EUROPEAN COMMISSION
Directorate-General for Communications Networks, Content and Technology

Brussels,

BACKGROUND NOTE
FOR THE ATTENTION OF THE CABINET OF THE PRESIDENT OF THE EUROPEAN COMMISSION JEAN-CLAUDE JUNCKER

Subject: Fake news

Introduction

Over recent months, there has been intense interest concerning the spread of fake news online, not least in the context of upcoming elections. The term 'fake news' was coined to describe deliberately constructed lies, in the form of news articles, meant to mislead the public, or to generate online ad revenue.

While misinformation has always been part of the media landscape and public discourse, there is a new concern that social media platforms have enabled easier spreading of such misinformation. A range of commentators argue that such fake news stories have the ability to weaken the quality of democratic deliberation in what some call a "post-truth" society.

In December 2016, President Juncker called upon online platforms to do more to tackle such misinformation. Since then, steps have taken by media and social media platforms to tackle misinformation, to identify fake news, and to prevent it from spreading.

The fight against fake news should go hand in hand with the protection of freedom of speech and efforts to support media pluralism and media literacy. ████████████ ████████████████████████████████ ████████████ [1].

Some experts question the exposure of people to fake news and the influence such news has on them. The real issue, some say, is the lack of trust citizens have in news from traditional media. This is borne out by data showing trust in established authorities or institutions is declining, while trust in the opinion of non-expert peers is steadily increasing[2]. Large scale comprehensive data on the nature, scale, evolution and impacts

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[1] Notably, ██ .

[2] The 2017 Edelman Trust Barometer reveals that trust is in crisis around the world. The general population's trust in all four key institutions — business, government, NGOs, and media — has declined broadly, a phenomenon not reported since Edelman began tracking trust among this segment in 2012. With the fall of trust, the majority of respondents now lack full belief that the overall system is working for them. In this climate, people's societal and economic concerns, including globalization, the pace of innovation and eroding social values, turn into fears, spurring the rise of populist actions now playing out in several Western-style democracies. To rebuild trust and

of fake news in the EU is currently not available. This was highlighted in recent public hearing with experts in the German Bundestag, and has prompted the UK Parliament to open a public inquiry into the matter[3].

Scholarly research based on US data has characterised the spreading dynamics of online social media, indicating that online communities can polarise opinion, known as the "echo chamber" effect. In such polarised communities, debunking or fact checking has limited effectiveness, as users tend to seek out messages that confirm their prior beliefs. Additional recent research on the scale and impact of fake news in the context of the 2016 US Presidential election found that the impact of such news story on the outcome of the election was limited[4].

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The landscape of fake news and policy responses

The landscape of fake news is variegated, with no clear boundaries between different types of fake news and misinformation. Content such as state propaganda, satire, rumours, or tabloid-style reporting or <u>other forms of legal and illegal speech</u> (such as hate speech) all have bearing on fake news.

Some distinct categories of fake news can be identified, calling for different types of responses.

1. Fake news versus illegal content

1.1. Covered by EU legislation / EU initiatives

Illegal content online – **such as <u>incitement to hatred, to terrorism or child abuse material</u>** - is currently subject to EU legislation that allows online platforms to be held liable unless they remove illegal content expeditiously once signalled. In the context of hate speech, a Code of Conduct on illegal online hate speech was signed on 31 May 2016 with Facebook, Twitter YouTube and Microsoft, backed by Council Framework Decision on combatting certain forms and expressions of racism and xenophobia by means of criminal law. Ongoing monitoring is aiming at ensuring the voluntary measures are effective. In the context of incitement to terrorism, the draft Terrorism Directive similarly contains provisions that aim to clearly penalize online terrorist content as illegal material online, backed by voluntary measures in the EU Internet Forum to curb terrorism online. Illegal content related to child abuse is covered by the 2011 Directive on combating sexual abuse of children. Implementation reports were published in December 2016, showing room for progress to prevention and intervention programmes for offenders, the assistance, support and protection measures for child victims, the

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restore faith in the system, institutions must step outside of their traditional roles and work toward a new, more integrated operating model that puts people — and the addressing of their fears — at the center of everything they do.

[3] Deutscher Bundestag, Ausschuss Digitale Agenda, 25 January 2017: "Fake News, Social Bots, Hacks und Co. – Manipulationsversuche demokratischer Willensbildungsprozesse im Netz"; UK Parliament, Culture, Media and Sports Committee, Call for written submissions on 'fake news', 30 January 2017

[4] See "Debunking in a World of Tribes", Oct 2015, and Stanford University Press Release, Jan 2017, http://stanford.io/2jA7Xh1

prompt removal of child sexual abuse material in Member States' territory and the provision of adequate safeguards when the optional blocking measures are applied.

Work is continuing also on how to further improve the effectiveness of the removal for illegal content, as announced in the Online Platform Communication in May 2016, including by assessing the need for guidance on the liability of online platforms when putting in place voluntary, good-faith measures to fight illegal content online, and by reviewing the need for formal notice-and-action procedures.

The proposed revision of the **Audiovisual and Media Services Directive** (AVMSD), adopted by the Commission on 25 May 2016, includes video-sharing platforms in the scope of the AVMSD only when it comes to combatting hate speech and dissemination of harmful content to minors. Platforms which organise and tag a large quantity of videos will have to protect minors from harmful content and to protect all citizens from incitement to hatred.

Whenever a piece of fake news falls under one of these categories of illegal content, it can be considered illegal and the general rules concerning removal of illegal content online will apply.

1.2. Covered by national legislation

National laws in the EU impose different limits to freedom of expression, e.g. in the context of defamation or where these amount to the denial of holocaust.

Fake news could in some instances be judged under defamation laws. In this context, the law in EU Member States vary. According to the International Press Institute[5] 17 EU countries have criminal insult laws, which means that journalists can go to prison if found guilty on that basis. In 6 Member States defamation of a public official is punished more severely than defamation of a private citizen. A limited number of Member States maintain laws prohibiting insult to the royal family, or "the honour of the state". Five EU Member States have repealed criminal defamation and insult laws.

Finally, some Member States regulate speech crimes such as denial of holocaust under the general umbrella of hate speech laws (e.g. Germany), while in other Member States this is categorized as a specific crime (e.g. Belgium).

2. Fake news not related to illegal content per se

However, as a broad category, fake news does not per se represent illegal content.

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[5] http://legaldb.freemedia.at/defamation-laws-in-europe/

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Other forms of fake news can include satire or tabloid-style reporting, but also deliberately planted misinformation as part of a hybrid cyber attack.

Furthermore, tools now available in academia and to audiovisual professionals will increasingly allow the faking of audio and video as costs fall and technology improves.

2.1. Action at EU level

The Commission has mainly focused its efforts on supporting media pluralism, journalism, media literacy and having a sustained dialogue with all stakeholders, including the press, online platforms, civil society.

The EU already has developed projects on Media Freedom and Media Pluralism, based on Art 11 of the **Charter of Fundamental Rights**. These include addressing violations of media freedom and pluralism within the EU competences, facilitating independent monitoring and practical solutions to address media freedom violations, and promotion of media freedom in enlargement policy and external action.

Media literacy

An important element of these policies is to **strengthen the general ability of citizens for independent critical scrutiny of media information**, especially when shared online. Therefore, in the area of media literacy, the European Commission has been facilitating the visibility and exchange of media literacy good practices from Member States and stakeholders. **In 2017 the Commission – further to an initiative of the Parliament - will also implement two pilot projects on "Media literacy for all"**. Media literacy is also an element in other EU policies, such as the review of key competences in formal education, youth policy, fight against radicalisation and fostering citizen's participation in civic and political life. The Commission is also funding a pan-European network of **Safer Internet Centres** that promote media literacy, critical thinking and awareness raising to protect and empower young users online, as part of the wider Better Internet for Kids strategy. ██
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As part of the conclusions of the **2016 Annual Colloquium on Fundamental Rights which focused on media pluralism and democracy**[6], the European Commission committed to continue a dialogue on media literacy with digital intermediaries aiming to identify initiatives and programmes to provide citizens with knowledge and understanding of the functioning of social media.

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[6] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31198

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████████████ On the specific topic of algorithms, an Pilot Project on awareness raising and accountability of algorithms has been mandated by the European Parliament, and will be implemented in 2017 by the Commission in the form a study. ██████████

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The **EU Expert Group on Media Literacy** facilitates best practice exchanges, including on how to empower citizens with media literacy skills and tools to debunk misinformation.

In 2017, ERGA (The European Regulators Group for Audiovisual Media Services) will work on a report that would describes inspirational practices of self- and co-regulation throughout the value chain, including on the video sharing platforms.

Support to media

The **new publisher's right**, proposed in the context of the **copyright reform**, is also relevant in this context, as it aims to strengthen quality journalism, and thus contribute to the sustainability of a pluralistic media landscape and traditional media companies.

Through its Multimedia Actions budget line, the Commission also encourages the production and dissemination of high-quality reports and news about EU affairs from a pan-European perspective i.e. showing more than only a national perspective, while respecting complete editorial independence. Current grant recipients are the TV channel Euronews, radio network Euranet Plus and two consortia focusing on production and dissemination of data-driven news.

Possible guidance on online platforms

In the Communication on Online Platforms[7] presented in May 2016, the Commission encouraged industry to step up voluntary efforts to prevent trust-diminishing practices and recognised the need for greater transparency for users to understand how the information presented to them is filtered, shaped or personalised, especially when it influences either purchasing decisions or participation in civic or democratic life.

While the internal governance of social media platforms is developing rapidly, ███

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[7] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Online Platforms and the Digital Single Market Opportunities and Challenges for Europe (COM(2016)288), May 2016

Research and innovation

Moreover, **EU research programmes** have featured relevant projects since 2011 under the 7th Framework Programme for Research (FP7), continuing in the current Horizon 2020 programme. Several projects seek to develop tools which assist with the assessment of content integrity, context, meaning origination and propagations paths, and contributor reputation, thereby helping journalists to assess the veracity of incoming, raw news items.

A joint CONNECT/SANTE working group has been set up to work on e-health. As part of the work of the group, cooperative projects on how to counteract fake medical news (e.g. on vaccination) will be studied.

Dedicated Task Force

Concerning state-orchestrated disinformation, the External Action Service set up a **dedicated Task Force to address Russia's ongoing disinformation campaigns**, following a request from the European Council in March 2015.Their objective is to include effective communication and promotion of EU policies towards the Eastern Neighbourhood; strengthening the overall media environment in the Eastern Neighbourhood and in EU Member States, including support for media freedom and strengthening independent media; and improved EU capacity to forecast, address and respond to disinformation activities by external actors.

2.2. Action by Member States

Any general obligations to take down news from online platforms would severely limit freedom of speech protected under Art 11 of the Charter of Fundamental Rights. In addition, any national regulation targeting social networks and/or media companies must be in line with EU legislation, such as the e-Commerce Directive,[8] which defines exemptions to the liability of online intermediaries, and the Audiovisual Media Services Directive[9].

The German Justice Ministry is reported by the media to be working on legal proposals for a dedicated centre where fake news can be flagged, coupled even with potential fines for non-removal by platforms such as Facebook, and the Bundestag recently conducted an expert hearing on the topic. In Italy, the head of the competition authority has called for an EU-wide approach and the President of the Italian Chamber of Deputies is supporting work on real time social media observatory. The French Senate is considering an Internet Ombudsman type construction, although not limited specifically to the issue of fake news. The UK House of Commons culture, media and sport committee has set up an inquiry into fake news. In addition, the Czech government is setting up a specialist "anti-fake news" unit to counter alleged Russian interference ahead of their upcoming

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[8]   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'), OJ L 178, 17.7.2000, p. 1–16

[9]   Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance), OJ L 95, 15.4.2010, p. 1–24

elections, in collaboration with the Eastern Neighbourhood Strategic Communication Task Force under High Representative Mogherini. Such national legal initiatives targeting the provision of information society services need to be notified to the Commission before adoption under the conditions established under the Transparency Directive.[10]

2.3. Action by media and social media platforms

Social media platforms – notably Google and Facebook – have publicly declared their intention to limit the spread of fake news, and have announced a series of voluntary measures.

These voluntary measures are currently focused on:

- depriving fake news websites of online advertising revenue ("follow-the-money"). One of the motives behind the proliferation of fake news in the US elections was to provide ad income by directing web traffic to fake news websites. Such traffic forms the basis for calculation of advertising revenue. If this can be stopped, the interest in developing fake news decreases substantially.

- flagging mechanisms of fake-news (i.e., users or trusted organisations flagging such content to the platform), including by working with independent, trusted third-party fact checkers. Facebook has already started cooperating with organisations that adhere to the International Fact-Checking Network fact-checkers' code of principles[11];

- experiments with warnings and labels aimed at the platforms' users, to highlight disputed content to users but without stopping users from accessing fake news or sharing it after seeing a warning.

Several media, such as BBC and *Le Monde[12]*, have also announced they would take measures to reinforce fact checking, identify fake news and propose tools to help users analyse information.

Suggested approach

We suggest to initially set up a discussion with Commissioners involved, ███████████
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The Commission is at present in contact with online platforms to follow-up on the efficiency and impact of their proposed voluntary measures, as well as with Member States known to be active in this domain. Furthermore, ongoing and future EU research projects will continue to add to a deeper understanding of the nature of the phenomenon.

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[10] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

[11] http://www.poynter.org/fact-checkers-code-of-principles/
[12] BBC sets up team to debunk fake news (12 January 2017); *Le Monde déclenche son offensive contre les "fake news"* (25 janvier 2017).

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It is essential to avoid either government or private forms of censorship or 'Ministries of Truth'. [REDACTED]

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[13]Notably, the Cyberspace Administration of China announced in July that using information from social media in mainstream media was forbidden, and calling for punishments to those who publish fake news.

[14]E.g. the Euromyths blog of the EC representation in the UK: http://blogs.ec.europa.eu/ECintheUK/euromyths-a-z-index/ . However, there is evidence that impactful mythbusting in social media is very difficult to achieve.