

BROADCASTERS WELCOME DISINFORMATION GUIDANCE; CALL FOR STRONGER VERIFIABILITY, INCORPORATION OF DSA IN COMMITMENTS & STRESS THE NEED FOR NEW CODE TO HAVE INPUT FROM INTERESTED PARTIES

BRUSSELS, 26 MAY 2021. The Association of Commercial Television in Europe (ACT) welcomes the European Commission's Guidance on the strengthening the Code of Practice on disinformation¹.

The Guidance responds to the "significant shortcomings" identified by the European Commission in its own evaluations, supported by ERGA (European Regulators Group for Audiovisual Media Services) and various civil society and researcher reports. It confirms the views – long held by the ACT and members of the initial Code's Sounding Board – that the Code would require significant improvements² to become an effective tool at tackling disinformation online. Today, the Commission has demonstrated that it understands the need for a real step change in its expectations. Particularly, as despite the very loose requirements of the present Code, "none [of the Platform signatories] has respected the Code, at least not what we wanted in its integrality"³ according to Commissioner Thierry Breton.

Today's announcement is therefore a positive political signal towards greater accountability for online platforms. We commend the Commission for responding to the call from broadcasters, press, radio, journalists, fact checkers, researchers and academics for basic Confidence Building Measures⁴. The call for a monitoring of the Code grounded on Key Performance Indicators⁵, an extended scope to tackle both misinformation and disinformation, a recognition of the importance of advertising transparency, a data access framework, the creation of a permanent disinformation taskforce, and, more generally, the commitment to a co-regulatory system are all positive elements of the Guidance. It will be incumbent to the Signatories of the Code to deliver structural responses to the issues at hand rather than mere public relations gimmickry.

However, a number of elements can and should be strengthened in the upcoming drafting exercise.

How do we verify the claims of Platforms regarding KPIs?

A core issue with the initial Code is and remains verifiability. How can institutions, regulators and to a certain degree researchers (and other expert entities), verify the monitoring results provided by the Signatories? While today's proposals calls for a data access framework for researchers, it does not set out how regulators may request such data to ensure that the commitments made by signatories and the monitoring results provided are correct. While we acknowledge that this framework needs to be delicately balanced, it seems incoherent to allow a framework for researchers but not regulators. The latter have the knowledge, experience and independence to deal with these issues, and will require this access to support the Commission as part of its responsibilities under the strengthened Guidance (see *9.2 Monitoring Framework*). Finally, without any sort of sanction mechanism, as foreseen by the Commission's self- and co-regulation principles, we are concerned that

¹ COM(2021) 262 final - European Commission Guidance on Strengthening the Code of Practice on Disinformation, <https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation>

² See for instance the Sounding Board on disinformation statements of [15 June 2020](#) and [4 December 2018](#), and [final opinion](#) on the Code of September 26 2018

³ See <https://audiovisual.ec.europa.eu/en/video/I-206563> at 2:30

⁴ See joint statement by broadcasters, publishers, journalists and academics' on 10 Confidence Building Measures <https://www.acte.be/publication/10-confidence-building-measures-for-platforms-to-deliver-verifiable-and-tangible-actions-to-tackle-disinformation-online/>

⁵ For more details on what KPIs should be included in the CoP, see <https://www.acte.be/publication/european-democracy-action-plan-act-guidance-and-indicators-for-the-code-of-practice-2-0/>

the renewed Code may not sufficiently incentivise signatories to act. In this sense, we call for the Commission to better incorporate these dimensions. At minimum, we would ask that signatories commit to independent audits immediately, as foreseen in the Digital Services Act in order to provide for effective verifiability as part of the monitoring of the Code.

What happens between now and the DSA? What are the interim measures and Plan B should the DSA be modified in the ongoing legislative discussions?

The reliance of the Guidance on the Digital Services Act (currently under negotiation) is of concern. The DSA has just begun its journey through the legislative process and is unlikely to come into force before 2024. Furthermore, the provisions in the DSA that the Guidance relies on may change as co-legislators work on the text, in particular regarding risk assessments, risk mitigation measures and Codes of Practice. Europe needs a Plan B and cannot wait that long. Just in 2020 there were +30 local, regional elections and referendums according to the Council of Europe⁶. The revamped Code of Practice should therefore frontload, incorporate, and make binding commitments, with regard to a number of obligations foreseen in the DSA proposal; notably on advertising & recommender systems transparency and independent auditing elements. Extending Know Your Business Customer obligations in the DSA, and therefore in the commitments, beyond marketplaces would also be helpful in effectively tackling the systemic spread of disinformation.

How does the Commission intend to follow its own guidelines regarding co-regulation?

With a view to developing the Code into a Code of Conduct as foreseen in the Communication issued today, we call on the Commission to ensure that the validation of the commitments made by the signatories in the strengthened Code respect the Commission's principles for better self- and co-regulation⁷. We emphasise here particularly the openness principle: *"The initial blueprint, or "concept agreement", for any action should be multi-stakeholder and **developed in a concerted and collaborative way involving open exchange between interested parties.***[bold added]" We therefore look forward to an inclusive process allowing civil society, media organisations and other interested stakeholders, to be consulted as part of the drafting process and issue a formal opinion to the European Commission with regard to the document(s) as part of the EC's adoption process.

In conclusion, we welcome the Commission's resolve in this matter and desire to address known deficiencies in the Code. Broadcasters will continue to work with the Commission, civil society, journalists, publishers and other interested parties to ensure Europeans are adequately protected from online disinformation. Despite some gaps in approach, this is a step in the right direction. The onus is now on the signatories to ensure they sign up to commitments that are aligned with the principles evoked in the Communication published today. Failing adoption of meaningful commitments by signatories we expect further fragmentation at European level⁸, which would give rise to a dedicated regulatory instrument in 2022.

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⁶ <https://www.coe.int/en/web/electoral-assistance/2020-electoral-calendar>

⁷ European Commission Principles for better self- and co-regulation: <https://ec.europa.eu/digital-single-market/en/best-practice-principles-better-self-and-co-regulation>

⁸ "Around half (14) of the countries that have responded to the survey referred to some kind of future legislative initiatives regarding disinformation", ERGA report "Notions of disinformation and related concepts" p15
<https://erga-online.eu/wp-content/uploads/2021/03/ERGA-SG2-Report-2020-Notions-of-disinformation-and-related-concepts-final.pdf>

ABOUT THE ASSOCIATION OF COMMERCIAL TELEVISION IN EUROPE (ACT)



The ACT represents the interests of leading commercial broadcasters in Europe. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. At ACT we believe that the healthy and sustainable commercial broadcasting sector has an important role to play in Europe’s economy, society and cultures. **For further enquiries please consult our website www.acte.be and/or contact Greg Polad, Director General, ACT – gp@acte.be**