How the European Union had Tried to Tackle Fake News and Disinformation with Soft Law and what Changed with the Digital Services Act?

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Abstract: The article shows snapshots from the history of fake news and terms and concepts to use in the field of information disorder (fake news, disinformation, misinformation) based on a thorough literature review. It describes that neither the analysis of only the the speaker's side (the intention) nor the the recipient's side (the impact) could not alone give a proper conceptual framework, but both should be used by the legislation to tackle these issues. With the viral misinformation through social media, it is clear that this poses new regulatory challenges and requires rapid-response frameworks suited to the digital age's unique dynamics. In the European Union, the road was marked by the Code of Practice on Disinformation, and the article describes how the EU Digital Services Act (DSA) tries to tackle fake news and disinformation. The article gives some possible legal solutions also.

1. INTRODUCTION

Since roughly the 2016 US election, there have been few elections in the world where the issue of influencing voters by fake news has not been raised. The world knows by now the town of Veles in northern Macedonia or the Russian troll farms. The recent Polish elections were described as full of "not disinformation pure and simple, just fake news. It's half-truths, biased information, manipulation, which are more difficult to pinpoint" (Czarnecka, 2023). The ongoing Russo-Ukranian war is also full of propaganda and fake news (Lendvai, 2023, p. 1236). A global survey showed that „48% across 27 countries have been fooled by fake news, believing a false story was real until later finding out it was fabricated" (Konopliov, 2024). Visualisation and graph-based studies also underline the spread of this problem worldwide (Soga *et al*., 2024). The role of TikTok for spreading misinformation was questioned during the late 2024 presidential election campaign in Romania (Morucci, 2024).

This article attempts to bring into the conceptual discourse a perspective that might bring us closer to answering the question of whether the term is worth using or whether it has (directly or indirectly) become so "politically charged" (Report for the European Commission, 2018, p. 5.) that it has lost its relevance in the academic field. And although it was voted for the

word of the year in 2017 by the Collins dictionary, some says that it has been used in so many ways that it would be better to stop using it (Papp, 2024). However, the problem certainly exists in the online space: "false news reached more people than the truth; the top 1% of false news cascades diffused to between 1000 and 100,000 people, whereas the truth rarely diffused to more than 1000 people." (Vosoughi *et al*., 2018)

2. HISTORICAL LINKS, OR ARE UFOS ATTACKING?

Half-truths, misinformation and lies have always existed. It is linked to power, control of communication, politics and social trust in them. Moreover, the answers of today differ from the answers of yesterday and tomorrow – not independently of our social, cultural, sociological and political structures.

In the Middle Ages, content deemed dangerous, heretical, undesirable by secular and ecclesiastical elites could be technically disseminated more widely: this was made possible by the invention of book printing in Europe, and its spread. In 1475, in Trento, Italy, "a two-and-a-half-year-old child named Simonino had gone missing, and a Franciscan preacher, Bernardino da Feltre, gave a series of sermons claiming that the Jewish community had murdered the child, drained his blood and drunk it to celebrate Passover. The rumors spread fast." (Soll, 2016). The preacher also claimed that the boy's body was found in the basement of a Jewish house. After an earthquake in Lisbon, "an entire genre of fake news pamphlets emerged in Portugal, claiming that some survivors

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owed their lives to an apparition of the Virgin Mary." (Soll, 2016) However, just as technology was lacking in antiquity, the Middle Ages lacked a class of people whose literacy and literacy could have made them receptive.

But this too changed with the rapid development of the printed daily press and the wider spread of literacy by the 18th and 19th centuries. Benjamin Franklin also invented propaganda stories about "murderous scalping Indians working in league with the British King George III" (Soll, 2016), where a found letter was the basis of the story. The letter, of course, was soon found to be untrue. Even back then, the spread of fake news was hard to break. This stage in the development of communication brought the first widespread fake news, the Great Moon Hoax of 1835. "The New York Sun published six articles about the discovery of life on the moon, complete with illustrations of humanoid bat-creatures and bearded blue unicorns" (Posetti & Matthews, 2018, p. 1).

These examples are obviously only snapshots, but they show that fake news and misinformation are a feature of the whole history of communication. At the same time, by the end of the 19th century, the increase in fake news led many people to seek more credible news, and objective journalism as a profession and as an industry was able to gain strength in many countries around the world. One important consequence of this was that the press at this time had what is known as the stamp of credibility (Schudson, 2022), which contributed greatly to the acceptance of information in the major press products as true by the general public.

The next change was again brought about by advances in technology: the widespread use of radio. The new technology seemed to 'hit' the listener almost like a projectile, impossible to escape. The most famous fake news of the era is linked to this, and it has become double fake news. In 1938, Orson Welles directed a dramatised version of H.G. Welles' fantasy novel The War of the Worlds, in which UFOs armed with death rays attack the earth, and broadcast it from the Columbia Broadcasting System (CBS) studios in New York. "At least six million people heard the broadcast. At least a million of them were frightened or disturbed." – wrote Hadley Cantril (1940), and for decades this was the reference point for both the harmful effects of the media and the easy spread of fake news. However, after 2010, a number of people began to question the extent of the post-radio panic and pointed out Cantril's methodological flaws. In other

words, the story was not only fake news in itself, but also – as a double-bottomed fake news – the after-effects of the story.

The Third Reich and the Soviet Union had already elevated fake news to the level of propaganda. After the Second World War, the spread of television and, in the words of Umberto Eco (1983, p. 163–179), the emergence of neo-television, made it possible to reach more and more people, but even in this era, journalists insisted that newspaper articles should be based on verifiable and reliable sources. The emergence of Web 1.0 and, even more so, Web 2.0 created a new situation: the concept of media was transformed, everyone became a journalist and therefore a source of information, and the algorithmic click-hunting of Artificial Intelligence (AI) helped to break the seal of credibility of traditional media. And the new challenges have come in a space – at first sight seemingly lawless – where technology and politics have done little to curb the spread of fake news (Gosztonyi, 2023a, p. 33–39).

3. TERMS AND CONCEPTS TO USE IN THE FIELD OF INFORMATION DISORDER

From a brief historical overview, it is clear that the use of the term fake news can be assumed to be a generic name for various methods, but it is also clear that humanity has been confronted with these issues several times in the history of communication. According to the Merriam-Webster dictionary (2017), "fake news appears to have begun seeing general use at the end of the 19th century." The change from the past can be described by the following elements:

1. Affordable technology for disseminating information to the general public,

2. Easy to use, mostly free applications,

3. More significant involvement in communication, both in the preparation and dissemination of information,

4. Growing social demand for information,

5. Information spreading at previously unimaginable speeds,

6. As a result, information is exchanged instantly,

7. Which makes monitoring much more difficult.

First of all, it should be noted that there is no widely accepted definition of fake news, as it is a "catch-all

term with multiple definitions" (Lilleker, 2017). There are many definitions, depending on the researcher (Kenyeres & Szűts, 2024).[1] And it is often felt that there is no guiding policy in this definitional chaos, but this is a false conclusion. Two broad categories can be drawn from the research:

1. One group approaches the question from the point of view of creation, i.e. the speaker and his situation. This group usually examines the position of the speaker, the intention of the communication, the content of the communication, the factuality of the communication and, less frequently, the method of dissemination.

2. The other group looks at the issue from the point of view of the recipients, i.e. the effects and consequences.

3.1. Analysis of the Speaker' Side or the Intention

In the context of conceptual clarification, it is worth citing the ideas of Claire Wardle and Hossein Derakhshan (2017, p. 19), who bring all the issues under the heading of information disorder. On this basis they distinguish between:

1. Sharing false information without intent to cause harm (misinformation),

2. Sharing false information with intent to cause harm (disinformation),

3. Sharing true information with intent to cause harm (mal-information).

They themselves point out that the concept almost strips itself of definitions, while the context of the issue (media market changes, democracy issues, algorithmic amplification, filter bubbles, echo chambers, credibility issues) can have a significant impact on the answers. They reject the use of the term 'fake news' because, on the one hand, "the term has also begun to be appropriated by politicians around the world to describe news organisations whose coverage they find disagreeable" (Wardle & Derakhshan, 2017, p. 16), and, on the other hand, it is too simplistic, as it brings together unrelated concepts under one banner.

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[1]For some thorough literature review, see Tandoc *et al*. (2017); Aïmeur *et al*. (2023); Broda & Strömbäck (2024).

Björnstjern Baade (2019, p. 1359) notes that there are two possible interpretations of the concept of fake news: narrow and broad. By narrow, the author means news that is deliberately fabricated, while by broad, he means news where accurate information is presented in such a way that "recipients likely to draw certain (false) conclusions." The latter category he calls distorted news.

Verstraete *et al*. also examined along the lines of intention and constructed a four-element matrix, where one of the two axes is intention and the other is financial motivation (Verstraete *et al*., 2022, p. 826). Another excellent example of a deliberate approach is the report commissioned by the European Commission (EC), which also rejects the use of the label fake news, considering it both too simplistic and too politically charged. The report therefore favours the term disinformation, which it identifies with the following definitive elements:

A. forms of speech that are outside the scope of what is already unlawful (defamation, hate speech, incitement to violence, etc.) but are nonetheless harmful,

B. including any form of false, inaccurate or misleading information which is knowingly prepared, displayed or disseminated for purposes of gain or profit and which is against the public interest (de Cock Buning, 2018, p. 11).

An inherent problem with the intent-based approach, however, is that it is difficult to prove or justify in many cases. Moreover, Nick Anstead (2021, p. 17) asks, what if the public has a different intention – positive or negative – for the content than that intended by its creator. It can be argued that "pseudo-news is not exclusively an emitter phenomenon, but rather the result of interactions" (Aczél, 2017, p. 15).

3.2. Analysis of the Recipient's Side or the Impact

A minority of the authors studied deal with the receiver side, but the question of how and how the global issues surrounding communication influence interpretations and thus the effects of fake news cannot be avoided.

Fake news and disinformation are not only closely linked to the right to freedom of expression, as political, economic and social issues can arise as well. The cross-border nature of the internet can easily turn the spread of fake news into a national security issue

(Heikkinen, 2021, p. 8). In support of this, it is worth highlighting the issue of interference in the most important democratic process, elections. The widespread spread of fake news can also easily undermine public trust in democratic institutions (Reglitz, 2022), as exemplified by the widespread – mostly false – theories that were spread during the COVID-19 pandemic. Sander van der Linden's (2023) research shows that "the promotion of coronavirus conspiracy theories and misinformation is an important predictor of people's willingness to accept public health measures." And this, as the United Nations Educational, Scientific and Cultural Organization (UNESCO, 2020) has pointed out, could even lead to the endangering of human lives. This is linked to the diminishing weight of genuine scientific opinions, which, if they are considered to be only one among many, are certainly of questionable importance (Gerbina, 2021). Science is not infallible, of course, but it certainly plays a fundamental role in providing us with information about our society, our economy and our political systems that we accept as true (Kupe, 2019). Femi Olan *et al.* (2022) have shown that fake news content is increasingly influencing social values, changing opinions on critical issues and topics, and reinterpreting facts, truths and beliefs. According to a University of Baltimore's (2019) study, online fake news costs the global economy $78bn a year, while their direct economic cost is estimated to contribute around $39bn a year to the stock market depreciation of various companies. Similarly, false information in the course of trade can be labelled as fake news (Hendricks & Vestergaard, 2019, p. 67).

In addition to political, economic and social problems, the issue can also be damaging at the level of individuals. According to William Van Gordon (2021), people's personal well-being is at stake: "in addition to unduly influencing a person's decision making, exposure to fake news can lead to false memories, as well as foster anxiety and a catastrophic outlook." As a side effect of this, one of the inevitable effects is the loss of faith and trust in the media in general, which, although it started earlier, the exponential growth in the volume of fake news is clearly contributing to the loss of the credibility seal. Moreover, as technology advances, the issue no longer applies only to written content, but also to visual content.

It may not be worth going back to John Milton to argue that every communication has a different effect on every recipient, but it is undeniable that there are significant difficulties in assessing the impact of pseudo-news. Changes in the media market and the increasing role of social media may confirm Nick Anstead's (2021, p. 42) view that "fake news is the latest in the long line of panics about the media and democracy." The loss of credibility of the media and the increasing questioning of democratic ways of operating are familiar and well-known phenomena around the world. Fake news is therefore a signal of disruption of democratic, constitutional operations, calling into question the normal role of the news. In examining the effects, Jordana George *et al.* (2021, p. 1073–1075) conclude that the following elements are worth examining:

1.   persuasion, when the recipient's opinion changes,

2.   translation, when the recipient's beliefs are transformed (thus 'going deeper' than persuasion on a single issue),

3.   political polarisation,

4.   the suppression of thoughts and opinions.

Their reflections show that the mechanism of action of fake news is seen to be most significant in political debates, which can be clearly transferred to issues related to democratic decision-making (Katsirea, 2018), as its influence can significantly reduce its legitimacy. The related view of David Lazer *et al.* (2018, p. 1095), however, is that the impact of fake news is bigger in social networks that „reduce tolerance for alternative views, amplify attitudinal polarization" Ultimately, they come to the same conclusion that the most important thing in terms of impact is that it attacks faith in the democratic processes on which our advanced societies are built. As Sacha Altay *et al.* (2023) put it, fake news is a "symptom of deeper sociopolitical problems."

4. EUROPEAN SOFT LAW INSTRUMENTS

In contrary to the historical cases, contemporary fake news frequently proliferates due to digital ease. With the viral misinformation through social media, it is clear by now that this poses new regulatory challenges and requires rapid-response frameworks suited to the digital age's unique dynamics.

4.1. Communication from the European Commission (2018)

In 2018, the EC issued a Communication on online misinformation, highlighting that Europe faces a serious

challenge in exposing its citizens to large-scale misinformation, including misleading or outright false information. It is seen as an interference in democratic processes, "mass online disinformation campaigns are being widely used by a range of domestic and foreign actors to sow distrust and create societal tensions, with serious potential consequences for our security. Furthermore, disinformation campaigns by third countries can be part of hybrid threats to internal security, including election processes" (COM(2018) 236 final, 1)

The Communication – rather tendentiously – presented the problem as primarily the responsibility of online platforms, pointing out that they have so far „failed to act proportionately, falling short of the challenge posed by disinformation and the manipulative use of platforms' infrastructures" (COM(2018) 236 final, 1). The same political accountability can be read in a statement by Marija Gabriel, Commissioner for the Digital Economy and Society, who said: "We are calling on all actors, in particular platforms and social networks who have a clear responsibility, to act on the basis of an action plan aiming at a common European approach so that citizens are empowered and effectively protected against disinformation." (Vandystadt, 2018).

The Communication highlights that the way these platforms operate contributes to the magnification of misleading information ((COM(2018) 236 final, 2.2). By these modes of operation, it means A) algorithm-driven, i.e. the potential for increasing the polarisation of personalisation and profiling, B) ad-driven, i.e. the potential for click-hunting and sensationalism, and C) technology-driven, i.e. the potential for exponential multiplication by exploiting AI. In the Communication, the EC committed to publish „an EU–wide Code of Practice on Disinformation (...) by July 2018, with a view to producing measurable effects by October 2018" (COM(2018) 236 final, 3.1.1).

4.2. EU Code of Practice on Disinformation (CPD) (2018)

The European co-regulatory period (Marsden, 2011) in the online world has produced two important results: the EU Code of conduct on countering illegal hate speech online signed in 2016 and the EU Code of Practice on Disinformation (CPD) signed in 2018. It is worth highlighting, in relation to the voluntarily signed CPD, that as the above-mentioned EC Communication effectively reduced the issue to the responsibility of

online platforms, it could not have been well communicated by tech companies, if they had not signed it (Colliver, 2019). As a result, some of the world's biggest tech companies, including Facebook, Google, Twitter and Mozilla, have signed up to the CPD. The 16 signatories have made commitments to, among other things, the following:

- Transparency in political and public affairs advertising,

- Demonetisation measures against disinformation disseminators in relation to advertising placements,

- Promoting informed consumer behaviour,

- Empowering fact-checkers and researchers (CPD, II).

It is problematic, however, that the CPD is only applicable to signatories (CPD, V), so it cannot be considered as a real regulatory, definitional solution in legal terms, as it is important to stress that it "must be applied within the framework of existing EU and Member State legislation and cannot be interpreted in any way as replacing or interpreting the existing legal framework" (CPD, Preamble).

The concrete framework for the CPD was set out in the Action Plan issued in December 2018 (JOIN(2018) 36 final) which aimed to improve the detection of disinformation (First Pillar), to coordinate a coordinated response by the EU institutions and Member States (Second Pillar), to mobilise signatories to the CPD to fulfil their commitments (Third Pillar) and to raise awareness among citizens and users (Fourth Pillar). However, the CPD did not include concrete, easily understandable indicators and its practical utility was therefore limited.[2]

4.3. EU Strengthened Code of Practice on Disinformation (SCPD) (2022)

As set out in the Action Plan for Democracy in Europe (COM(2020) 790 final, 4.2), the EC published guidelines (COM(2021) 262 final) in May 2021 inviting signatories to endorse the CPD. In order to understand these developments, it should be borne in mind that the COVID-19 pandemic and its consequent shift into the Internet space of communication has significantly

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[2]For more details on the problems, see Kuczerawy (2020, p. 297–302).

amplified the problems associated with fake news (Gosztonyi, 2023b). "The »infodemic« – the rapid spread of false, inaccurate or misleading information about the pandemic – has posed substantial risks to personal health, public health systems, effective crisis management, the economy and social cohesion" (COM(2021) 262 final, p. 1). The guidelines called for stronger and more tailored commitments, their swift and effective implementation and wider participation.

On this basis, work began in the summer of 2021 to revise the CPD, leading to the adoption of the Strengthened Code of Practice on Disinformation (SCPD) in June 2022. It now has 44 signatories, although it should be pointed out that only a few of the big tech companies (Google, Meta, Microsoft, TikTok) are represented. The signatories have made the following commitments, among others:

- Stronger measures to cut off sources of disinformation (SCPD, p. 5),

- Increasing transparency in advertising (SCPD, p. 7),

- Expanding and strengthening the user toolbox to identify and report fake or misleading content (SCPD, p. 21-25),

- Expanding the possibilities for fact-checking (SCPD, p. 33).

It should be noted, however, that the process of drafting the Digital Services Act (DSA) was already well underway, so it was already apparent that, as Alberto Rabbachin put it, "the SCPD to combat disinformation is currently a »code of practice«, but with the entry into force of the DSA it will soon become a »code of conduct«." (Fülöp, 2023).

4.6. Baseline Reports and Statements (2023)

The signatories of the SCPD have also committed to submit a so-called baseline report six months after signing the document, and to resubmit data every six months for very large online platforms and annually for others (SCPD, p. 39). In February 2023, 30 of the signatories submitted their first baseline report to the Transparency Centre (SCPD, p. 35). The reports include 152 reporting indicators (111 qualitative and 42 service level/quantitative indicators), which illustrates the complexity of the issue. This complexity can also be problematic, as many signatories have provided data for the wrong time period or not comparable,

therefore, it is expected that more precise guidance will be provided to respondents before the next baseline report. The difference in importance between the signatories, as indicated above, is illustrated by the fact that the European Commission (2023a) noted that "most major online platforms (Google, Meta, TikTok and Microsoft) demonstrated strong commitment to the reporting. (...) Twitter, however, provides little specific information and no targeted data in relation to its commitments."

In September 2023, the signatories also submitted the first batch of reports comparable to the baseline report (European Commission, 2023b), which revealed, for example:

- Google has indicated that it has prevented more than €31 million worth of advertising from reaching disinformation actors in the EU in the first half of 2023.

- Meta reported that 95% of users who encountered content with disinformation warnings did not click on the information.

- TikTok reported that 832 videos related to the Russian-Ukrainian war were checked, of which 211 were removed as a result of the fact-checking.

These figures are obviously just a drop in the ocean, but they show that there is a way to tackle online fake news.

5. THE DIGITAL SERVICES ACT (DSA) (2022), OR "YOU CAN RUN BUT YOU CAN'T HIDE"

In April 2022, after buying 9% of the company's shares on the stock exchange, Elon Musk launched a hostile takeover of Twitter. The offer price was well above the market price, and long months passed until he finally became the owner of the company at the end of October 2022. The eccentric billionaire surprised many with the acquisition itself, but afterwards he also had some surprising moves at the company, renamed X in July 2023. One of these was that, as we have seen above, it did not submit a baseline report of value as a signatory to the SCPD, and when the EC raised this issue, it withdrew its signature from the SCPD at the end of May 2023. At the time, Thierry Breton, the European Commissioner for the Internal Market, wrote on Twitter: "You can run but you can't hide. Beyond voluntary commitments, fighting disinformation will be legal obligation under DSA as of August 25."

5.1. About the Regulation in General

The DSA (Recital 9) states that the main aim of the legislation is to ensure a „safe, predictable and trusted online environment, addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate." The DSA entered into force on 16 November 2022 and becomes directly applicable in the EU on 17 February 2024. However, very large online platforms (VLOPs, DSA, Article 33(4)) and very popular online search engines (VLOSEs, DSA, Article 33(4)) already have to comply with their – more stringent – obligations earlier, since 25 August 2023. Of particular importance, each Member State was required to designate a Digital Service Coordinator from among its national institutions (DSA, Article 49(2)), responsible for the implementation of the Regulation in respect of the intermediary service providers established in that country.

5.2. Rules of the DSA Relating to the Fight Against Fake News

The DSA has introduced a number of new regulatory solutions to combat disinformation, and has replaced and adapted a number of previous solutions (Husovec, 2024).[3]

5.2.1. Trusted Flaggers

The DSA (Article 22) has created a category of trusted flaggers, which would bring the fight against illegal content online back to the realm of trustworthiness and predictability. Trusted flagger status is granted by the Digital Services Coordinator, and all organisations with such status must produce an annual public report of their reports of allegedly illegal content. An important rule for legal certainty is that the status can be withdrawn (DSA, Article 22(7). Trusted flagger status cannot be granted to individuals, but only to organisations that have demonstrated, among other things, that they have the expertise and competence to deal with the illegal content and that they act with due diligence, accuracy and objectivity (DSA, Recital 61). Their notifications should be treated as a matter of priority, processed without undue delay and acted upon without also undue delay.

5.2.2. Notice and Action Mechanism (NAM)

The safe harbour model rules, which were previously governed by the Electronic Commerce Directive (ECD, 2000/31/EC), have been strengthened and transferred to the DSA for harmonisation purposes. The former Notice-and-Takedown System (NTDS, ECD Article 14) is replaced by a so-called Notice and Action Mechanism (NAM, DSA Article 16) which differs in some points from the previous legislation. The main reason for this is that the NTDS, as regulated in the ECD, quickly proved unable to keep pace with technological developments and international courts had to fill in the gaps in the legislator's wording (Gosztonyi, 2023a, p. 121-156).

Under the new rule, if a four-element notification (DSA Article 16(2)) is received by a service provider, it will be deemed to have been made with actual knowledge of the information (DSA, Article 16(3)) and they have to make their decision "in a timely, diligent, non-arbitrary and objective manner" (DSA Article 16(6)). These procedures should give priority to notifications of suspected illegal content reported by trusted flaggers.

However, in relation to the proliferation of disinformation, it should be noted that the new legislation maintains and reaffirms the prohibition of the general monitoring requirement as set out in Article 15(1) of the ECD, stating that it "nothing in this Regulation should be construed as an imposition of a general monitoring obligation or a general active fact-finding obligation, or as a general obligation for providers to take proactive measures in relation to illegal content." (DSA, Recital 30 and Article 8). It must be admitted however that given the current rate of spread of disinformation, this may not contribute to the removal of this type of illegal content with sufficient speed and in sufficient quantity.

A further criticism of the new NAM legislation is that the first point of the four-element notification requires the notifier to provide "a sufficiently substantiated explanation of the reasons why the individual or entity alleges the information in question to be illegal content" (DSA, Article 16(2) a)). As we have seen above, illegal content as a broad category may present very diverse typologies, moreover, in the context of disinformation, the issues analysed above may not be correctly aligned by all users, so that the three-element test of adequacy-necessity-proportionality does not meet the requirement that a service provider should act on the basis of a mere notification alleging unlawfulness.[4] This issue should avoid the delicate situation whereby

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[3]For the assesment of the impacts of the DSA, see Nannini *et al.* (2024).

[4]Moreover, this can be compared with the trend for service providers to take action on certain content within one hour (2021/784, Article 3(3)).

legitimate content is removed instead of disinformation content that should rightly be prosecuted, simply because providers want to avoid liability.

5.2.3. User Rights

The DSA (Articles 20–21) provides users stronger tools to challenge and appeal against the moderation decisions of platforms, unlike previous legal solutions. In addition, platforms will have to provide "clear and specific statement" (DSA, Article 17(1)) if users' content or accounts have been removed or terminated, suspended, restricted in their visibility – either in full or in part. At the same time, the lack of a distinction and definition of illegal and harmful online content in the DSA is problematic, as although this would put users in a less vulnerable position than in previous years, in practice they would still not be sure why the content they upload is considered legal or illegal.

5.2.4. Transparency Reporting Obligations for Intermediary Service Providers

The reports identified in the SCPD are also included in the DSA, as it requires all intermediary service providers to publish a report on content hosting at least once a year. Moreover, the report must be in "clear, plain, intelligible, user-friendly and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format" (DSA, Article 14(1)).

5.2.5. Systemic Risk Assessment

Online platforms and online search engines that have an average of at least 45 million active users per month in the EU (DSA, 33(1)) are classified as very large online platforms (VLOPs) or very large online search engines (VLOSEs). Sally Broughton Micova (2021, p. 5) argues that the main reason for singling out online giant platforms and very popular online search engines is the correlation between the size of the service and the potential for harm. These service providers are required to conduct a risk assessment at least once a year to "identify, analyse and assess" (DSA, Article 34(1)) the systemic risks posed by their operations. This includes, inter alia, issues such as the distribution of illegal content, violations of fundamental rights as enshrined in the Charter of Fundamental Rights of the EU or "any actual or foreseeable negative effects on civic discourse and electoral processes, and public security" (DSA, Article 34(1) c)). In relation to illegal content, particular attention should also be paid to the potential for its rapid and widespread dissemination.

5.2.6. Algorithmic Transparency and Fines

One of the most controversial issues concerning the spread of disinformation and its detection is the algorithmic functioning of platforms (content management systems, recommendation systems, advertising systems). The lack of visibility of these systems significantly reduces the chances of combating the spread of false information at lightning speed, as "the algorithmic amplification of information contributes to the systemic risks" (DSA, Recital 84). Thus, the DSA (Article 40) also puts the understanding of the algorithms of the platforms on a new basic by providing access to them – for monitoring and assessing compliance – to the EC, the Digital Services Coordinator, or to verified researchers upon their justified request. In the course of this examination, "the design, the logic, the functioning and the testing" of algorithmic systems can be examined.

With all these rules, it is not surprising that the EU also wants to give financial incentives to service providers to comply with them, so the maximum amount of fines that can be imposed for non-compliance with an obligation under the DSA (Article 52(3)) is 6% of the annual worldwide turnover of the intermediary service provider concerned in the preceding financial year.

6. POSSIBLE LEGAL SOLUTIONS FOR TACKLING FAKE NEWS

We can be sure that if there was an easy, quick, but legal and universally acceptable solution to the fake news problem, humanity would have already used it. As there is certainly no magic solution that will solve the problems, it is still possible to fight the pseudo-news that spreads online by using a complex set of tools. The main elements of this complex package of measures could include the following:

A. Developing not only short-term (1 year), but also medium-term (3-5 years) and long-term (more than 5 years) proposals.

B. Use of a "significantly more extensive public policy toolbox" than legislation (Polyák, 2023, p. 88–89). In this context, it would be important to ensure transparency, strengthen media and information literacy, develop technical tools to filter out disinformation, or ensure the diversity and sustainability of the European news ecosystem.

C. Where feasible, it is necessary to use not only classical state legislation, but also co-regulation with the involvement of stakeholders (Ricker Schulte & Pickard, 2020). An example of this is the report prepared for the UK Parliamentary Assembly's Digital, Culture, Media and Sport Committee, which proposes the adoption of a Code of Ethics (HC 1791, 2019, p. 89).

D. The use of criminal sanctions should also be avoided,[5] as they contribute significantly to increasing the chilling effect. Increasing digital literacy also promotes access to information from multiple sources (Çakır-Somlyai, 2023, p. 113).

E. In light of conflict-related disinformation, particularly regarding the Russo-Ukrainian war, a closer collaboration between regulatory bodies and military or national security agencies is required.

F. Increasing media literacy in general, which can also increase the capacity for critical thinking about online content, thus contributing to more resilient democracies.

G. A conscious reduction in the willingness of political actors to polarise.

H. Setting up a permanent, global institution to monitor and study information (Wardle, 2023).

I. Improving journalism training by adding fake news to the training curriculum.

J. Online platforms should also do their utmost (Levy, 2024) to correctly identify and remove problematic content. As a good example, the Facebook Oversight Board's decision in the fake news and disinformation case (2021-008-FB-FBR) resulted in the issuance of a policy advisory opinion in April 2023 (PAO-2022-01), stating that Facebook "should continue to remove COVID-19 misinformation that is likely to directly contribute to the risk of imminent and significant physical harm."

K. Creating and supporting independent fact-checking networks and sites. The creation and operation of these networks could even be envisaged as a public obligation in some European countries.

L. Increasing transparency of content, not only in terms of the information it contains, but also in terms of the source, production, sponsorship, distribution and targeting of that given content (de Cock Buning, 2018, p. 22).

M. With regard to the use of different types of bots, the intention of the usage should be clear.

N. Better insight into AI-driven recommendation and distribution algorithms (DSA, Article 40).

O. Awareness-raising campaigns by the state, NGOs and the media that can shed light on what content (text and images) to place more trust in. These should be included in primary school education, which should be taught how to identify fake news.

P. Significantly expanding user rights and options for dealing with content deemed problematic (Cabrera Blázquez *et al*., 2022). In this context, it is worth mentioning reporting options, the introduction of feedback obligations for large companies, the standardisation of moderation practices or the possibilities for legal redress.

Q. Case studies that explain, step by step, the small (or big) signs that a news item is fake. Central Washington University library's guide suggests the following four steps to do so:

- check fact-checking sites[6] to see if the news has been found to be false,

- decipher the original source: if it turns out that the sources are linked to the same person or organisation and are only trying to create the appearance of diversity, it is worth being suspicious,

- look at the imprints of the sites reporting the news: the absence of this can be a tell-tale sign,

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[5]Gabriella Lim and Samantha Bradshaw (2023, p. 6), analysing the legal regulation of fake news in 105 countries, found that increasing fines are becoming more common, and prison sentences are also not uncommon. For more on international legal solutions, see also Vese (2022).

[6]Examples of such sites include Snopes (https://www.snopes.com), FactCheck (https://www.factcheck.org), Reporters' LAB (https://reporterslab.org/fact-checking), AFP Fact Check (https://factcheck.afp.com) and Fact Checker (https://www.washingtonpost.com/news/fact-checker). The International Fact-Checking Network (https://www.ifcncodeofprinciples.poynter.org) has 141 active and 34 in renewal members who have committed themselves to common goals and signed the organisation's statement of principles.

-       check the other accounts and pages of the person posting the news: isn't it just a case of generating clicks to sell advertising?

R.   Systematic analysis of the baseline reports and reports based on the SCPD.

S.   Systematic analysis of annual systemic risk reports based on DSA.

7. CONCLUSION

It is clear that there are no easy and simple answers in the content chaos in which our lives is in 2024. In the words of Romain Badouard (2020, p. 11), "in many ways, we are living in a golden age of freedom of expression, because it has never been easier to get an idea out into the general public and to get it to as many people as possible." On the other hand, it has never been so easy to technically get false, misleading and malicious ideas and content to as many people as possible. Technology is a blessing on one side and a curse on the other. "This leads to an uncomfortable and seemingly paradoxical truth: fake news is simultaneously of democratic life and also profoundly anti-democratic." (Anstead, 2021, p. 8). How can this democratic paradox be addressed? The complex use of the above holistic solutions may not offer an easy and definitive answer, but it can help to keep the issue in perspective.

It seems certain that none of the three actors will be able to handle the situation alone. Neither the states – although the intention is increasing –, nor the tech companies, nor the civil society, academia or users. It can be argued that all three axctors in the "platform governance triangle" (Gorwa 2024, p. 27) must be involved in the process, i.e. the parties are doomed to cooperation and collaboration.

The democratic paradox of fake news is an issue we must learn to live with. "Let's stay calm and move on", summarises Vagelis Papakonstantinou (2021, p. 9), who argues that the electronic media has also lost its novelty and then its credibility, and that this will happen to Internet communication. Despite the increasing use of strong political statements, the bird may not fly under European rules simply because of a piece of legislation.

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