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From:	Presidency
To:	Delegations
Subject:	Summary - Media Pluralism and the Rule of Law in the Digital Age

Delegations will find in the Annex the Summary of the Seminar organised by the Estonian Presidency on "Media Pluralism and the Rule of Law in the Digital Age" held on 12 July 2017 in preparation of the annual Council dialogue on the Rule of Law.

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On 12 July 2017, the Estonian Presidency organised an informal expert seminar on the subject of media pluralism and the rule of law in the digital age. The participants included representatives of EU Member States' national administrations, EU institutions, international organisations, non-governmental organisations and media companies, journalists and academics.

The purpose of the seminar was to listen to the views of different stakeholders in preparation of the annual Council dialogue on the rule of law in the General Affairs Council on 17 October 2017. The Ministers' discussion will be based on a paper to be drafted by the Presidency with input from the views expressed during the seminar. The Estonian Presidency wishes to thank all of the speakers and participants for their active and positive contribution to this effort.

Below is an informal and non-exhaustive summary of the discussions, intended to give an overview of the views expressed by the speakers and participants at the seminar to a wider audience.

Panel 1 – A crisis of trust in the digital age?

Moderated by Israel Butler, Head of Advocacy, Civil Liberties Union for Europe.

Panelists: Julia Laffranque, Judge, European Court of Human Rights; **Elda Brogi**, Centre for Media Pluralism and Media Freedom, **Roberto Suárez Candel**, Head of Media Intelligence Service, European Broadcasting Union; **Marju Lauristin**, MEP.

Summary: Propaganda and the dissemination of false information have always existed and in that sense, "fake news" is nothing new. What is different, however, is the magnitude of the phenomenon and its impact in the digital age where anyone can be a reporter, anyone can disseminate information rapidly via social media, and where messages and information can potentially travel at a greatly increased speed to an unprecedented number of people throughout the world.

The term "fake news" has come to cover a wide spectrum of phenomena which in many cases are not comparable. Sometimes what is referred to as "fake news" is someone's legitimate opinion, which another person does not agree with. Sometimes it is just bad or sloppy journalism, and sometimes it is the dissemination of intentionally false or inaccurate messages with the aim of some political, financial or other gain. It may be state propaganda or produced by private actors. It can even be satire or parody. It might just be traditional media bias. It may also be that "real" news and "fake" news are intertwined in the same piece. A number of speakers and participants noted that there is a need to better define "fake news" if we are to take measures to combat or neutralise it.

The panel discussed factors that may be contributing to the rise of fake news: Digital platforms allows for current affairs to be reported more quickly and easily than traditional paper and analogue formats. This has contributed to a change in the economic model supporting quality journalism. Advertising revenue has shifted from producers of content to companies that aggregate content. In turn, this has produced a situation where fewer media companies can survive, leading to the concentration of media ownership and a growth in the influence of a smaller number of media companies. To help increase revenue, media companies find themselves incentivised to engage in sensationalist reporting to meet public demand (for sensationalism and entertainment), and media outlets cannot afford to invest in good quality journalism, which requires time and resources. The openness of media platforms has encouraged a proliferation of non-professional media (including blogs, bots), while (self-regulatory) standards for journalists are lowered. These factors combine to create an environment that is conducive to the proliferation of inaccurate and misleading reporting. As one possible counterweight, the panel discussed the role of public service media in maintaining a healthy media environment.

Judge Laffranque noted that it is important to bear in mind that according to the case law of the European Court of Human Rights, any restriction to the freedom of expression must be based on law, it must have a legitimate aim, it must be necessary in a democratic society and must also be proportionate. The speakers and participants generally agreed that censorship is a red line. Several speakers agreed that there may be merit in Commission Vice-President Andrus Ansip's assessment that "fake news is bad, but the ministry of truth is even worse".

Panel 2 - What is the role of media and social media in promoting a healthy political debate?

Moderated by Friso Roscam Abbing, Head of Department, Fundamental Rights Promotion, European Union Agency for Fundamental Rights.

Panelists: Krisztina Stump, Deputy Head of the Audiovisual & Media Policy Unit, European Commission DG CONNECT; **Marco Pancini**, Director, Public Policy and Government Affairs, Google; **Juliane von Reppert-Bismarck**, Founder, Lie Detectors.

Summary: Journalists, publishers and internet intermediaries each have a role and a shared responsibility to ensure the quality of journalism and reliability of information published.

The fake news debate and the rise of inaccurate and untruthful information have helped highlight the need for quality journalism and its role in respecting and promoting fundamental rights and the rule of law in a democratic society. They have also given a new impetus to existing models of journalism, notably data journalism, "constructive" journalism and investigative journalism. Because current conditions make it difficult for good quality journalism to thrive, new models of funding have begun to emerge. These include philanthropically funded journalism, niche journalism that charges money for quality content, and fact-checking sites.

Internet intermediaries are also actively contributing to finding solutions to the problem of fake news. For example, Google has introduced fact-checking in its search engine and Google news, and graphics that show users that specific information has been fact-checked. Google is also able to suspend advertisers who use advertising to fund a propaganda scheme or mislead consumers. Google also considers feedback and flagging of incorrect or illegal content by users to be very important.

Industry self-regulation including cooperation with the Commission such as in the case of the Code of Conduct on countering illegal hate speech online is important, but there is a need to increase the transparency of these practices and to ensure that decisions on taking down or blocking information can be challenged. Self-regulation of the journalist profession through a code of ethics and journalistic standards would also contribute to the trustworthiness of and trust in the media.

A number of speakers noted that not everything can be regulated by law, and therefore media literacy from a young age as part of school curricula but also among adults is vital for consumers of information to be able to produce knowledge from data, to identify false or misleading information and also understand the motivation and sources behind fake news.

Panel 3 – Do unreliable information and other challenges to media pluralism require new approaches?

Moderated by Prof. Pier Luigi Parcu, Director of the Centre for Media Pluralism and Media Freedom, European University Institute.

Panelists: Urška Umek, Administrator, Secretary of MSI-MED, Council of Europe; **Paolo Cesarini**, Head of Media Convergence and Social Media Unit, European Commission DG CONNECT; **Henna Virkkunen**, MEP; **Daniel Holznagel**, Legal Officer, German Federal Ministry of Justice and Consumer Protection.

Summary: The third panel returned to the question of how to define fake news which was addressed in the first panel. It was noted that fake news can be seen as the intentional publication of false information for political or commercial gain, which can amount to fraud. The dissemination of information in this case is not by accident, rather it is a means to an ill-conceived end. The dissemination of fake news may require the intervention of states, but measures must be proportionate. Any limitation to freedom of expression should be by legislative means and must comply with the requirements of Article 10 (2) ECHR. It must also be noted that falsehoods are not automatically unlawful.

It was recognised that there are many different types of fake news and challenges. There is a graduation along a scale from legal to illegal content, starting with parody, satire, journalistic errors, then advancing to more malicious forms, intentional disinformation to undo citizens' trust or democratic institutions, including state-sponsored propaganda and fake news that can amount to hate speech or defamation. The line between legal and illegal is difficult to determine.

One speaker found that further dialogue should be pursued with stakeholders – IT companies, media companies and NGOs – to move towards more civic involvement by the platforms. This includes: 1) improving technologies through research and innovation policy; 2) support for quality journalism; and 3) efforts to increase media literacy, including through tools provided in real time for users by the media platforms.

Moreover, it is important to bear in mind that not everything has to be regulated, and there is the risk of overregulation with digitalisation. The role of education and media literacy should be underlined, and people themselves should analyse and think critically. Consumers of information also have a role to play.

A number of speakers agreed that what is needed is quality journalism and free media, and access to the right information. Establishing the responsibility of platforms, which may take the form of self-regulation such as ethical rules and the Code of Conduct on countering illegal hate speech online or the form of binding legislation, such as the new German Law to improve the enforcement of law on the internet, is also important. However, there are very different rules in different Member States on hate speech, different perceptions due to culture and context, and the requirement to take content down within 24 hours may be too fast. A number of speakers emphasised that when sanctions are used against platforms, it must be because of illegal and not just harmful content. Such efforts should not endorse censorship.

There are concerns about platforms being required to remove content, as this requires them to balance fundamental rights against one another, and against other legitimate interests. That is not a typical function for any other actor but the state, so far. It was stressed by the speakers that there must therefore be strong rule of law safeguards, procedural safeguards and judicial oversight over the process.

Interest in the new German law was high, but the general impression was that it remains to be seen whether the German law will become a model for other Member States or European legislation. It was noted that what exactly is legal and illegal remains to be defined clearly, and actions relating to illegal content which are necessary in one situation may be disproportionate in another context. Reference to the criminal code is problematic, as the phenomena in question are beyond what is currently regulated in criminal codes. Policy-makers also need to be wary of the problem of false positives, i.e. cases where the fear of sanctions may lead companies to remove content that should not be removed.

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