



# “Fake news, Fake democracy”

Summary of a Dinner-Debate  
organised by the European Parliamentary Association  
in collaboration with the European Audiovisual Observatory

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**Fake news, fake democracy**

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## Welcome speeches and introduction

The President of the Board of the European Parliamentary Association (APE) Herbert Dorfmann, MEP (EPP), welcomed the participants to the dinner-debate and highlighted the issues at stake, which make fake news one of the topics on the agenda of the European Parliament.

Susanne Nikoltchev, Executive director of the European Audiovisual Observatory (EAO), thanked the APE for organising this event and for counting on the Observatory to moderate this debate. She recalled the Observatory's expertise in the audiovisual media, as part of the Council of Europe as well as a longstanding partner of the European Commission.

Maja Cappello, Head of the Department for legal information at the Observatory introduced the topic of this dinner debate "Fake news, fake democracy". She explained that the expression "fake news" has been on the rise for the past years. Politicians have been at both ends of fake news, as some have been targeted by them, while others were propagating them. Such an assumption is largely due to modern technology, which has had an impact on news and on the flow of information. One of the issues to be discussed at the dinner-debate was the responsibilities of law makers and platform operators.

## The impact of fake news on human rights

Robert Spano, Judge at the European Court of Human Rights (ECHR) and guest speaker at tonight's dinner-debate, structured his intervention around the following points: what are the human rights questions, and what constitutes an unlawful statement.

As known, the European Convention on Human Rights has established a set of fundamental rights and freedoms, including:

- The right to freedom of expression, under its Article 10. However, there can be limitations to this right if the reason is legitimate and the limitation is done in a proportionate way.
- The right to be guaranteed free and democratic elections, under its Article 3 of Protocol I. This provides for the right to vote and to stand for election.

Judge Spano stated that the need for regulation becomes unavoidable when two fundamental rights start to clash under very specific circumstances. Democratic societies need to establish the right balance between the various freedoms and rights. To illustrate these observations, he mentioned the ECHR's judgement in the case *Salov v. Ukraine*. In this case, the presidential elections were affected by false information, presuming the death of President Leonid Kuchma, which disrupted the smooth running of the electoral process.

But how could fake news be defined and, what is an unlawful statement? Fake news should be kept clearly distinct from defamation, which is already covered by

national legislation in many EU member states. Hate and violent speech are also covered on both European and national levels. Many reports and studies use the expression of *post-truth* to refer to the conflict between information and disinformation.

As the hype around “fake news” has kept growing till becoming a worldwide phenomenon, some international organisations have stepped forward and issued a joint declaration on *Freedom of expression and “fake news”, disinformation and propaganda*, in March 2017.<sup>1</sup> This declaration recalls the States’ responsibilities in enabling an environment for freedom of expression, all while tackling disinformation and propaganda; and the role of intermediaries and media outlets and the importance of cooperating with the different stakeholders.

## **Intervention – Marietje Schaake, MEP (ALDE)**

For MEP Marietje Schaake, who preferred to use the term “junk news”, the issue was not about “fake v. truth” since truth is a very subjective notion. The danger would lie rather in the establishment of “ministries of truth”, as this would undermine freedom of expression in democratic societies. However, it is important to clarify what is legal and what is not.

New technology and online platforms have certainly played a major role which amplified this phenomenon of fake news. It would be important to pay particular attention to the economic realities clearly indicating that fake news is a market driven industry and that social media are designed for profit not for democracy. Click-based sensationalism is behind the success of social media as a big player of the news environment and clearly influences its editorial agenda, which is, once again, based on money and advertising. Political oriented advertising shows how this combination can be detrimental to democracy and to public interests.

Author and activist Eli Pariser introduced the concept of filter bubble, to describe the phenomenon resulting from the targeting of users with tailored information based on their preferences and their behaviour online. This would prove that algorithms cannot be fully relied on to ensure a fair and safe flow of information.

According to Pariser, there is a need of strengthening the rule of law online to avoid gaps between the offline and the online worlds. However, extreme regulation that might hurt freedom of speech should be avoided.

Regarding tools and remedies, education and media literacy are as important as smart regulation; since they help empower citizens to find their way in the digital world.

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<sup>1</sup> A joint declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information.

## Intervention – Axel Voss, MEP (EPP)

MEP Axel Voss viewed fake news, and the business underlying it, as a challenge for democracies and their core values. He gave the example of the *Brexit*, which when put to a vote had been surrounded by many claims of deliberate disinformation in order to manipulate the public opinion and to influence the outcome of the electoral process. But did this really have a significant influence at the end?

In Voss' view, there is a need of political will to truly tackle fake news. However, countering false messages alone would not be enough, and would have to be accompanied by quality journalism and news making.

He joined MEP Schaake in her view on the necessity to look at the fake news phenomenon from an economic angle in order to tackle it properly and efficiently.

## Discussion

Following the interventions of Judge Spano and MEPs Schaake and Voss, the MEPs joining the dinner-debate were kindly invited to react and share their thoughts and ideas.

MEPs identified disinformation and propaganda as constituting a major threat to civilisation and democracy. Significant events which marked the recent years, including claims of foreign interference in the American presidential elections and the Brexit referendum, were used as examples to illustrate the dangers of disinformation and propaganda. However, fake news is by no means a new phenomenon. What is new and disrupting is the role of new technologies and their capacity of disseminating information, which explains why all participants agreed on the need for a new legal framework that is more adapted to the digital era.

Some participants expressed their fears regarding potential chilling effects that unfettered/unchecked regulation might have on citizens' rights and freedoms. That is why policy makers should aim at finding the right balance between freedom of expression and public interest when they look into defining conditions under which some limitation to freedom of expression may apply.

In fact, laws addressing disinformation and propaganda already exist in some EU member states, as some MEPs highlighted. The question is how to enforce these rules in practice. As an example of necessary policy measures, some participants pointed to the need of adapting the current legislation to the new world - referring to the proposed provisions on the rights of publishers in the copyright package proposal. To that extent, it was held that the role and responsibilities of internet intermediaries and information society services providers should be reviewed. Moreover, as for traditional media outlets, one of the main problems facing social media and online platforms would be media concentration, since three or four major companies control the flow of information online.

Certain MEPs considered disinformation as a portion of a much wider challenge facing citizens online. Indeed, disinformation and propaganda touched also upon other issues, such as data protection. Some participants thought the core of the problem was the use of personal data by social media and online platforms. Such data is used to target users with personalised information, including news related content and political advertising. This is exactly why the use of algorithms and personal data should be regulated, by clarifying the legal status of algorithms. Judging by the actual state of the art, algorithms are dictating the rules of the game, some MEPs pointed out while insisting on the emergency of addressing this issue in particular. As a possible solution some suggested that algorithms be published.

Many participants considered that abundance of information can only be seen as a sign of diversity and pluralism in a democratic society, without down playing the impact of big data. Indeed, the vast amount of information available on the web makes the daily tasks of internet intermediaries more complicated.

The rise of fake news has been linked to the decline of traditional media. Against this background some MEPs advocated for the necessity of supporting quality journalism and of enhancing public service media. Regulation alone seems insufficient to them.

By observing disinformation in media narratives and the influence on public opinion, the following question emerged: are we living in a post-truth era? In other words, do facts matter?

While some MEPs shared thoughts about the new trend of “fact-checking” information by private companies (social media among others), other MEPs held that fact-checking is already the core work of journalists. Some MEPs argued that truth is a subjective notion, while others expressed their concern about the chilling effect of fact-checking on freedom of expression and information, as well as on pluralism and diversity of opinions. In a democratic society no one would want a ministry of truth, some said.

Regulation is not the only path. It was said that policy makers should turn to more sustainable solutions, like supporting curricular education and media literacy initiatives. There is a lack of knowledge about the functioning of political institutions, for instance, which leads to mal-information and helps fake news attaining its objectives.

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