ACT FEEDBACK ON ROADMAP ON EUROPEAN DEMOCRACY ACTION PLAN

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A. Context, Problem Definition and Subsidiarity Check

Commercial broadcasters welcome the proposed Roadmap on the European Democracy Action Plan as broadcasters are invested and committed at all levels to "nurturing, protecting and strengthening our democracy". Producing and distributing news has a cost. Each year broadcasters invest millions in professional and fact checked news disseminated across our thousands of generalist channels and dedicated news channels in Europe (a majority of which are operated by commercial entities). We play a major part in informing the public, offering diverse opinions and editorially responsible content. This role is crucial towards ensuring media pluralism and a healthy democratic discourse in our societies.

Regulators have duly recognised this is placing heavy regulatory requirements on broadcasters. The media landscape has changed and with it a number of regulatory asymmetries have appeared, notably online. The EDAP should be a measure, with other instruments such as the DSA, to achieve a regulatory level playing field while ensuring European citizens are equally protected no matter what distribution means they choose to access content and information.

This should ensure that the problems identified by the Roadmap – disinformation, erosion of media freedom and pluralism, quality decrease of public debate, threats to the integrity of elections caused by external interferences – are aptly tackled. As such we call on the Commission in its Action Plan to put more emphasis on the economics of the media sector and focus on the main disruptive factors, such as the spread of disinformation on global online platforms as identified in the roadmaps and recently set out in the EC's DSA inception impact assessments and public consultation documents.

Finally, the Roadmap in its treatment of the Covid-19 impact should outline how the epidemic has magnified the phenomenon identified and further legitimised the need to tackle the issues at hand. As such, we trust that the EDAP as "a non-legislative initiative announcing further steps to come" will highlight clear areas towards extending platforms' responsibility while ensuring the robustness of the media sector[1].

B. What does the initiative aim to achieve and how

Election integrity and how to ensure electoral systems are free and fair. Many Member States currently impose rules during election periods for Broadcasters[2]. These are not necessarily reflected in the online sphere, notably on social networks used by many people as a means of informing themselves on political developments. ACT would welcome an assessment of which measures the Commission would find appropriate in order to ensure a balanced framework to preserve democracy and people's choices. The Commission should pay particular attention in its Action Plan to the difference between political advertising and the sponsoring/monetization of content in order to put them forward during election periods to satisfy the interests of third parties or the cause of foreign countries. What should be the rules for large online platforms and networks to ensure that they do not disseminate content aiming at facilitating or disrupting the electoral process? How can regulators ensure that they have the necessary tools to act in time? These are key questions that the EDAP should address.

Strengthening media freedom and media pluralism. This is a key area which should look at supporting journalism and the media ecosystem altogether as there are large interdependencies. The Roadmap announces

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[1] ACT Blueprint

[2] OSCE: Handbook On Media Monitoring for Election Missions

measures "supporting the competitiveness of the media sector in the digital era". As outlined above, there is a clear link between the economics of the sector and the sustainability of the democratic discourse in Europe. Advertising policy is a big part of the solution. Online platforms are the publishers of the advertisements they display and should take responsibility for the content and placement of these advertisements on their networks. The lack of equivalent rules in the online environment is creating economic and social harm; fuelling a wider public trust crisis with online disinformation threatening to drown out quality news and democratic debate. Europe can act at several levels including extending AVMSD measures and tackling disinformation by regulating online political content and ads that are not already subject to editorial control rules. Commercial communications obligations applied to online platforms will help drive incentives for compliance, protecting advertisers and viewers in the process.

Tackling disinformation. ACT and its members are actively involved on this issue having respectively been consulted as members of the Sounding Board on the Code of Practice[3] and as members of the High-Level Expert Group[4]. The ACT highlights that the Commission should adopt a strong co-regulatory framework to address disinformation as suggested by the European Regulators Group on Audiovisual (ERGA)[5]. This view is based on the myriad of reports on the (lack of) effectiveness of the CoP, including those produced by VVA[6] (for the EC) and the assessment of the European External Action Service (EEAS)[7]. We are concerned that the current language in the Roadmap seems to indicate that more analysis is required when the literature on this issue is prolific and generally pointing to the same conclusion: the Code of Practice is not enough to tackle the problem at hand. ACT is concerned that without an ambitious and clear agenda towards co-regulation this will lead to more fragmentation[8] with Member States adopting their own legal framework in ways that may be harmful to providers of quality and balanced news.

The ACT would first strongly suggest setting a specific legal definition for false information that does not fall under the general conditions of online platforms. Secondly, online platforms must get back into line. They have cooperated with public authorities during the health crisis, which proves that they have the means to act. Collective initiatives and efforts must therefore be extended and systematized, for example by contributing to major campaigns, relaying verified and reliable information, working hand in hand with traditional publishers on these subjects, etc. so that all players bear a social and editorial responsibility vis-à-vis the content hosted or distributed and contribute to the fight against harmful content.

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[3] The Sounding Board Members entered the Multistakeholder process which was designed to address a number of key principles adopted by the High-Level Expert Group back in March of 2018. The Multistakeholder Forum on Disinformation comprises two different and autonomous groups. On the one hand, major online platforms ad exchanges and their trade associations;, the advertisers and agencies' associations and the European advertising self-regulatory body ("the working group"), and on the other hand representatives of the media, civil society, fact checkers and academia ("the Sounding Board").

[4] In January 2018, following an open selection process, the Commission has appointed 39 experts to a new High-Level Group (HLEG) High-Level Expert Group (HLEG) on fake news and online disinformation. It comprises representatives of the civil society, social media platforms, news media organisations, journalists and academia. The High-Level group has advised the Commission on scoping the phenomenon of fake news, defining the roles and responsibilities of relevant stakeholders, grasping the international dimension, taking stock of the positions at stake, and formulating recommendations.

[5] ERGA'S Report on Disinformation published on 12th May, 2020 Assessment on the Implementation of the Code of Practice on Disinformation

[6] Valdani, Vicari and Associates (VVA) study on the Assessment on the implementation of the code of practice on disinformation published on 8th May,2020

[7] EEAS Special Report: Disinformation on the Coronavirus – Short Assessment of the Information Environment Available here

[8] Conventional regulatory approach (statutory regulation) is already happening in some EU Member states (i.e. France, Germany).

The ACT would then encourage the EC to refine the measures outlined (technical capabilities, oversight, coordination) to flesh out a co-regulatory framework for disinformation applied to large online platforms and social networks. Co-regulation must ensure in its application that it boosts rather than penalises media; i.e. the measures in place should ensure journalistic freedom, fundamental rights and editorial freedom are guaranteed. As highlighted by ACT and members of the Sounding Board[9] the essential part of this new framework will be:

- **Transparency and access to data obligations**. The lack of transparency, access to relevant/useful datasets, third party oversight has been a major impediment. Transparency and how it is delivered is a corner stone to achieve any progress on independently assessing disinformation, its effects and the effectiveness of measures in place. More specifically, algorithms used by online platforms and social networks, combined with micro-targeting practices, may include biases influencing public opinion. These biases may be defined by platforms and social networks themselves or used by third parties. Algorithms being protected by trade secret, the only way to tackle the phenomenon is to give full access to algorithms to an independent authority which could audit those as well as associated source code. Correlatively, it means that online platforms and social networks should cooperate closely with this independent authority (explainability, documented source code, answer to questions, …).
- **Key Performance Indicators (KPIs)**. Strong indicators as part of the assessment tools used need to effectively describe meaningful progress within and between platforms signed up to the CoP.
- **Sanctions**. A meaningful sanctions regime should be put in place to ensure the co-signatories of the CoP have an incentive to act. This will also allow for a co-regulatory process that is financially self-sufficient rather than resting on public contributions.
- **Structured Dialogue**. We have seen a number of Commissioners reaching out to individual signatories of the CoP. We would highlight the need for this conversation to be opened up as part of a structured dialogue with regular consultations including with the regulators (ERGA).

ACT looks forward to working with European policymakers and regulators to ensure a meaningful and impactful set of measures that will effectively tackle online disinformation.

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[9] Joint Statement of the Sounding Board issued on 15 June, 2020 statement and list of signatories here.