European Digital Media Observatory

V.D.D: Report on main trends and legal developments at national level on disinformation and national policies during the electoral campaigns

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Policies to tackle disinformation in EU member states

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Executive Summary

With the growth of internet penetration, it has become increasingly hard for audiences to determine what information they can trust. They are often exposed to fabricated content that is disseminated with the intent of misleading them. In turn, disinformation causes disruptions in society, especially in the context of elections. This report looks at some of the policy examples that aim to tackle this problem. It starts with an overview of the assessments of the Media Pluralism Monitor (MPM) for the specific variables that are devoted to the topic. The media Pluralism Monitor is an annually-administered questionnaire that looks at the risks to media pluralism in the EU member states, from a holistic perspective. Threats related to disinformation are part of the MPM's focus. We briefly describe the EU approach to disinformation, and, as a next step, we zoom in on seven EU member states, some of which held elections in the past years or introduced regulations related to disinformation that are worth looking into. The spread of disinformation is typically regulated by non-legislative methods, though a handful of countries have tried to use a legal approach to deal with the phenomenon. Some of the measures are still controversial, mainly because they might affect the freedom of expression. Moreover, there is a question as to whether they are complementary to a well-functioning European approach to combating disinformation.

Introduction

Disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and therefore, may cause public harm (as defined by the European Commission's Communication on tackling online disinformation). With the increase of internet penetration, it has become increasingly hard for audiences to determine what information they can trust, and they are often exposed to fabricated content that is disseminated with the intent of misleading them. In turn,

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disinformation causes disruptions in society, especially in the context of elections. This report looks at some of the policy examples that aim to tackle this problem.

In our assessment and overview, we rely on the findings of the latest iteration of the Media Pluralism Monitor (2021) that assesses the risks to media pluralism in member states and candidates, as well as on reports by the European Regulators Group for Audiovisual Media Services (ERGA) and other authoritative sources related to disinformation policies in the EU or member states. While the original intent of this deliverable was to assess laws and policies in relation to elections, the COVID-19 pandemic and the ensuing ‘infodemic’ provided another relevant trigger for disinformation-related policymaking that cannot be disregarded in the analysis. As a next step, we zoom in on a set of EU member states, some of which held elections in the past years or introduced regulations related to disinformation that are worth assessing. We chose the countries based on availability of data, thus some member states were excluded or under covered in this report; these member states should be assessed in future reports, either by EDMO or other relevant stakeholders, including research teams interested in policies to tackle disinformation.

3. The assessment of risks related to disinformation

3.1 The variables on disinformation in the Media Pluralism Monitor

In the Media Pluralism Monitor (MPM) 2021, the sub-indicator on protections against disinformation examines the extent to which disinformation is seen as a problem in EU member states (and candidates) and whether the countries have come up with possible legal or policy responses to deal with it. The rationale behind the sub-indicator is based on three elements: on the regulatory standards developed at EU level, on the assumption that the massive spread of disinformation online may result in a potential threat to pluralism, and on the need to safeguard the integrity of democratic procedures.

The assessment of the MPM also checks whether a regulatory framework for limiting disinformation (if existent) is compliant with the freedom of expression. In other terms, it looks at whether the national regulatory frameworks addressing disinformation online allow for a certain amount of transparency and accountability of the platforms, which are usually asked to conduct content moderation in order to avoid the diffusion of disinformation. This kind of

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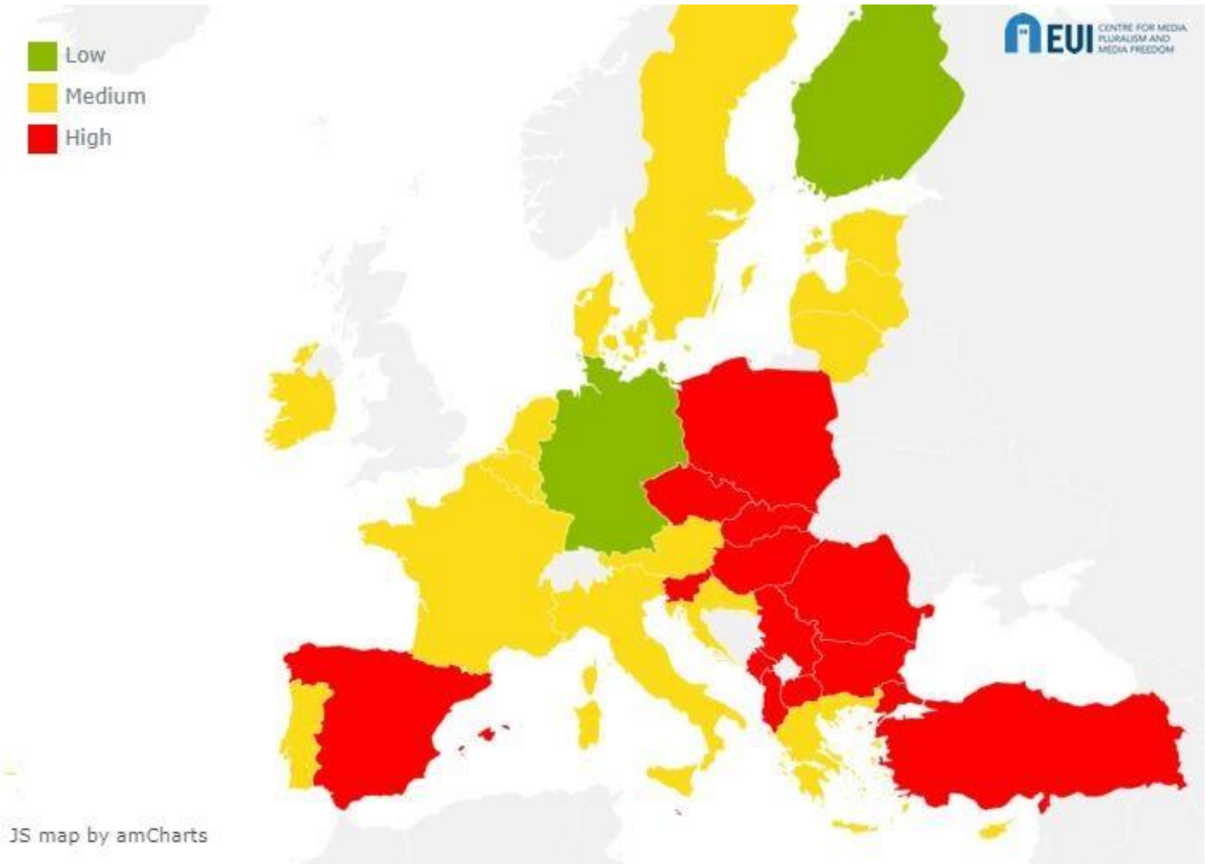
assessment takes into account the debate and policies in the EU and EU member states in terms of the role and liability of online platforms in limiting disinformation online, and how to guarantee that an accountability system is in place that allows for the public scrutiny of platforms' actions. The sub-indicator has shown that only 2 countries (Finland and Germany) scored low risk, while 16 countries scored medium risk (these are Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, France, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal and Sweden). High risk was mainly reported in the former socialist countries, the only notable exception being Malta and Spain. The map of countries' risk scores can be seen below (green stands for low risk, yellow, for medium and red, for high risk. The map also includes EU candidate countries, which all registered high risk scores):



Map 1. Risk assessment of the MPM2021 sub-indicator on protections against disinformation

The sub-indicator is made up of three variables that look at legal and policy responses, the assessment of the fight against disinformation and the extent of the problem of disinformation. We will briefly describe them one-by-one.

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- The first question asked MPM county expert teams is whether, in their countries, there are any laws or policies that aim at countering disinformation. The levels of risk were assessed based on the proportionality of the regulatory measures to limit disinformation with freedom of expression. We looked at the existence of a well-developed legal/policy framework with concrete targets, one that does not restrict or harm freedom of expression, as well as at self-regulatory measures that are effective in reducing the spread of disinformation and allow for the scrutiny of content moderation activities by the platforms. An existing legal framework that does not respect common standards on freedom of expression as developed under the interpretation of art. 10 of the European Convention on Human Rights (ECHR), is considered at high risk. Only six countries (Belgium, Croatia, Finland, Germany, Greece and Lithuania) reported having laws that were effective, while ten others (Austria, Cyprus, Denmark, France, Italy, Malta, Netherlands, Poland, Portugal and Sweden) reported having laws with some deficiencies. The rest of the countries stated that they lacked a functioning framework, or that their laws posed a serious risk to freedom of expression.
- Most country teams assessed their countries' fight against the spread of disinformation as medium risk (meaning that initiatives are limited and inefficient). Only Germany, Estonia and Sweden viewed their measures as low risk (meaning that initiatives on disinformation are widespread and efficient across the country, and those initiatives do not restrict or harm freedom of expression). Four EU-members (Bulgaria, Cyprus, the Czech Republic and Spain) were especially worried about disinformation.
- When it comes to the perceived impact of disinformation, Germany and Finland saw it as low risk (meaning that disinformation is almost non-existent in the country and/or actions against disinformation have been very efficient; and that no direct and/or harmful consequences of disinformation have been observed). Fourteen EU member states saw the issue as medium risk (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, France, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Portugal and Sweden), meaning that disinformation exists but is not spread widely in the country and/or disinformation consequences remain limited. In the remaining countries, disinformation was seen as widely spread, and some clear consequences were reported.

False or misleading information often spreads in the form of paid political or issue-based advertisement. The sub-indicator on rules of political advertising online (in the political

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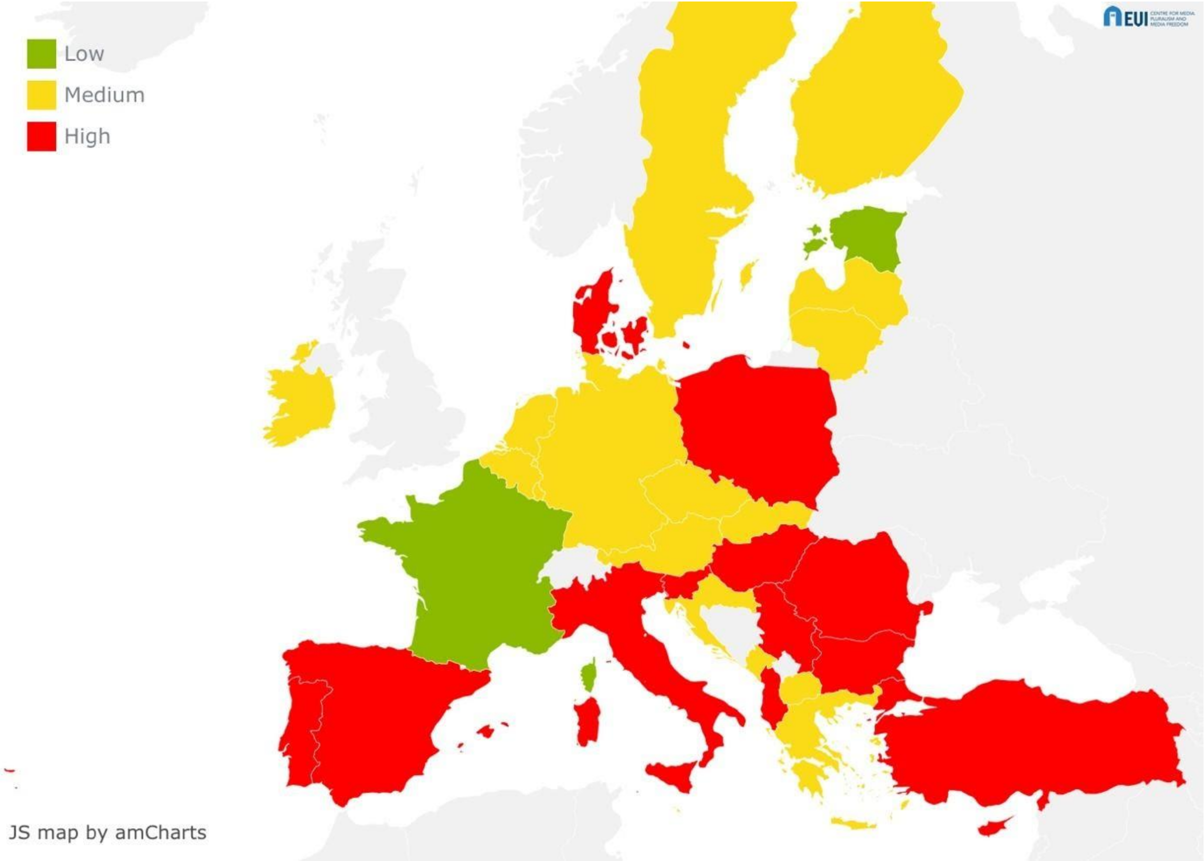
independence area of the MPM2021) shows that in 2020 very little regulation existed in relation to political advertising online, largely due to a lack of understanding of the criteria used by online platforms in content moderation and recommendation systems' design. Only France and Estonia showed low risk, at this time. While the online political advertising libraries of large online platforms were available in the countries (although often incomplete), political parties and candidates only rarely provided a full picture of their spending and targeting on online platforms.



Map 2. Risk assessment of the MPM2021 sub-indicator on rules of political advertising online

3.2 Short overview of the European responses

To foster a pan-European response to disinformation, in January 2018, the European Commission established the High Level Expert Group on Fake News (later renamed: High Level Expert Group on Fake News and Online Disinformation) made up of industry representatives, civil society, policy makers and scholars, and aimed at providing advice on policy initiatives to tackle the problems of online disinformation on the European level. It produced a report in March of the same year, which recommended a multidimensional approach to increase the transparency of online news, the promotion of media literacy, the development of tools to empower users and to safeguard the diversity and sustainability of the news ecosystem in Europe, as well as to promote research on the issue of disinformation.

In its final report, the Expert Group also recommended against using the term ‘fake news’ as it is too broad and has been often misused by populist politicians for the defamation of news media that are critical of their activities (High Level Expert Group, 2018:10). Instead, it advocates the widely-accepted typology of the researchers Claire Wardle and Hossein Derakhshan (2018) that differentiates between three key forms of information disorders: misinformation (when the information is not true, but is not created and shared with the intent of doing harm), disinformation (when the untrue content was created and shared with the intent of doing harm) and mal-information (when the information is factually true, but is shared in a way that it can cause harm). Ahead of the 2019 European elections, the EU sponsored a ‘European approach’ to tackle disinformation. This led to the signing of the Code of Practice on Disinformation (CoP), the first major initiative developed at EU level to fight disinformation, which followed the Expert Group’s recommendations and encouraged online platforms, among others, to ensure the transparency of political advertising and to restrict the automated spread of disinformation in the European Economic Area. In its text, disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may therefore, cause public harm. The text adds that deceptive content is disseminated either for economic gain (monetisation) or with the intent of deceiving the public. It also emphasises the component of ‘public harm’ as it is a threat ‘to democratic political and policymaking processes as well as public goods such as the protection of EU citizens’ health, the environment or security’.

The Code of Practice (CoP) is a relevant step in defining a policy against disinformation, as its signatories have committed to obligations that currently are not required from them by law. Its impact is nevertheless limited—at least for the time being. Problems can be traced back, first of all, to the fact that the CoP does not provide detailed practical guidance for its signatories, terms used in the commitments can be either misinterpreted, or can provide grounds for online platforms to selectively comply with their obligations. Moreover, the CoP relies on self-reporting, and statements of platforms cannot always be verified. There is an absence of

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standards for its evaluation and for reporting, lack of oversight on compliance, lack of sanctions for non-compliance, and lack of data against which to check the statements and reports created by platforms themselves.

The shortcomings are well-known on the European level. With the 2020 Democracy Action Plan, the European Commission started steering the efforts to turn the Code of Practice on Disinformation into a co-regulatory framework, which introduces obligations and requirements for accountability on online platforms. In addition, the Digital Services Act (DSA) proposal of December 2020 aims to establish a powerful framework for transparency and clear accountability, which enables democratic oversight over online platforms, especially those referred to as ‘very large online platforms’ such as Facebook or Google. Still, the disinformation-related measures in the DSA fall into the category of self- and co-regulation. Its articles 26 and 27 describe the obligations of online platforms to identify and mitigate systemic risks, such as disinformation, while article 36 emphasises the need for a code of conduct for online advertising. Moreover, the biggest online platforms will undergo a yearly audit on their own expenses. While some shortcomings will be addressed, Bayer et al. (2021:41) write that the new arrangements still lack ‘teeth’, as there are no sanctions for non-compliant platforms.

4. Review of the country-level responses to disinformation

In its report titled *Notions of Disinformation and Related Concepts*, ERGA (2021) made a mapping of legislation and regulation related to disinformation in a set of EU member states. They found—in line with the MPM findings—that the spread of disinformation online is typically regulated by non-legislative tools, but the criminal law covers, as a general rule, the deliberate dissemination of disinformation in case it poses a threat to peace or the public order (Croatia, Cyprus, the Czech Republic, Greece, Hungary, Slovakia, Romania). The study mentioned three statutory regulations that included a definition of disinformation: the Law on Misdemeanours against Public Order and Peace (Croatia), which sets out a fine or a prison term of up to 30 days for those who invent and distribute the kinds of disinformation that ‘disturbs the peace and quiet of citizens’; the Law on the Fight against the Manipulation of Information (France), which focuses on ‘false information’ in the context of elections; and the Law on

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Information to the Public (Lithuania) which prohibits the spread of the kind of disinformation that is 'defamatory and offensive to a person or that impairs his or her honour and dignity' (ERGA, 2021:62-63). Instead of using the term disinformation, penal codes refer, among other definitions, to the 'publication of fake news, etc' (Cyprus), 'spreading of alarming news' (Czech Republic), 'scaremongering' (Hungary), 'giving false information' (Romania), 'alarming messages of information' (Slovakia) (ERGA, 2021:69-70). In the context of the COVID-19 pandemic, Hungary made a change to its criminal code, the Italian House of Representatives approved a bill that would create a 'two-chamber' Parliamentary Inquiry Commission on disinformation, the Spanish Ministry of Justice announced a legislative change in order to have legislative tools against those who disseminate information that impedes the citizens' right to receive truthful information, and Germany initiated state-coordinated surveys to assess the impact of disinformation (ERGA, 2021:73).

4.1 France

France had already passed a law in 2018 to fight disinformation during election campaigns, due to indications of possible foreign meddling in the 2017 presidential vote. The 22 December 2018 law (no. 2018-1202) for 'the fight against information manipulation' invites online platforms and other media (art. 15) to develop measures aimed at fighting against 'the dissemination of fake news likely to disturb the peace' or to alter the 'sincerity of elections' (art. 11). It also addresses the transparency of their algorithms (art. 14). This law makes it possible to suspend the activities of foreign state-controlled broadcasters in France, in case they are found distributing disinformation. It establishes a civil procedure by which judges can order online service providers to block specific content prior to elections and imposes transparency requirements on online platforms.

Rachael Craufurd Smith, a legal scholar at the University of Edinburgh (2019) highlights that the French law is an alternative to the EU's soft, self-regulatory approach to disinformation. Her argument reads as follows:

> [France] adopted a system that combines mandatory disclosure requirements prior to elections, where an awareness of provenance can be critically important, with a less constraining, 'cooperative' approach designed to enhance transparency more generally.

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> This latter approach imposes some specific obligations on the operators of online platforms, for example, to put in place procedures enabling users to flag potentially false information, but also leaves scope for the operators to develop their own initiatives in response to the concerns identified in Title III, such as the need for greater transparency regarding the use of algorithms. The operators are, however, required to report to the public on the steps they have taken and their actions are also overseen by the CSA [Conseil supérieur de l'audiovisuel], which has power to issue directions, and is required itself to publish a regular report on the application and effectiveness of the measures taken.
>
> State measures such as these can help to build a climate where delay or obfuscation is no longer an option, whether at EU or national level. (Craufurd Smith, 2019:80)

The law has caused some controversy in France; it was rejected twice in the Senate and is criticised for its potential chilling effect on freedom of expression.

4.2 Germany

To deal with the challenges of disinformation, one of the first national policies formulated in an EU member state was Germany’s so-called Network Enforcement Act (NetzDG, also referred to as the Facebook Act) in 2017. It required social media providers to proactively remove certain kinds of problematic content, based on the criminal code provisions. This requirement was criticised early on by civil society for possibly damaging freedom of expression and freedom of the press. From the catalogue of crimes that fall under the scope of NetzDG only some are linked to disinformation, but the new Media Services Agreement (MStV) introduced new tools to fight disinformation.

Section 19 (1) of the MStV from 2021 extended the existing journalistic due diligence obligations to commercial websites that publish news or political information. In their assessment of disinformation policies between 2019 and the first month of 2021, Bayer et al. (2021) mentioned that state media authorities have, in accordance with the MStV, issued 13 warnings against websites that published disinformation, at least one of which was associated with the far-right AfD (Alternative for Germany) party. The MStV (sections 18 (3) and 22 (1)) also prescribes that political, ideological, and religious advertising and content created by bots

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(programmes that perform pre-defined, repetitive tasks) should be marked (sections 18 (3), 22 (1) sentence 3 MStV). How this legal development impacted the German federal election on 26 September 2021 had not yet been assessed.

Although the MPM data shows that the risk related to disinformation in Germany was seen as relatively low in 2020, news and commentary in the run-up to the election have pointed towards the possibility that foreign or domestic actors will try to spread false claims with the intent of influencing public opinion. International media reported that the hacker group Ghostwriter, which is linked to the Russian military intelligence agency GRU, has stepped up its operations in Germany. As the newspaper Politico.eu explains, Ghostwriter 'specialises in deceiving officials to obtain access to compromising information and then leaking it to the press, as well as spreading disinformation' (Cerulus and Klingert, 2021).

In the run-up to the 2021 federal election, the German federal ministry of the interior has briefed the press and the public about threats and governmental measures related to IT security and disinformation in the context of the federal election (Tagesschau, 2021). To deal with the problems, a number of civil society and state initiatives were launched, among other things, to monitor the spread of disinformation and to debunk false claims. The research arm of the online activist network Avaaz has analysed 900 fact-checks (provided by the investigative website Correctiv and the news agencies DPA and AFP) and found that the most (28 percent) disinformation was spread about the Green Party's candidate for chancellor, Annalena Baerbock. These included the made-up claim that Baerbock plans to ban pet ownership, and the sharing of a naked picture of a nude model who slightly resembled Baerbock. Often disinformation was picked up by mainstream media (Avaaz, 2021). A joint investigation of the ZDF 'Magazin Royale' and 'Who Targets Me?' has found that Facebook's ad library was incomplete; thousands of ads by political parties, ministries and the federal government were missing. The research also uncovered that a political party has campaigned with different sets of messages (often contradictory), depending on the microtargeted audience on Facebook, while a member of the Bundestag deliberately targeted followers of conspiracy theory sites with campaign messages that were skeptical of Western COVID-19 vaccines. In some cases ministries even paid for campaigns targeted at possible voters of specific parties; this goes against the constitutional court decision 2 BvE 1/76, which forbids political campaigning by state institutions (Targetleaks, 2021).

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Despite the problems, all in all, the #Faktenfuchs fact checking project of the public service media found that the spread of disinformation during the election campaign was limited, and especially, that allegations of election fraud were less wide-spread 'than expected'; only a small number of them went viral. It highlighted that online platforms (especially social media companies) were more prepared nowadays than during the last US presidential elections. Twitter, for example, labelled unfounded allegations and people searching for 'election fraud' and directed this traffic to official profiles. The #Faktenfuchs team reported that the most common manner of dealing with election-related disinformation by platforms was by limiting their reach. They also found that messaging apps, especially Telegram, were more actively used to spread disinformation than social media (Moßburger, 2021).

4.3 Greece

Greece did not hold national elections in 2020-2021, nevertheless, there was an important regulatory development related to disinformation. Article 191 of the Criminal Code penalises the dissemination of disinformation, by stipulating that:

> Anyone who publicly or via the Internet spreads or disseminates false news in any way, causing fear to an indefinite number of people or to a certain group or category of persons, who are thus forced to unplanned or cancelling action, at the risk of causing damage to the country's economy, tourism or defence capacity or at the risk of disrupting the country's international relations, is punished up to three years in prison or with a fine (PC191(1)).
>
> Whoever negligently becomes guilty of the act of the previous paragraph shall be punished by a fine or by the provision of community service (PC 191(2)). (translated by the CMPF MPM's Greek country team)

In September 2021, the government proposed amendments to this article, which would extend the law to print and online news media. As the Mapping Media Freedom project quoted: 'If the transaction was performed repeatedly through [the] press or online, the perpetrator is punished with imprisonment of at least six months and a fine'. Journalist unions pointed out that the bill could lead to self-censorship, or journalists could face jail time for reporting sensitive topics.

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The publisher of the media outlet responsible would also face imprisonment and financial penalties (Wiseman, 2021).

During the MPM2021 data collection, the country team reported that research on disinformation in the Greek news media, social media and the public sphere was still limited. Nevertheless, there are indications that the problem is among the most wide-spread in Europe. In the Flash Eurobarometer on ‘Fake News and Online Disinformation’ in 2018, 55 percent of respondents across the EU said that they come across fake news every day or almost every day. The percentage of those who think that the existence of disinformation is a problem for the country was 63 percent. There are some initiatives aimed at improving detection and analysis of, as well as exposure to disinformation. Research under the COMPACT (2019) project recorded ten information disorder initiatives in Greece in the year 2019, carried out by private enterprises, civil society and non-governmental organizations. Such initiatives include fact-checking and information websites (such as http://ellinikahoaxes.gr which is also Facebook’s local fact-checking partner, and factchecker.gr), software developed by private companies for the verification of digital content (such as TruthNest and TrulyMedia) and self-regulatory codes of conduct for online news media (such as the Code of Ethical Publishing by the Online Publishers Association of Greece). Yet, the report by COMPACT suggests that the efficiency of most of these information disorder initiatives was hampered by lack of funding and limited audiences.

4.4 Hungary

In Hungary, all three disinformation-related variables of the MPM score high risk, mainly due to the fact that the government itself is amplifying disinformation. Disinformation-related policymaking risks infringing the objective reporting of independent journalism. At the beginning of the first wave of the COVID-19 pandemic, on 30 March 2020, the Hungarian government passed an emergency law that granted almost unlimited power to Prime Minister Viktor Orbán, including the right to rewrite existing laws by executive fiat. In addition, Section 10(2) of Act XII of 2020 on the containment of Coronavirus stated that people who were seen as spreading ‘untrue fact or […] misrepresented true fact’ suitable to undermine the government’s response to the pandemic could face prison terms of up to five years. Legal scholar Gábor Polyák (2020: 4) argued that the wording of the law made arbitrary application

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possible. He added: the legal practice in Hungary has shown that sites run by purveyors of disinformation were shut down on the grounds of ‘making threats of public endangerment’, which is unrelated to the emergency law. The regulation was repealed on 18 June 2020. By then, the Hungarian police reported about 134 criminal proceedings into fearmongering related to the COVID-19 pandemic (Police.hu, 2020). No journalists were reported among them. However, two cases have been the focus of attention. On 12 and 13 May 2020, two people were held by the Hungarian police on suspicion of ‘scaremongering’ for Facebook posts that they published in the month before. Both of their posts were critical of the government’s response to the pandemic, but they did not contain any untrue information (Spike 2020a and Spike 2020b).

Bayer et al. (2021:46) pointed out that in Hungary, the main disseminator of disinformation is the government-friendly media, with the aim of gaining popular support and discrediting opposition parties’. In September and October 2021, the Hungarian opposition parties held primary elections. During that time, the public service media, the state news agency and the government-friendly private outlets overwhelmingly avoided reporting on the primaries, except for some speculative articles about former Prime Minister Ferenc Gyurcsány’s role as a puppet master behind the scenes and about the possibly inflated numbers of voters participating in the primaries (Szopkó, 2021).

4.5 Italy

Despite the growing debate on disinformation, no widespread and effective initiatives have been implemented in the country. There are no specific laws to counteract disinformation online. Instead, the general law applies: the Criminal Code, when the false or inaccurate news is a criminal offence; and the civil law, in cases in which a person damaged by false information may ask for a compensation. A self-regulatory code of conduct exists for journalists, and the Ordine dei Giornalisti (Order of Journalists) supervises its implementation, but it is an old tool, not very effective in the past and not suitable to deal with misinformation online. Political and legislative initiatives to fight disinformation have been proposed in the past, but they might raise concerns due to the potential harm to freedom of expression, and are often limited to the online environment, while the problem of disinformation in the country affects legacy media as well.

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In the digital environment, the co-regulatory initiatives implemented by the media authority (AGCOM) asked the platforms to adopt a voluntary code of conduct to counteract misinformation and hate speech. The lack of effectiveness of these initiatives is underlined in the conclusions of ‘Indagine conoscitiva sui big data’, a special joint report by the competition authority (AGCM), the media authority and the data protection authority (Garante Per La Protezione Dei Dati Personali), released in February 2020. The report asks for more transparency about platforms' criteria, clear and verifiable reporting, and for more audit and inspection powers of the authorities on the algorithmic selection of the content by the platforms (AGCM et al., 2020: 117-118).

In 2020, the growing concern about a COVID-19-related ‘infodemic’ led the government to set up a committee against fake news related to COVID-19 in the web and social networks. The committee (‘Unita' di monitoraggio per il contrasto alla diffusione di fake news relative al COVID-19 sul web e sui social network’) has no supervisory and sanctioning powers; its task has been to study and promote media literacy policies.

The Italian parliament is debating a draft law for the appointment of a special parliamentary committee on ‘fake news’ with investigative powers. The draft law has been approved by the lower chamber and is currently pending in Senate. In its last annual report (Relazione annuale) AGCOM calls for a new legislation on platforms’ accountability:

> A wider reflection is needed on the issue of the accountability of platforms (…). The use of detection, removal and control tools on contents, accounts and social pages, above all, against publishers and political subjects, raises relevant questions on the legal nature of the policies adopted by the platforms and the consequent legitimacy and opportunity that the platforms, unlike (in) the case of regulated media, can independently remove information content, pages and accounts. It is obviously a matter which requires organic legislative interventions for a correct balance between rights and values at stake, in full respect of freedom of information and of pluralism. (AGCOM, 2021)

The media authority (AGCOM) has also introduced initiatives related to the COVID-19 emergency. These are as follows: 1) act 129/20/CONS, to call the traditional media to respect the general principles on correctness of information (an enforcement of this act has been issued

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against 61DDT channel and 880SAT for a specific programme, and the digital platforms have been asked to cancel the same content); 2) a special edition of the pre-existing observations on online misinformation, focused on COVID-19 (the last issue of the 'Observatory' on online disinformation focusing on COVID-19 was published on 29 June 2020); 3) initiatives to promote self-regulation by digital platforms; 4) a data science task force, with a GitHub page dedicated to misinformation on COVID-19.

4.6 The Netherlands

In the run-up to the parliamentary elections of 17 March 2021, the International Institute for Democracy and Electoral Assistance drew up a code of conduct with the aim of combatting disinformation in the pre-election campaign period. According to this text, the political parties and internet service providers commit themselves to safeguard the integrity of elections, to refrain from publishing misleading content, to be transparent about the monetisation of advertising placement and to combat foreign interference. In the run-up to the elections, the spread of disinformation is monitored by DROG (an initiative to fight disinformation) in cooperation with Trollrensics, various universities and journalistic organisations. The results of the open source investigation were published on www.forensicjournalism.nl/tk2021. The Netwerk Mediawijsheid launched the website www.isdatechtzo.nl, which provides general information about disinformation. The Ministry of the Interior and Kingdom Relations organised election roundtables with parties that are involved in the elections, as well as with internet service providers. One of the purposes of these meetings is to raise awareness of digital risks and to exchange knowledge about them. Internet service providers also have a responsibility to combat disinformation and they can play a role in correctly informing voters about the election process. Online platforms were asked to promote official government information related to the elections. Political parties and online platforms were also asked to sign a code of conduct on the transparency of political advertising (Rijksoverheid, 2021), but this document was non-binding. Sarah Stapel from the Institute for Information Law (IViR) at the University of Amsterdam summarised the Code's commitments as follows:

> Political parties commit to fairness in advertising in ten ways. Most importantly, they commit to provide 'faithful information for registration and verification processes', maintain 'ethical limits' to microtargeting, refrain from 'psychological profiling',

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> attribute the source of their advertisements, to refuse foreign purchases or funding of advertisements, and to refuse to disseminate disinformation or misleading content, particularly regarding the voting process. Notably, microtargeting is not banned completely, allowing parties to target ads (at) individuals as long as they remain within the ‘ethical limits’ of linking data sets.
>
> Platforms commit to fairness in advertising in 12 ways. They primarily commit to providing transparency mechanisms that identify the source of, funding for, and reach of political advertisements. They have to provide such mechanisms for both the parties and the users. First, they have to establish clear advertising rules and verify that the information provided by the parties is in accordance with these rules. Second, they have to develop a ‘user-friendly response mechanism to answer questions or address issues related to the Dutch elections.’ Platforms are required to respond quickly to the concerns of users and take a proactive approach in countering inaccurate information regarding the electoral process. Finally, in addition to the commitments leading up to and during the elections, platforms commit to conduct a ‘post-election review’ that reflects upon the successes and incidents of the ‘Dutch elections and the correlated platform actions.’ (Stapel, 2021)

Tom Dobber of the University of Amsterdam made the following assessment of the code of conduct to Politico.eu (Manancourt, 2021): ‘I think it’s a nice gesture of the involved parties, but there is no monitoring, enforcement or penalty mechanism. The code seems toothless. The social platforms commit to nothing new (…). The lack of a clear watchdog that monitors compliance makes the code a paper tiger.’ In addition, Manancourt (2021) referred to research by the Floor Terra privacy company that shows that Google and Facebook tracked visitors to several political party websites without their consent (in violation of EU privacy standards).

In July 2021, the Dutch government endorsed the European Commission’s Guidance on Strengthening the Code of Practice on Disinformation, reiterating the need for minimum transparency and reporting standards, the adoption of common definitions of key concepts and access for users to an appeals procedure against platforms’ decisions. The Netherlands has also argued for better compliance by signatories.

The so-called ‘Procedure for Intervention against Disinformation’ has been in effect since November 2020. This policy document allows for the surveillance of social media to look for foreign disinformation. In a statement, the Secretary of State for Communication explained that ‘the approved procedure is intended to prevent foreign interference in electoral processes, as well as to detect campaigns promoted from abroad that may harm the national interests of our country’ based on the requirement of the EU to create a coordinated action against disinformation. ‘In no case will it monitor, censor or limit the free and legitimate right of the media to offer their information’, the statement added. The procedure establishes a structure made up of different government departments, from the National Security Council to the National Intelligence Center (CNI), the State Secretariat for Communication, the State Secretariat for Digital Transformation, and Artificial Intelligence, and ministries such as the Interior and Exterior Ministry. The procedure also contemplates the possibility of collaboration between private entities and civil society, such as the media, digital platforms, the academic world, the technology sector, and non-governmental organisations. The NGO Reporters without Borders (RSF), among other organisations, raised concerns; civil society and journalists’ associations were not consulted in the drafting process, while ‘a commission consisting of government members with loosely defined powers is in charge of its implementation and decides what does and does not constitute disinformation’ (Reporters without Borders, 2020).

The Spanish country team of the MPM reported that in April 2020, the Technical Secretariat of the State Attorney General's Office prepared the report ‘Criminal treatment of ‘fake news’, which serves as a guide for the actions of prosecutors. The preamble of the report states that the current health crisis constitutes a ‘favourable breeding ground’ for misinformation, and affirms that false news is of such varied content that, ‘depending on what it refers to and with what intention it is disseminated, it can get to integrate various criminal types’. These include hate speech, privacy or attacks against one’s moral integrity. If the disinformation contains alarming messages, references to terrorist attacks or catastrophes that imply a danger for society or require the assistance or activation of emergency services, the conduct may constitute a crime of public disorder (article 561 and/or 562). They can also integrate the

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criminal types of the offense of libel of article 209, and the crime of slander of article 206. All of these might lead to prison sentences or fines.

Conclusions

Our overview of the EU and the country-level policies shows that the legal responses are still limited and controversial. The chilling effect of laws is highlighted in many cases, both when it comes to regulating disinformation in the context of the COVID-19 pandemic and when addressing it as a threat to the integrity of election, even if, in most cases, these threats don't materialise.

In addition, not much is known about the ways in which the described policy measures have impacted elections. In Germany, for example, disinformation and possible foreign interference were prominent in the public discussion, as the country was preparing to elect Angela Merkel's successor in September 2021. The country has passed a new law, which partly deals with disinformation but there is not much discussion so far of its impact in the context of the federal elections. This is partly because there are no mechanisms in place that could capture the actual extent of disinformation, and there is no counterfactual; we don't know what would have happened without these policies. Moreover, many EU member states perceived only a moderate impact of disinformation in their countries; audiences and policymakers feel they are less exposed to disinformation than are their counterparts in the United Kingdom and the United States. But the COVID-19 'infodemic' has somewhat increased threat perception in societies. Platforms might have also become more prepared to respond to the most obvious disinformation campaigns, making the problem less obvious on the surface.

The uncertainty related to the extent of the disinformation problem, as well as the difficulties of comparing the issues across the countries, highlight the need for further research, as well as the development of standards and indicators that help the research and the policy community better understand the harms that disinformation can cause in the election context and how they could be mitigated or countered.

In general, it would be advised that countries that introduce regulatory measures or self- and co-regulatory measures make sure that the dominant online players, including the ones that are known to spread disinformation, are covered by them. Moreover, there need to be appropriate

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sanctioning mechanisms in place to guarantee that the platforms cooperate with states when it comes to safeguarding the information environment. A well-functioning policy response also needs increased attention to political and issue-based advertising. Audiences should be informed at least about the persons who are behind a specific advertising. Political parties and other campaigners should be expected to keep detailed archives of their past campaign messages, while political platforms need to maintain extensive and accessible libraries of political advertising. In these endeavours information about microtargeting methods should feature prominently, as well as the description of audiences, the amounts spent and the reach of specific messages and the interactions they triggered.

Regulatory authorities need to regularly monitor the activities of online platforms (including a focus on algorithmic transparency) and require that platforms appropriately label activities of automated or misrepresented accounts. While digital literacy projects exist all over the EU, it would be advised to increase their reach and intensity. Incorporating digital literacy in school curricula is advised.

Still, the COVID-19 pandemic has shown that no member state is immune; both foreign and homegrown disinformation exist. In some cases, such as in Hungary, there is increased awareness of the state’s role in spreading disinformation through captured or state-controlled media organs and social media. While some of the state measures described might be suitable to mitigate the harms of disinformation, there is so far no indication that member states would all individually arm themselves with the best possible responses to disinformation. Instead, a Europe-wide response is needed; country measures would be complementary to this.

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