



EUROPEAN COMMISSION

*Brussels, 23.4.2019
C(2019)3022 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Joint Communication of the Commission and the High Representative on the Action Plan against Disinformation {JOIN(2018) 36 final}.

The Commission welcomes the Bundesrat's support for this initiative to address the phenomenon of disinformation, a problem that risks undermining the democratic process and the trust of European citizens in the media and in Union and national institutions. The Commission shares the opinion of the Bundesrat that an effective strategy to tackle this issue requires engagement at European level and needs to be based on a long-term perspective that extends beyond the urgency of the elections to the European Parliament.

Freedom of expression and information is a fundamental right enshrined in the Charter of Fundamental Rights of the European Union as well as in the national legal orders of the Member States. The need to respect and preserve this fundamental right of European citizens is reflected in and inspires the Commission's activities in this area.

The Commission is pleased to note that the Bundesrat welcomes the strategy set out by the Action Plan in particular as regards the actions strengthening the cooperation between the Member States and the Union institutions on the exchange of information and best practices; the actions aimed at bringing on board the private sector, notably social media and other on-line platforms, in the fight against disinformation; and the actions aimed at improving media literacy, digital skills and the critical thinking of European citizens.

As regards the private sector, the Commission agrees with the Bundesrat that self-regulatory measures, such as the Code of Practice on Disinformation, can be very helpful in the context of the pursuit of public policy interests and the protection of

*Mr Daniel GÜNTHER
President of the Bundesrat
Leipziger Straße 3 - 4
D – 10117 BERLIN*

freedom of expression. The Commission would like to recall that it is actively monitoring the compliance of on-line platforms with their commitments under the Code of Practice. On 28 February 2019, Vice-President Ansip as well as Commissioners Jourova, King and Gabriel called on the signatories of the Code of Practice to step up efforts to comply with their commitments and to effectively fight disinformation. As is explained in the Communication on tackling online disinformation and in the Action Plan, should the Commission consider that the Code of Practice has not led to satisfactory results, it might consider other actions, including actions of a regulatory nature.

In response to the specific comments raised in the Opinion, the Commission would like to refer the Bundesrat to the attached Annex. The Commission hopes that the clarifications contained therein will address the issues raised by the Bundesrat, and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

Annex

The Commission has carefully considered the points raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications:

Point 4

In the Commission Communication on tackling online disinformation and the Action Plan, disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm. Public harm comprises threats to democratic political and policy-making processes as well as to public goods, such as the protection of EU citizens' health, the environment or security. Disinformation does not include reporting errors, satire and parody, or clearly-identified partisan news and commentary.

The Commission takes note of the views of the Bundesrat that, in some cases, it may be difficult to distinguish information that qualifies as disinformation from information which does not, to prove the subjective elements of the above-mentioned definition (notably, the intention to deceive the public and to realise an economic gain from the spreading of disinformation) and/or to define public harm. However, the Commission believes that a careful definition of disinformation, encompassing all such elements, is necessary to preserve freedom of expression. Furthermore, this definition, which is a novel one, has been well received by a variety of stakeholders because it achieves a careful balance between the need to protect freedom of expression, on the one hand, and the need to counter effectively the phenomenon of disinformation and its consequences, on the other hand.

Point 5

The Commission would like to clarify that information originating from a party is not per se excluded from the scope of the definition above. The Commission considers that the clear indication of the source of information is of great importance to enable citizens to assess the information critically. It furthermore considers it of key importance to ensure compliance by the platforms with their commitments on the transparency of political advertisement. In this context, the Commission would like to recall its Recommendation of September 2018¹, which calls on European and national political parties, foundations and campaign organisations to ensure that citizens of the Union can easily recognise online paid political advertisements and communications, and to make available information on their expenditure for online activities, including paid online political advertisements and communications, as well as information on any targeting criteria used in the dissemination of such advertisements and communications. It also addressed specific recommendations to European and national political parties, foundations and campaign organisations to ensure among others that citizens of the

¹ C(2018) 5949 final.

Union can easily recognise online paid political advertisements and communications and the party, foundation or organisation behind them.

Points 6 to 8

The Commission agrees with the Bundesrat that self-regulatory measures, such as the Code of Practice on Disinformation, can be helpful in finding the good balance between the pursuit of public policy interests and the protection of freedom of expression, and effectively mobilise the resources of on-line platforms to achieve these ends. In this respect, the Commission recalls that self-regulation in this case enabled different players in a variety of pertinent economic sectors to participate in the development of the Code. The Commission is actively monitoring the compliance of the signatories of the Code of Practice with their commitments.

Point 10

The Commission agrees with the Bundesrat on the importance of promoting the transparency of sources of all information (and not just sources of disinformation). For this reason, the Commission welcomes the commitments of on-line platforms under the Code of Practice to increase the transparency of political or issue-based advertising.

The Commission shares the view of the Bundesrat that improving the media literacy of our citizens is key in this context and that the media literacy and digital skills of European citizens need to be strengthened in a more comprehensive way. Whilst the Commission supports various media literacy initiatives, it is very much aware of the key role played in this field by national authorities and, in some Member States, by regional and local authorities as well. The Commission underlines that it will monitor that, in line with the provisions of the Audio-visual Media Service Directive, Member States have taken appropriate measures to promote media literacy.

Point 11

The Commission notes the critical view expressed by the Bundesrat in relation to the promotion of independent fact checkers and researchers. However, it considers that independent fact-checkers and researchers have an important role to play in providing context and transparency with regard to information exchanged over social media, including analysis of actors, trends and patterns. The nature of their work is not to propose alternative narratives but to deepen public understanding of disinformation and strengthen societal resilience. The Commission considers that the effectiveness of fact-checkers and researchers depends on their maintaining independence from public authorities. The Commission's efforts to support fact-checkers and researchers in no way undermine their independence.

Point 12

The Commission agrees with the Bundesrat on the importance of preserving media freedom and media pluralism in the Union. It notes that, as set forth in Article 11 of the Charter of Fundamental Rights of the European Union, freedom of expression encompasses respect for media freedom and pluralism, as well as the right of citizens to

hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. The Commission considers that quality journalism may act as an effective antidote against disinformation. For this reason, both the Communication on tackling online disinformation and the Action Plan refer to the need to support quality journalism and investigative media and include specific actions in this regard. Furthermore, the Commission fully agrees with the Bundesrat on the need for public authorities not to interfere with the editorial responsibility of media organisations. It considers that self-regulation by the media sector may be very effective to this end, and notes that the code of conduct of the German Press Council provides inspiration.

Point 13

The Action Plan notes that, as regards external sources of disinformation, the evidence is strong in the case of the Russian Federation. However, it also recalls that other third countries deploy disinformation strategies, quickly learning from the methods of the Russian Federation. According to the EU Hybrid Fusion Cell, disinformation by the Russian Federation poses the greatest threat to the European Union. It is systematic, well-resourced, and on a different scale to other countries. In terms of coordination, levels of targeting and strategic implications, Russia's disinformation constitutes part of a wider hybrid threat that uses a number of tools, levers, and also non-state actors. The Commission takes note of the comment of the Bundesrat concerning the possibility of increased diplomatic actions to counter the spread of disinformation in such cases.