

ACT STATEMENT BEFORE THE INGE COMMITTEE

Honourable Chair, Honourable Members of the European Parliament’s Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation,

I would like to thank you the INGE committee for this opportunity to speak on behalf of Europe’s media sector on this important topic.

First, a few words about the Association of Commercial Television. The ACT represents the interests of leading commercial broadcasters in Europe. ACT member companies include household names like RTL, Sky, Mediaset, TF1, CME, the Nordic Entertainment Group and ProSiebenSat.1 which finance, produce, promote and distribute content and services, including news, benefiting Europeans across all platforms.

The fight against disinformation is a key topic for the ACT. Our members invest millions in professional news and factual information programmes, but we also have a vested interest in ensuring that European citizens maintain a high level of confidence in the media in general.

This is why the ACT has been very involved at every step of the process. Individually, but also with other stakeholders and through the High Level Expert Group on Fake News. We were also involved in the process to draft the original code of practice as a member of the Sounding Board back in 2018. A body created by the Commission to give input to the signatories in the drafting process. Together with the rest of the Sounding Board members, we were so appalled by the outcome that we rejected the Code outright. To be completely frank, it is crystal clear that we were right. The Code didn’t move the needle whatsoever.

It is therefore my pleasure to share with you our views on the EU’s activities to tackle disinformation and foreign interferences. I will start with our overall view of the EU approach and then narrow down on specific EU instruments, namely the Code of Practice on Disinformation and DSA and the way forward. Specifically, I will talk about the process of drafting the Code, the link with the DSA and key principles that must be incorporated in the Code and why INGE has an important role to play – now – in the process.

From our perspective, the issue of disinformation and foreign interference cannot effectively be addressed while digital platforms avoid responsibility for content they surface, promote and profit from. Until adequate accountability and transparency mechanisms are in place, European institutions will not be able to have a solid read on the effectiveness of their policy decisions.

The EU’s response to disinformation is spread across a number of different instruments and communications.

The focus of our intervention today is on the Code of Practice which is currently being drafted by the Signatories with the oversight of the EC. This is where the Committee can have an impact to ensure we avoid repeating past mistakes and deliver outcomes that effect real change.

First, There is a disconnect between the political discourse, existing guidelines and the drafting of the Code.

The Commission Guidance released back in May demonstrated a clear political signal for a real step change in this field. Particularly, because despite the very loose requirements of the present Code, “none [of the Platform signatories] respected the Code” according to Commissioner Thierry Breton.

However, we are concerned that this political narrative is not supported by the facts, and we are seeing the same mistakes of the initial Code of Practice being repeated. Namely, by sidelining or marginalising the role of civil society and stakeholders in the drafting and validation process. The **process** to review the Code of Practice as it is being implemented will exclude the European Parliament, as well as interested stakeholders, from having a role in reviewing platforms' proposal for a revamped Code.

This is at odds with the Commission's Principles for Better Self-and Co-Regulation which steer how the Commission should approach such exercises. We submit the present document as part of our testimony today. In particular, we note that the openness principle states that "*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.*" To comply with this principle, transparency on the developments of the discussions, access to the meetings and relevant papers/reports produced would be the bare minimum.

However, we are seeing the opposite happen. In a call for interest to join the Code released over the summer, we were dismayed to see a confidentiality clause forbidding any party involved from disclosing any information regarding the process and the outcomes of the discussions, even after the termination of the revision process and until the official publication of the revised Code. While seeking to bring more organisations on board is welcome, this is bad practice and will not contribute to building trust in the revamped Code.

We believe that the European Parliament, and INGE in particular, has an important role to play in addressing this and ensuring democratic supervision.

There are three things you as MEPs and collectively as a special committee can do:

- Demand clarifications on how the process considered for the revision and validation of the Code is in line with the Commission's Principles for Better Self- and Co-Regulation and Better Regulation agenda.
- Hold regular exchanges with regard to the establishment of the Task Force foreseen in the guidance to ensure it can deliver an opinion on the revised CoP ahead of its adoption.
- Organise regular exchange and hearings on expected commitments and measures and give an Opinion commenting, endorsing or rejecting the Code as the process is on-going and before it is finalised.

Second, we need to both decouple the Code of Practice with the DSA and ensure that the DSA will reinforce the Code, not weaken it.

The Code of Practice heavily relies on the DSA to give it any teeth and given what we have seen so far, and if the final parliament text resembles what LIBE adopted, the code of practice will remain a toothless instrument. I am referring here in particular to changes to article 26, 27 and 35 of the DSA, which would ensure that the Code of Practice remain completely voluntary and non-binding.

Europe needs a Plan B and cannot wait that long. The revamped Code of Practice should therefore frontload and incorporate binding commitments, with regard to a number of obligations foreseen in the DSA proposal; notably on advertising & recommender systems transparency and independent auditing elements. This will be a true test for the Signatories of their true commitment.

This brings us to our third/last but perhaps most important point regarding the Code. We urge the Committee to ensure any solutions respect a number of principles, in order to address a number of issue.

The core issue with the Code remains verifiability and needs to be tackled as a matter of priority.

To put it simply, no one in Europe today is able to effectively verify the claims made in the reports submitted by the Signatories. Therefore any notion of independently verified progress with regard to tangible indicators remains elusive. What we cannot measure we cannot improve. If disinformation is indeed a systemic risk – as the existence of this Committee effectively reflects – policy-makers and regulators should be able to have the required access to verify the application and effectiveness of measures.

At the very least, the new Code of Practice should ensure that we have independent audits and that regulators have effective access to unaltered datasets in order to verify the claims being made.

This is a question of public trust. Why would the general public trust commitments and self-generated reports from big tech companies that have time and again demonstrated they cannot be trusted to address the issues at hand. Companies that continue to fail to disclose the revenues earned on the basis of disinformation via advertising, seek to suppress researchers, block accounts when politically convenient... Companies that have shown little to no remorse in their role in the Capitol events of January.

There are a number of principles that must be taken into account if we want to effectively be able to tackle disinformation through the Code of Practice. A number of those – we call them the 10 Confidence Building Measures – were endorsed by the main stakeholders active in the media space. We will of course also submit them to the committee.

A first key point is that, technical or KPIs, and comprehensive data access and transparency obligations are a must. We have prepared detailed proposals on what KPIs could look like, which we will submit to the Committee. There are many indicators, but, so I won't dig into but, for instance, we still have no idea how much Facebook spends to tackle disinformation or how many people they have working on this in each countries.

Independent regulators will need to be directly involved in the monitoring and enforcement and they need direct access to platform systems and data to directly monitor results. They have the knowledge, experience and independence to deal with these issues, and will require this access to support the Commission.

Finally, without any sort of sanction mechanism, the renewed Code will not sufficiently incentivise platforms to act. We have seen how this went the last time around.

In terms of next steps, to summarise we do not believe that EU actions to tackle disinformation have been very effective so far, and that is because too much was given to platforms to self-regulate. However, we may have the tools to deliver going forward.

What needs to happen for that is:

- First, a transparent revision process of the Code of Practice, with parliament, INGE in particular, fully involved. This means hearings to scrutinise the drafting process that is on-going right now behind closed doors. This also means demanding that the Disinformation Taskforce be created

before the adoption of the code and that it be given an oversight role on its drafting. The Parliament should be represented on this Taskforce.

- Second, we need to both decouple the Code of Practice with the DSA and ensure that the DSA will reinforce the Code, not weaken it. A strong co-regulatory backstop in the DSA that gives the Code of Practice teeth by reinforcing articles 26, 27 and 35. Not by undermining them. One of the core missions of the INGE committee is to identify possible areas which would require legislative and non-legislative actions. Now is the time to make this clear.

Failing the adoption of meaningful commitments by platforms, the EU should step up its game and urgently move to a dedicated regulatory instrument in 2022.