

ERGA REPORT ON DISINFORMATION: ASSESSMENT OF THE IMPLEMENTATION OF THE CODE OF PRACTICE - EXECUTIVE SUMMARY

The Code of Practice on Disinformation (“The Code”) is a unique and innovative tool in the fight against online disinformation. By signing the Code and thus voluntarily accepting obligations that are not part of the legal framework, the signatories demonstrated a commitment to the EU approach to governance of the digital environment. During 2019, the Code’s signatories implemented actions to deliver on their commitments under all five pillars of the Code and engaged with the EU and national institutions with the common goal of countering online disinformation. The **Code, therefore, should be regarded as an important step in the process of building a new relationship between its signatories, the EU and National AV Regulators.** Nevertheless, the work carried out by ERGA in 2019, and presented in this report, shows that **the Code has significant weaknesses that need to be addressed if it is to achieve its objectives.**

Firstly, there is a need for greater transparency about how the signatories are implementing the Code. The Code relies on self-reporting but lacks a mechanism through which the information from these reports can be independently verified. The information provided by the platforms is generally aggregated for the whole EU, which makes it difficult to evaluate the impact of the Code across the EU. This difficulty is amplified at a national level where language, societal and cultural factors make it the most relevant sphere for monitoring the impact and effectiveness of the Code.

Secondly, the measures of the Code are too general in terms of content and structure. To some extent, this is caused by the character of the instrument and, therefore, understandable. However, it provides space for the signatories to implement measures only partially or, in some cases, not at all. There is also a lack of uniformity in the procedures (and the definitions) adopted by the different platforms.

Thirdly, the number of signatories of the Code is limited. Although the current signatories are the main online platforms active in the EU, significant platforms/tools such as Tik-Tok, WhatsApp and Messenger are missing.

Therefore, ERGA believes **that steps are required to increase the effectiveness of the measures of the Code itself and also the oversight/reporting structures if it is to evolve into an effective tool in combating disinformation.**

For this reason, **ERGA encourages the Code's signatories and the EU Commission to improve the Code and its measures** by requiring that all of the platforms comply with the same obligations in a uniform manner (whenever possible taking into account the specificity of the individual platforms) and adopt more precise definitions, procedures and commitments, as well as measurable key performance indicators (KPIs). There is also a need for a set of provisions that apply to a broader number of online platforms active in Europe, as well as a need for provisions allowing the Commission (and the National Regulatory Authorities - NRAs, if delegated) to carry out specific monitoring activities, especially at the national level, and to adopt enforcement tools to ensure the compliance to the rules. The above-mentioned background suggests that **moving from the current self-regulatory model to more structured co-regulation may prove to be more effective to counter disinformation online.**

Based on the detailed summary of the outcomes of ERGAs monitoring activity (build on the national monitoring reports by the participating NRAs), carried out during 2019, **ERGA proposes in this report a set of recommendations**, based on three levels of intervention aimed at:

Improving the monitoring of the existing Code's commitments:

- o to ensure a consistent approach towards these issues/principles in the whole EU a set of relevant definitions should be drafted,
- o to improve the provision of information by the platforms by making available datasets, data monitoring tools and Country specific information (in a structure proposed by ERGA and by the Commission and similar for all the platforms) allowing the NRAs to monitor the commitments of the Code,
- o ERGA to draft sets of guidelines concerning the relationship between the platforms and the fact-checkers; platforms' reactions to consumers complaints and flagging; the media literacy campaigns in each Country and lastly improve the relationships between online platforms and researchers,
- o create intensive cooperation between ERGA and the new European Digital Media Observatory.

Expanding the existing Code's commitments:

- o address the problem of lack of uniformity by ERGA analysing further the commitments and compare the way the platforms implement them and then make recommendations aimed at harmonising the implementation of these commitments,
- o formally identify specific moments of the year in which the platforms would provide data on the implementation of the Code that includes Country-specific information, so to allow the ERGA to conduct a regular and proper monitoring activity,
- o increase the number of platforms signing the Code.

Exploring new (more effective) tools to counter disinformation:

- o To improve the existing model of the Code points toward a more structured form of regulation. To this effect, a **shift from the current flexible self-regulatory approach to a more co-regulatory one would be required**. Such a system would involve the evolution of the current self-regulatory Code to provide for more consistency in its formulation and in its implementation and the introduction of a formal backstop mechanism to deliver the required monitoring and enforcement elements. This should include a mechanism to incentivise industry players to take part in a self (or co)-regulatory structure. The ERGA experience in 2019 indicates that the effective development and implementation of the Code requires such a framework. To achieve this, operative rules should be put in place. These should consist of clear reporting obligations, more harmonised procedures and appropriate timeframes. **This is the solution that ERGA recommends to enhance the relationship with the platforms.**
- o Ideally, **all the platforms¹ which distribute content in Europe should be engaged in this co-regulation procedure** and should then be subject to the co-regulatory obligations. Should this not be the case, the **EU institutions might explore the possibility of adopting a more conventional regulatory approach**. With the current review of the regulatory framework that should culminate with the announced Digital Services Act (DSA), ERGA sees the value in a holistic approach to governance of online content regulation. In this overall framework, **the DSA-package should create a framework that would also include the basis for the effective fight against disinformation (liability regime). In addition, a dedicated legal act is needed to address the problem more directly and in greater depth**. Such a separate instrument (e.g. a regulation) would ensure not only a level of detail of provisions and comprehensive coverage of stakeholders but also the legislative speed required given the threat the current information crisis presents to European democracies.

ABOUT ERGA

National regulators in audiovisual media services have, not exclusively, the role of implementing the rules set by the European legislative framework – the Audiovisual Media Services Directive (AVMSD). The European Regulators Group for Audiovisual Media Services brings together the leaders or high level representatives of these regulatory bodies to advise the Commission on the implementation of the EU's Audiovisual Media Services Directive (AVMSD). The responsibilities of ERGA Members (i.e. statutory regulatory bodies responsible for applying a legal framework) vary significantly. In some cases, NRAs have a level of involvement in the development of voluntary codes, whereas others have a very clear delineation between aspects of statutory regulation.

¹ Or at least all the platforms which have a relevant size