Online Disinformation: fostering the debate
Reflections, concerns, regulatory challenges

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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 canvasing 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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