

Online Disinformation: fostering the debate

Reflections, concerns, regulatory challenges

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Online Disinformation: Finding the silver bullet in the digital world
European Economic and Social Committee, Brussels
November 12th, 2019

Panel: How far reaching is regulation?

Content

Introduction

- *Fundamental rights, values and frameworks at stake*

1. Privacy and DP

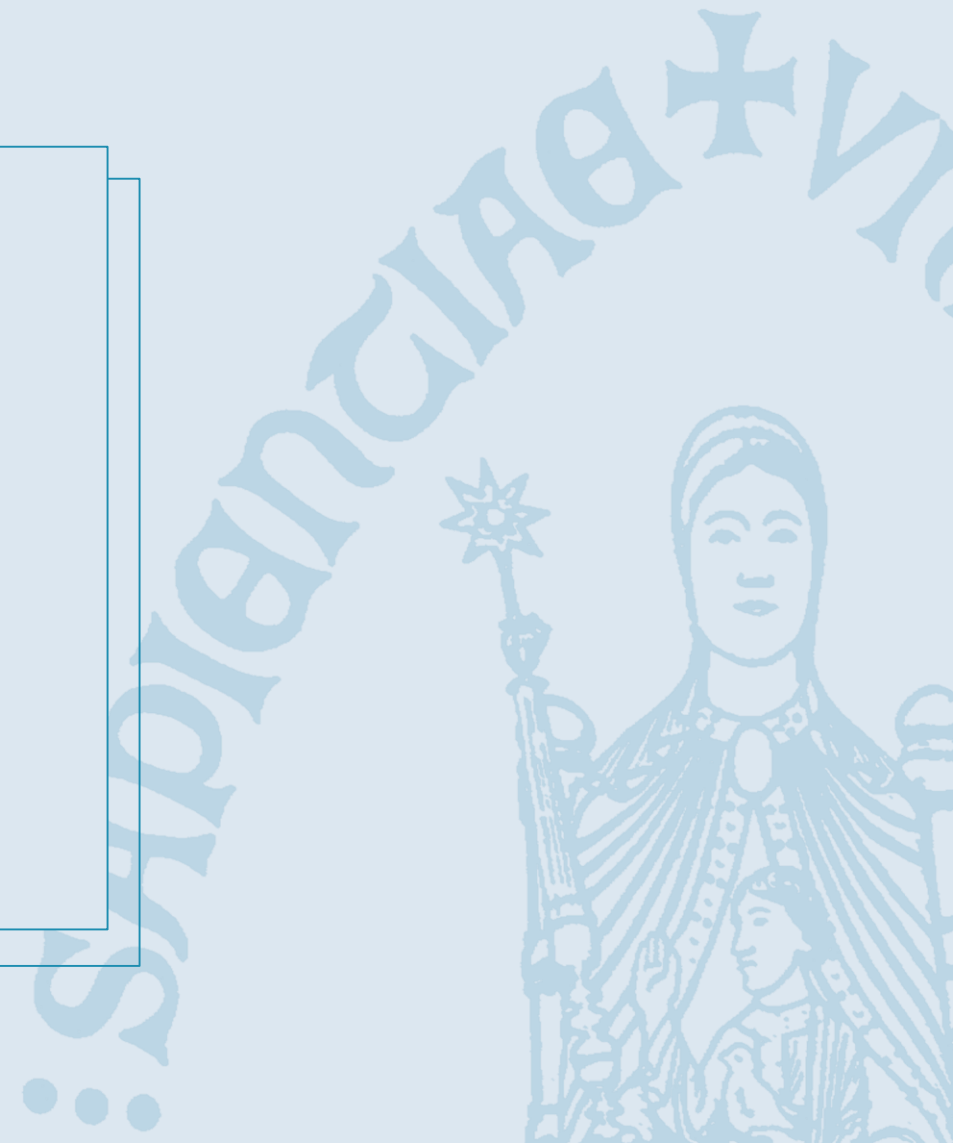
- *The 'online' shift in political campaigning*
- *... and potential pitfalls: micro-targeting and online manipulation*
- *Current situation and remarks*

2. Advertising and transparency

- *Current situation and remarks*

3. Freedom of Expression

- *Current situation and remarks*



Introduction

Fundamental rights, values and frameworks at stake

Fundamental rights and values

- **Fundamental rights and Freedoms**
 - **Privacy** and protection of data
 - Freedom of thought, conscience and religion
 - **Freedom of expression and information**
 - Freedom of assembly and association
- **Media Pluralism**
- **Free elections**
- ...

Legal frameworks

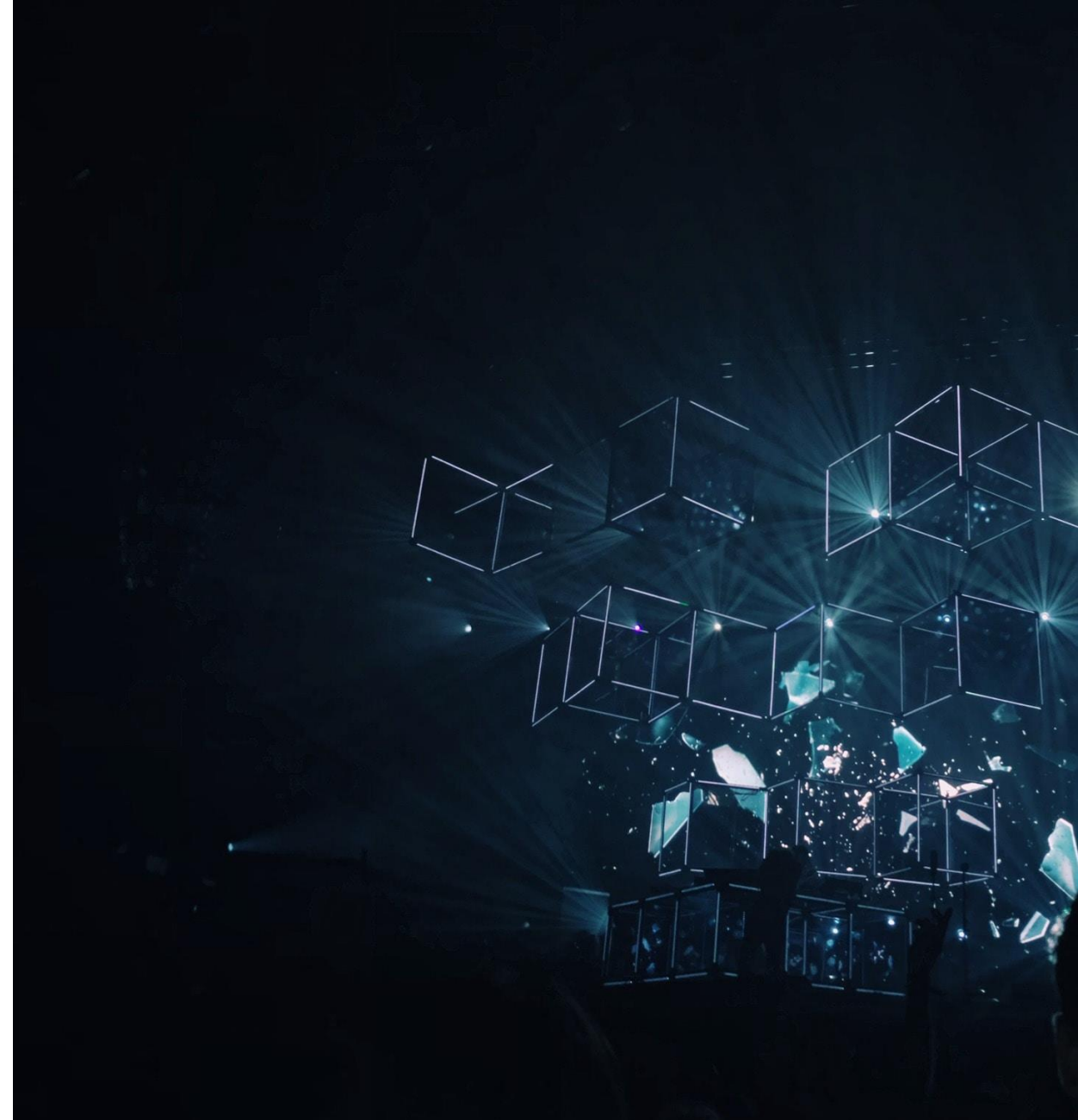
- Data protection rules and principles
- Audio-visual media rules
- Electoral regulations
- Security
- Consumer protection
- Competition law
- ...

1. Privacy and DP

The 'online' shift in political campaigning

- The traditional system of political campaigning has **evolved**. Elections have become increasingly '**datified**' (ICO, 2018)
- Political parties **target individual voters** with messages in keeping with their particular interests and values

➤ Recent developments have led the public to question **how** personal data of voters is processed, and whether this is done **legally** and **ethically**



1. Privacy and DP

... and potential pitfalls: micro-targeting and online manipulation

*‘Microtargeting of electoral canvassing changes the rules of public speech, **reducing the space for debate and interchange of ideas**’ – (EDPS Ethics Advisory Group, 2018)*

- **Micro-targeted online environment facilitates ‘filter-bubbles’ / ‘walled gardens’** – in these environments, individuals encounter fewer opinions, likely resulting in increased political polarisation (Alcott et al, 2016)



1. Privacy and DP

Current situation and remarks 1/2

Law

- **GDPR:**
 - key principles including: *lawfulness, fairness and transparency; purpose specification; data accuracy; data security; accountability.* (art 5 GDPR)
- **DP rules interpreted by EU bodies**
- **Further guidance by National Data Protection Authorities (DPAs)**

Enforcement

- **DPAs:**
 - at the centre of topic. (Bennet 2019)
Cross-law subject
 - Many guidance but few examples of enforcement (UK, FRA)
- **EDPS:** regulators should aim for a collective diagnosis of the problem + coordinated effects with other Authorities

1. Privacy and DP

Current situation and remarks 2/2

Issues:

- **Lack of information** towards data subjects in relation to:
 - the use of personal information for micro-targeting on social media
 - third party online campaigning platforms
- Lack of **due diligence** in relation to personal information obtained from data brokers

(ICO, 2018)

• Tensions:

- **Data subjects' rights**
- **Transparency** and 'explainability' on profiling and received advertisement
- **FoE**
 - Users: to receive information
 - Content providers: to impart information

2. Advertising and Transparency

Current situation and remarks



Audio Visual Media Law in EU MS:

- '20th Century regulations for online platforms' (Kergueno, 2019)(Tambini, 2017)

Political advertising:

- Absence of a common notion of 'political advertising' in the EU

Platform ad archives: a potential governance tool for online political advertising (Leersen et al 2019)

- Code of Practice and Recent developments

3. Freedom of Expression

Current situation and remarks

- *EU Code of Practice:*

(Kuczerawy, 2018)

- **Delegated private enforcement** to enforce public policy objectives
- Encourages demotion of content >< FoE
- Lack of **safeguards** to ensure the respect for human rights and prevent over-compliance
- **Enforcement**

- *Proposed safeguards:*

(Kuczerawy, 2018)

- **Notification** to content providers
- **Counter-notification mechanisms**
- **Appeal mechanisms**

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