital Services Act* to provide users with the parameters used by recommender systems and an easily accessible feature allowing them to modify these parameters as well as to deactivate profiling; calls for this measure to be reinforced by requiring recommender systems to be disabled by default (opt-in system);
- ⑧⑧ Underscores, in all cases, the need for recommender algorithms to obey minimum criteria of neutrality and non-discrimination (*ethical by design*) and legality (*legal by design*);
- ⑧⑨ Regrets that the proposed *Digital Services Act* does not concern search engines, particularly given their predominant role in prioritising content and, consequently, its accessibility to their users;
- ⑨⑩ Suggests consideration, for certain online intermediaries, and very large platforms in particular, of an intermediate status between the one provided in the proposed *Digital Services Act* and that of a news media publisher to extend their responsibility over disseminated content, since the use of content prioritising algorithms and, even more so, the configuration of these algorithms, may amount to editorialisation;
- ⑨① Approves the possibility opened by the proposed Digital Services Act for the Commission or the auditors or experts it appoints to have access to explanations as to how very large platforms function, as part of its monitoring and inspection powers (Art. 54 and 57);
- ⑨② Asks that the obligation placed on very large platforms to open access to their data to vetted researchers '*for the sole purpose of conducting research that contributes to the identification and*

understanding of systemic risks' (Art. 31.2.) also be provided for purposes of analysing and evaluating risk mitigation measures taken by very large platforms;

⑨③ Calls on the European Commission to support all initiatives, whether from universities or regulatory authorities, that seek to measure the effectiveness of methods for moderation or tackling the virality put in place by the platforms, and to support research on algorithm explicability; calls for a clarification of the applicable regulation, especially in terms of protecting personal data, to ensure that the audit tools used to this effect are lawful;

⑨④ *On the transparency of online advertising*

⑨⑤ Welcomes the obligations placed on platforms by the proposed *Digital Services Act* in terms of online advertising transparency (Art. 24) as well as the additional obligation placed on large platforms to maintain a public repository of advertisers (Art. 30); considers, however, that the repository's retention period should be extended beyond one year, given the significance of the risks of harming the sincerity of public debate;

⑨⑥ Considers as insufficient the implementation, as provided in Article 36 of the proposed *Digital Services Act*, of codes of conduct for online advertising;

⑨⑦ Calls on the European Union and Member States to take all useful and necessary measures, especially in terms of organisation and the resources allocated to national data protection authorities, to ensure that online platforms comply fully with European law in terms of personal data protection (GDPR and the directive on communications privacy), including respect for the limitation of data processing purposes and data minimisation;

⑨⑧ Considers that a full and complete application of these personal data protection rules should ultimately result in the exclusion of micro-targeted advertising as currently practiced by online platforms; invites the European Commission to consider the possibility of requiring online platforms to provide their users with at least one advertising display option that does not use profiling, in addition to the transparency measures provided in Article 24;

⑨⑨ Recalls that data on data subjects' political opinions is 'sensitive' personal data; that, in accordance with Article 9 of the

GDPR, processing them is, in principle, prohibited; consequently, profiling for political and electoral purposes, including when this profiling is done using personal data not in itself sensitive within the meaning of the GDPR, is also prohibited in principle by the same article of the GDPR; that any exceptional gathering and processing of this data must also meet the conditions provided in this article and be strictly regulated; that, if such processing relies on the data subject's consent in accordance with Article 9(2)(a) of the GDPR, the consent must be explicit, informed and freely given;

⑩⑩ Suggests that online platforms be required to clearly distinguish political advertising from commercial advertising;

⑩① *On the draft legislation on political advertising*

⑩② Considers that electoral law requires adjustment, in the context of the increasing digitalisation of information and the massive dissemination of digital tools in society, to ensure that online political debate has an equivalent level of protection to offline political debate throughout the Union;

⑩③ Welcomes, therefore, the European Commission's announcement of an upcoming draft legislative text on sponsored political advertising to complement the horizontal provisions on targeted advertising provided in the proposed *Digital Services Act*;

⑩④ Presently underscores that this necessary harmonisation at the European level must be carried out in strict compliance with the powers of the Member States, and calls for the greatest vigilance in ensuring that this future legislation does not weaken the high level of protection in force in certain Member States;

⑩⑤ Underscores the need for this future legislation to tackle the issue of content of general public interest, and not just strictly political communication, despite the difficulties that defining the latter entails;

⑩⑥ *Transversal and complementary measures*

⑩⑦ Calls on the European Union to increase its support of young businesses that develop online platforms that respect the principles of transparency, non-manipulation, and respect for personal data;

- ⑩ Welcomes the Democracy Action Plan presented by the European Commission and calls for the full implementation of its various components beyond tackling disinformation, especially concerning support for quality journalism and media diversity and tackling foreign interference in electoral processes, in particular by reinforcing cybersecurity measures;
- ⑪ Highlights the need to better increase awareness among citizens, especially young people, of the stakes of protecting fundamental rights and of the democratic challenges that arise from using digital tools, and to support all initiatives that seek to encourage enlightened and critical use of media and online resources, particularly by examining sources;
- ⑫ Calls on the European Union to promote the regulation of online disinformation content among international bodies and its partners to encourage a globally harmonised approach that fully respects fundamental rights and freedoms.