



Alain Strowel – Jean De Meyere

15/04/2023

The EU Legal Framework on disinformation – Quick overview

Introduction

- Dis/misinformation itself is not new: « All warfare is based on deception » (Sun Tzu, 5th BC)
- Dis/misinformation has been used for various reasons by States and non-States actors throughout history... But :
 - Social media have been accused of being a particularly efficient vector for disinformation (e.g. Cambridge Analytica)
 - Since 2016 and the popularization of the term « fake news », disinformation has become a public policy issue



AI and disinformation

- Generative AI : new threats for production and disinformation
- Social bots : potential for massive dissemination of disinformation
- Use of AI to counter disinformation : risks for freedom of expression



AI and disinformation



Definitions

Misinformation = false, incorrect or misleading information that is shared without the intention to harm (Lewandowsky et . 2013, Cacciatore 2021)

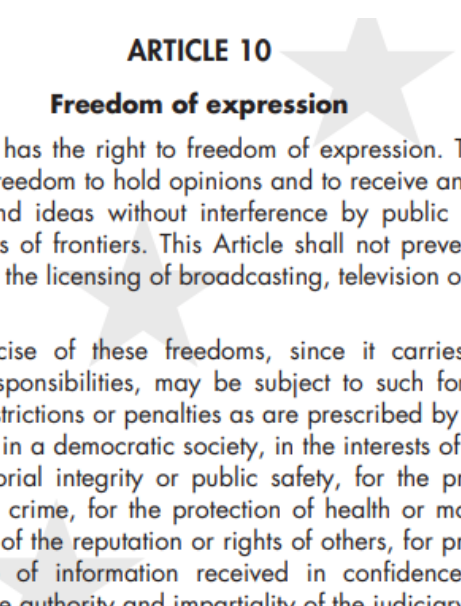
Disinformation = intentionally incorrect information disseminated to cause harm (Lewandowsky et al. 2013, Wardle and Derakshan 2017)

Malinformation = intentionally sharing genuine information to cause harm (Wardle and Derakshan, 2017)

Infodemic = An “overabundance of information, misinformation, and disinformation,” including “misleading or fabricated news, images, and videos” (Pool, Fatehi, and Akhlaghpour 2021)

Challenges when regulating disinformation

- As with every regulatory actions touching upon speech, attempts to curb the spread of (online) disinformation must take into account freedom of expression and of the press.
- ECHR:



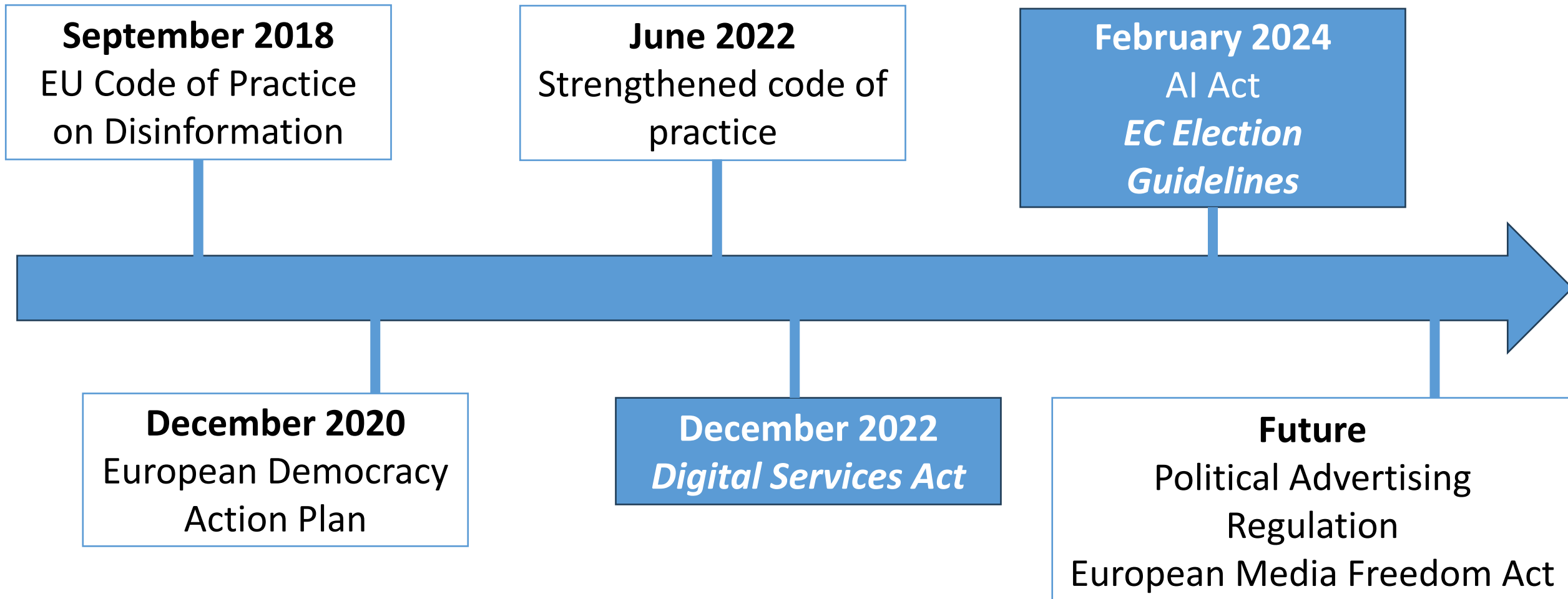
ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The EU Legal framework surrounding disinformation



EU Code of Practice on Disinformation

2018 : self-regulatory instrument, focus on :

- Scrutiny of ad placements
- Transparency regarding political advertising
- Integrity
- Empowering consumers, fact checkers and researchers

2022 : strengthened Code of Practice, focus on:

- Demonetisation of disinformation
- Coverage of manipulative behaviour
- Provide data to researchers
- Robust monitoring and reporting framework
- Creation of a permanent task-force

Digital Services Act

- Part of EU strategy regarding platforms together with the Digital Markets Act
- First version unveiled in December 2020 by the EC. Final text was voted by the EP in July 2022 and approved by the Council in October 2022 -> entry into force : 1/1/24 (earlier for large platforms)
- Tiered structure : more obligations for large platforms (VLOPs: >45M EU users)
- Objectives :
 - Protecting rights of users online
 - Ensuring a safe, predictable and trusted online environment
 - Provide the appropriate supervision of digital services
- No focus on disinformation itself, but :
 - Strengthened transparency obligations for online platforms, including **more access for researchers (art. 30 DSA)**
 - VLOPs need to analyse and address systemic risks, including those favoring disinformation

Digital Services Act – Obligations regarding content moderation for online platforms

- Rules on term and conditions (art. 14)
- Notice and action mechanisms (art. 16)
- Statement of reasons (art. 17)
- Internal complaint-handling systems + out-of-court dispute settlements (art. 20 & 21)
- Trusted flaggers (art. 22)
- Measures and protection against misuse (art. 23)

Digital Services Act – Risk Assessment Obligations

- At least once a year, VLOPs have to assess the following systemic risks :
 - Dissemination of illegal content
 - Any negative effect on fundamental rights :
 - Any negative effect on civic discourses, electoral processes and public security
 - Any negative effect on gender-based violence, protection of public health, minors, person's physics and mental well-being
- Algorithmic systems to be included in the risk assessment
- VLOPs to analyse whether manipulation of their services can impact those risks
- VLOPs to put in place mitigating measures

Digital Services Act – Transparency and Data Access

- Data access for researchers – art. 40
- Independent audit – art. 37
- Reporting obligations – art. 15, 24, 42

Future Law

- Artificial Intelligence Act
- Media Freedom Act
- Political Advertising Directive

Conclusion

- Disinformation and order information disorders have a **polymorphic nature**
- Regulating speech poses high risks for freedom of expression
 - **But the prevalence of false information online comes with serious consequences**
- The DSA promotes a governance framework for online platforms that aim at enhancing transparency, human rights and platform accountability
- The emergence of new automated tools, such as generative AI and Natural Language Processing (NLP), creates new risks yet offer new opportunities in the fight against disinformation
- What will the global impact of the DSA be? Is there a potential for a *Brussels effect* ?

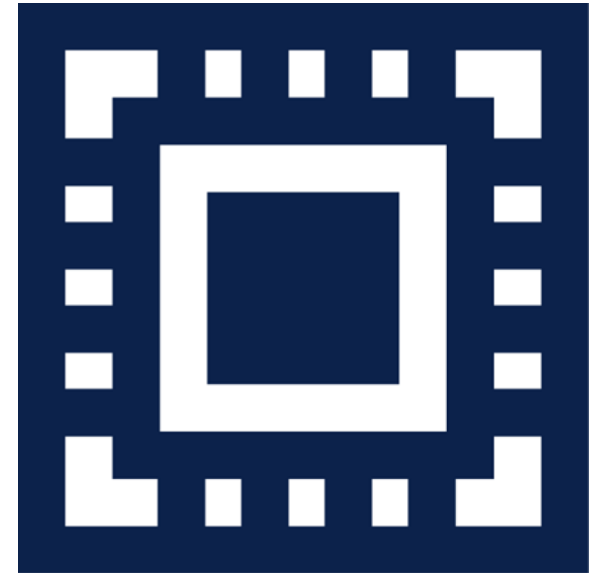
The research group on **Data, Robotics, Artificial Intelligence, Law and Society**

A joint initiative of the CRIDES and CPDR at
UCLouvain and of researchers at USL-Bruxelles

Aims

- bringing together scholars and experts in the social sciences, the humanities and beyond
- to investigate emerging challenges raised by digitalization

More info : <https://drails.org/>



The **RE**gulatory and other **S**olutions to **MitigatE** online **DIS**information (REMEDIS) Project

A FNRS-FNR Project between UCLouvain,
UCLouvain-Saint-Louis Brussels and the University
of Luxembourg



Remedis

REgulatory and other solutions to Mitigate online DISinformation

Aims

- provide innovative regulatory frameworks and legally compliant socio-technical solutions to monitor online disinformation and its effects
- <https://projectremedis.wordpress.com/>

Thank you

Alain Strowel

Professor at UCLouvain and UCLouvain-Saint-Louis-Bruxelles

alain.strowel@uclouvain.be

Jean De Meyere

PhD Student at UCLouvain and Doctoral researcher at the Centre for IT and IP Law, KU Leuven

jean.demeyre@kuleuven.be