

POLICY PAPER

A new regulatory framework on countering online disinformation in the Republic of Moldova

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The paper was prepared within the #reforMD project, which aims to strengthen the resistance to disinformation in the Republic of Moldova through policy dialogue with the participation of civil society and public actors.

The opinions expressed in this paper belong exclusively to the author

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About the Project:

reformMD – resilience against disinformation in the Republic of Moldova

The aim of the reformMD project is to contribute to strengthening resilience against disinformation in the Republic of Moldova through policy dialogues with the participation of civil society and public actors facilitated by national and international experts mobilized within the project. The implementing partners also produced a number of media products, such as videos, podcasts and TV debates, used to respond to disinformation campaigns on EU and member state policies. Exchanges of experience between experts and civil society on this issue were also supported with Germany and other Member States. The project builds on the results of the previous project #inforMD.

Implementing organizations:



Institut für Europäische Politik (IEP) has been active in the field of European integration since its inception in 1959. In its work, the IEP places special emphasis on supporting EU candidate countries and EU neighbourhood countries in their rapprochement with the EU. In the Republic of Moldova, IEP has been active for more than 15 years. Since 2015, IEP has supported interethnic dialogue and education activities regarding the Association Agreement and contributes expertise about the European Union and its policies with regards to combating disinformation.



The Institute for European Policies and Reforms (IPRE) was established in March 2015 as an independent, non-profit and apolitical think-tank. IPRE's mission is to accelerate the European integration of the Republic of Moldova by promoting systemic reforms, enhancing participatory democracy and strengthening the role of citizens in decision-making processes at national and local level. IPRE is a member of the National Platform of the Eastern Partnership Civil Society Forum (www.eap-csf.eu) and co-initiator of the Eastern Partnership Forum of Research Centers (EaP ThinkTank Forum), launched in 2017 in Chisinau.



The Institute for Strategic Initiatives (IPIS) is a politically independent think tank specializing in the analysis of strategic challenges, good governance, public policies, interethnic dialogue and conflict mediation in the Republic of Moldova. IPIS contributes to the implementation of the project through its expertise and information channels targeted at population groups distanced from the EU and particularly affected by disinformation.

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EXECUTIVE SUMMARY

The policy paper analyses and suggests a series of policy recommendations on the regulatory framework on preventing and countering online disinformation, to be examined by the Parliament of the Republic of Moldova. This policy document includes an analysis of the current situation and arguments in support of a new legislative framework. It also briefly presents relevant international best practices in the field of preventing and countering disinformation.

Additionally, the paper takes into account the results of a policy debates series on the subject, where it was concluded that increasingly, there is the need for a normative intervention and the institutionalization of a clear mechanism for countering disinformation in the online space. There is also a greater understanding of the need to focus on countering disinformation when it affects the security of the state.

At the same time, in the perspective of establishing an entity responsible for countering disinformation and protecting the information space of the Republic of Moldova following the model of a Strategic Communication Centre, it is important that it will be empowered with functions and tools to prevent disinformation and to ensure rapid response and strategic communication at the national level. The sanctions that are currently being considered to be assigned to such a national authority require additional attention to ensure that they meet standards of transparency and do not harm existing human rights standards. The methodology used to identify and analyse disinformation must be made publicly available, for the scrutiny of civil society, journalists, academia and the general public, to ensure understanding and transparency of what and how disinformation is being monitored in the Republic of Moldova, and how its information space may be affected.

At the same time, the need to establish mechanisms to prevent and counter disinformation at national level requires also to ensure cooperation with big tech companies (e.g. META, YouTube, Telegram, etc.) and, respectively, regulating the measures of preventing and countering disinformation on social media platforms, establishing cooperative rules and measures and encouraging companies in the field to undertake adequate measures of content moderation, blocking accounts and countering malicious actions according to their terms of services and to regularly report on it to the Moldovan authorities.

The key recommendations based on the analysis are summarized at the end of the paper.

I. CONTEXT

The media sector is considered the fourth power in the state, having the key role of transmitting, independently, free and objective information to the public. But often media in Moldova is used for propaganda and disinformation purposes being under control of oligarchic actors. In the conditions of fragile institutions and administrative systems, as well as insufficient media education in society, as is the case of the Republic of Moldova, media can be used to manipulate public opinion and weaken social cohesion, and in the worst case can also affect the security of the state.

Most of the states of the region have neglected the dangers that the media sector can generate if it is used for propaganda and disinformation purposes. The awareness for this threat grew after 2014, when Russia illegally annexed Crimea, and a substantial disinformation effort sought to legitimise the violation of Ukraine's territorial sovereignty. After this, most of the states of Central and Eastern Europe began to strengthen their capacities to identify and react to information threats. However, not many states have managed to create solid government systems to effectively combat attempts at manipulation and propaganda and to strengthen societal resilience, with the majority remaining vulnerable to this phenomenon. The level of

preparedness to react varies from country to country, with some already having a better prepared system (e.g. Slovakia and Lithuania), others remaining more vulnerable. With the outbreak of Russia's war of aggression against Ukraine in February 2022, each country in the region, especially the Republic of Moldova, became aware again of the importance to protect the information space.

A first normative measure was taken by the authorities of the Republic of Moldova in order to secure the information space with the adoption of [the decision of the Commission for Emergency Situations of March 2, 2022](#), which suspended the retransmission of the informative and analytical programs produced in the Russian Federation. As a legal criterion the non-ratification by Russia of the European Convention on Cross-Border Television was used, similar to the instrument on the basis of which in 2018 the same types of programs (the [so-called Anti-Propaganda Law](#) that was repealed at the end of 2020), were banned in the audiovisual space.

On 2 June 2022, the draft [law for the amendment of the Code of Audiovisual Media Services of the Republic of Moldova no. 174/2018](#) was approved. Among the basic changes is the introduction of the notion of 'disinformation', which is inspired by the definition of disinformation formulated in the [European Union Code of Good Practice on Disinformation](#). Another amendment was the introduction of the restriction on broadcasting in Moldova of news, informative and analytical programs and military films produced in countries that have not ratified the European Convention on Cross-border Television. In essence, the provision of the Order of the Commission for Emergency Situations was confirmed by law. Also, a number of sanctions have been introduced for non-compliance with the legal provisions in this regard. An important element of the amendments introduced by this draft law is the limitation of these provisions only for the audiovisual field, the initial proposal to extend these provisions to online platforms has been excluded.

Thus, a major challenge that has remained on the desk of the legislator and the competent authorities, is the regulation and institutionalization of the way of combating disinformation in the online space, which has become increasingly problematic.

In this regard, the Parliament initiated a process of elaboration of a new normative framework through which it aimed to come up with a series of legislative changes and proposed the creation of a public authority that would be responsible for countering disinformation in the online space, offering it attributions to prevent disinformation and protect the information space. Subsequently, on the basis of several debates on the subject, the authors of the legislative initiative presented a revised version of the concept of the draft law, which proposes the adoption of a framework rule regulating measures against disinformation in the online field, as well as to establish exhaustively the competences of the institution responsible for this field, following the model of a Strategic Communication Center. Based on the complexity of the actions that need to be taken to effectively counter disinformation, it should be noted that a simple one size fits all model does not exist. The successful implementation of preventive, monitoring and reactionary measures requires the interaction of several institutions in the shortest possible time, which implies a clear distribution of roles, a similar understanding of tasks by all actors involved and use of resources outside the administrative system (e.g. use of resources and analyses offered by civil society).

II. ANALYSIS OF GOOD PRACTICES AND INTERNATIONAL EXPERIENCE

The [International Media Support](#) conducted an analysis of the capacity of states to address information threats and build information resilience in several Central and Baltic European countries, including Romania, Slovakia Lithuania and Ukraine. Some of the most advanced

models that can be considered as guiding examples for the Republic of Moldova are the models of Slovakia and Lithuania.

Slovakia

Slovakia has managed to achieve some progress in institutionalising the process of ensuring the security of its information space. In addition to a broad mandate, the body that is responsible for ensuring information security in the public space is the Security Council, which is the government's advisory body and is chaired by the president of the country.

The Security Council comprises two subdivisions that have the role of coordination at Government level in responding to threats to information security in the public space: the Strategic Communication Department and the Situation Center.

- The Strategic Communication Department is designed as an operational unit that links threat identification/analysis to the practical communication response;
- The Situation Center primarily performs analytical functions and is not designed to identify threats beyond 24 hours. It informs the higher institutions and develops response strategies.

As in the case of other countries, the resources available within the Strategic Communication Department and the Situation Center are limited, that is why they focus mainly on cooperation with civil society and pre-exchange of data within the Government.

Lithuania

The role of strategic communication in Lithuania is performed by each ministry. At the same time, the leading role is taken on by the Office of Threat Management and Crisis Prevention, which operates under the subordination of the Chancellor of the Government and provides the secretariat of the National Security Commission, which is the main institution responsible for ensuring national security.

The Office of Threat Management and Prevention has three permanent groups: the Threat Assessment Group, the Planning Group and the Strategic Communication Group (which has the role of ensuring strategic communication and rapid reaction).

Unlike Slovakia, Lithuania has greater resources to provide analysis at Bureau level. Still, additional support from national and international civil society organisations and analytical centres is required.

This shows that the experience of European countries largely lies in the creation of strategic communication capabilities. The relevant government units collect and systematize information about important disinformation cases, study and analyze the phenomenon, build systemic response mechanisms and coordinate the communication of different governmental structures in order to combat and prevent the harmful impact of disinformation. Punitive measures are not characteristic for the practices of EU countries.

III. DRAFT OF THE NEW REGULATORY FRAMEWORK ON PREVENTING AND COUNTERING DISINFORMATION IN THE ONLINE ENVIRONMENT

From the analysis above, it can be found that some countries in the region have managed to advance more in terms of preventing and countering disinformation, creating a high level of resilience, while others have remained vulnerable and without a mechanism to combat manipulation and propaganda that is affecting information security. In this regard, the comparative study for the countries of Central and Eastern Europe - [Disinformation Resilience Index 2021](#) is relevant. Perfect models do not exist, and the realization of a "copy-paste" is not

effective, given that each country has its own geopolitical, political, cultural and administrative realities, which must be taken into account when developing the institutional and procedural model to ensure the security of the information space. In the case of the Republic of Moldova, the biggest challenge is the profound division of the society based on language and geo-political preferences. Against the background of the longstanding and coordinated disinformation from the Russian Federation there are very few subjects that enjoy a broad consensus in society. Furthermore, it is very difficult to achieve a societal consensus on what can or may not be considered disinformation. This precarious situation makes any institutional effort in the field, contraversional from the start.

In this regard, following the decision of the Parliament of the Republic of Moldova not to regulate the mechanism of countering disinformation in the online space through the draft [law for the amendment of the Code of Audiovisual Media Services of the Republic of Moldova no. 174/2018](#), adopted on 2 June this year, the Parliament has developed another legislative initiative. Initially, it drafted a law through which it aimed to come up with a series of amendments to several normative acts and proposed the creation of an institution that would be responsible for countering disinformation in the online space, offering it attributions of prevention, combating and sanctioning. Subsequently, based on the debates on the draft law organized on the parliamentary platform, but also on the input from civil society, the authors elaborated an improved version of the draft, which takes into account most of the conceptual recommendations coming from the first version of the draft law. The updated draft proposes the adoption of a framework law to regulate measures against disinformation in the online field, as well as to establish exhaustively the competences of the institution responsible for this field. According to the draft this is an Agency for Preventing and Counteracting Disinformation. Also, the draft is accompanied by another draft law proposing the modification of the related regulatory framework.

In the following, several proposals on the concept of the draft law discussed during a series of policy debates with parliamentary and civil society actors, as well as international experts are presented. The policy debates were conducted within the project "[reforMD](#) – resilient against disinformation in the Republic of Moldova".

2.1. CONCEPTUAL PROPOSALS

2.1.1. Purpose, objectives and scope

According to the concept of the draft law, it aims to create the necessary regulatory framework to prevent and counteract disinformation, as well as to establish the mission and directions of activity, functioning mode, attributions, rights and obligations of a new public authority, preliminarily called the Agency for Preventing and Counteracting Disinformation. As an objective of the draft law, it is proposed to implement information security measures and policies by countering projected threats to the security and national interests of the Republic of Moldova in the information space, identifying and preventing disinformation, effectively counteracting destructive propaganda, influences and information campaigns and preventing attempts to manipulate public opinion.

Both the purpose and the objective of this draft law do not make the distinction between the audiovisual field and the online field. The only delimitation is specified in art. 3 of the draft law, which mentions that the actions provided for by this law aimed at preventing and counteracting disinformation are within the competence of the authority for preventing and counteracting disinformation, and those located in the audiovisual space are within the competence of the Audiovisual Council, without clearly delimiting the powers of the authority in relation to the Audiovisual Council.

Thus, it is necessary to determine clearly whether this law and the future public authority are to be responsible for countering disinformation also in the audiovisual field or only in the online field.

If it covers both areas, then it is necessary to correlate this norm with the provisions of the Audiovisual Media Services Code of the Republic of Moldova no. 174/2018, especially those inserted by Law no. 143/2022 for the amendment of the Code of Audiovisual Media Services of the Republic of Moldova no. 174/2018, which aimed to counter disinformation in the audiovisual field, also defining disinformation in this respect.

If the draft initiative aims to be limited only to preventing and countering disinformation in the online field, then it is necessary to mention this aspect expressly.

Based on the above-mentioned good practices, it is recommended that the purpose of the law should remain for both areas, that the relationship between the new public authority and the Audiovisual Council is clearly regulated, especially taking into account the level of autonomy that the Audiovisual Council has in relation to any governmental entity. Also, it should be correlated with the provisions inserted by Law no. 143/2022 for the amendment of the Code of Audiovisual Media Services of the Republic of Moldova no. 174/2018.

2.1.2. Sanctions and cooperation with the prosecution

The draft law, as well as the draft law proposing the modification of the related legislative framework, regulate the competence of the Public Authority to apply contraventions, suggesting a series of amendments in this regard to the Contravention Code of the Republic of Moldova no. 218/2008. At the same time, the definition of disinformation proposed in Art. 2 also includes the information created to harm the security of the state, which by the level of gravity cannot be limited only to contravention sanctions, but would meet the elements of a crime.

Thus, it is recommended to further examine the level of severity that disinformation can achieve in the field of status security and how to sanction them. Where appropriate, it will be necessary to regulate the competences and the way of collaboration with the criminal investigation bodies. Moreover, the examination of crimes of increased seriousness against the state security should not fall within the powers of the public authority, but it may be consulted in order to provide relevant expertise to the criminal investigation bodies.

2.1.3. Remuneration of employees of the future public authority for contracting disinformation

The duties to be carried out within the authority require a substantial effort, but also knowledge specific to the field, which implies that a motivational salary system needs to be created to attract qualified and motivated personnel within the authority. The current salary system regulated by Law nr. 270/2018 on the unitary salary system in the budgetary sector does not offer this possibility. In this regard, it is necessary to identify a legal mechanism that would allow the provision of a motivational salary remuneration for future employees.

2.2. TECHNICAL PROPOSALS

2.2.1. Name of the new draft law

According to the provisions of art. 42 para. (1) and (2) of the draft Law on normative acts no. 100/2017, the name of the normative act represents the generic appointment of the act according to its category, the issuing authority and the object of the regulation expressed synthetically, following to be laconic and to clearly express the object of the regulation.

Thus, based on the provisions of the Law on normative acts on the name of the normative act and taking into account the purpose, objective and scope of application of the law, which exceeds the regulation of the way of organization and functioning of the public authority, it is proposed

to be named the "Law on preventing and counteracting disinformation". In the event that it is decided to limit the provisions of the draft law only to the online environment, then the title of the law would be "Law on preventing and counteracting disinformation in the online environment".

2.2.2. Purpose, objectives and scope

In addition to preventing and counteracting disinformation, an important objective that the draft law proposes is the institutionalization at governmental level of the strategic communication mechanism, including ensuring a centralized coordination in this regard by the future public authority. Thus, it is recommended to provide in the draft law with provisions that highlight the primary focus on strategic communication.

2.2.3. Notion of disinformation

Based on the fact that the purpose and objective of the law is to prevent and counteract projected threats to the security and national interests of the Republic of Moldova in the information space, it is improper to include in the category of subjects for whom the provisions of this law are applied other subjects than those targeting the state and its institutions. Thus, as long as the security of the state or its institutions is not affected, it is proposed to revisit the notion of disinformation by excluding "a person or a social group" from the category of those to whom the law applies. In the event of amending the Audiovisual Media Services Code of the Republic of Moldova, a similar approach can be examined for the notion of "disinformation" within it.

2.2.4. Authorities responsible for preventing and countering disinformation and their tasks

According to the provisions of art. 52 para. (2) of the Law on normative acts no. 100/2017 the name of the article briefly expresses the object of regulation, without having its own meaning in the content of the article. In this respect, it is proposed to review the name of article 3 of the draft law, especially taking into account a possible change in the name of the law. At the same time, article 3 of the draft law shall be closely correlated with the provisions of the Code of Audiovisual Media Services of the Republic of Moldova and any amendments thereto, as well as with the provisions of article 6 of the draft law and the proposals to it presented below.

Also, the provisions of art. 3 are to be adjusted following the decision on the purpose, object and fields of application of this law detailed above in the subchapter conceptual proposals.

At the same time, taking into account the principles of public administration of OECD / SIGMA and in order to comply with the provisions of Law no. 98/2012 on the central specialized public administration, regulating the delimitation of competences between ministries, administrative authorities and institutions within the Government, it is necessary to separate at the level of norm the competences of the Government, ministries, the Agency for Preventing and Counteracting Disinformation and other institutions within the Government. These delimitations are important in order to avoid abuses but also to eliminate potential conflicts of interest.

Additionally, it is recommended to establish the central specialized body responsible for developing policies in the field of mass media, which should also have at the level of attributions policies in the field of prevention and counteraction of disinformation and strategic communication. Based on the practice of other states, but also taking into account the distribution of competences within the Government of the Republic of Moldova, we recommend the establishment of this competence at the Ministry of Culture.

As for the statute proposed for the new authority in article 4 of the draft law, it contravenes the provisions of art. 14 of Law no. 98/2012 on the central specialized public administration, which

provides that the Agency is a separate organizational structure in the administrative system of a ministry, which is constituted for the exercise of functions of management of certain subdomains or spheres in the fields of activity of the ministry. Also, the provisions of art. 18 of the same law stipulate the possibility that at the proposal of the Prime Minister, central administrative authorities subordinated to the Government may be created. Regardless of the type of organization that is selected on the basis of Law no. 98/2012 on the central specialized public administration, they cannot have an autonomous status within the Government.

In this respect, the provisions of Articles 3, 4 and 6 and 7 of the draft law shall be amended and reviewed in particular.

At the same time, the obligations laid down in Article 7 para. (2) should be reflected in the article governing the powers of the public authority.

2.2.5. Cooperation with social networks and messengers

A missing component in the draft law is the attributions in the field of preventing and combating disinformation on social networks and messengers. A definition and classification of online social media platforms and messengers with major impact is imperative. For this the agency should come up with a list of criteria for platforms that can be attributed as relevant in Moldova, based on a transparent methodology and impose on the platform administrators the observance of some norms and the realization of practices to prevent and counteract disinformation in the virtual space they manage. We suggest that the administrators should be obliged to comply with the following rules:

- Have their own regulations (best practices) to prevent disinformation and other practices of inauthentic and harmful behaviour on social media. These mandatory rules must be public and accessible to all users.
- Social media platforms with a major impact must have specialized staff of at least 2 people who know Romanian and Russian languages and who will be responsible for moderating the content according to the rules described above. These employees must cooperate with the public institutions and non-governmental organizations of the Republic of Moldova in order to take over the notifications and inform about measures taken.
- The platforms will be obliged to publish at least once every 3 months reports on compliance with legal requirements and activities undertaken in the field of prevention and countering of disinformation among users registered in Moldova.
- The main task of the public authority will be to monitor the compliance of the social media platforms with the legal rigors (to have their own transparent rules on disinformation, to provide staff dedicated to this activity, to publish reports and to cooperate with media and non-governmental institutions in the Republic of Moldova). If the online social media platforms do not comply with the legal provisions, the agency must be able to gradually issue public warnings and fines until the temporary suspension or ban of the activity of the platforms in the Republic of Moldova for repeated or particularly serious violations.

2.2.6. Final and transitional provisions and impact assessment

In order to accelerate the process of implementing the provisions of the draft law, it is recommended to introduce in the final and transitional provisions, in addition to the provisions provided, a new provision that obliges the Government to approve the normative acts necessary for the implementation of the provisions of the law.

Additionally, based on the fact that the draft law contains regulations with an impact on the national public budget and provides for the creation of new authorities at the level of the Government, it is imperative that the draft be accompanied by the impact analysis, elaborated

in accordance with the Government Decision on the [approval](#) of the Methodology for the analysis of the impact in the process of substantiation of the draft normative acts no. 23/2019.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis above, it can be concluded that there is the need for a normative intervention and the institutionalization of a clear mechanism to counteract disinformation in the online space. There is also a greater understanding of the need to focus on countering disinformation when it affects the security of the state.

At the same time, it should be noted that with respect to establishing an entity responsible for countering disinformation and protecting the information space of the Republic of Moldova following the model of a Strategic Communication Center, it is important that it will be empowered primarily with functions and tools to prevent disinformation, ensure rapid response and strategic communication. The sanctioning powers that are currently being examined to be assigned to the future competent public authority require additional attention to ensure that they meet standards of transparency and do not harm existing human rights. It is of special importance that the principles of legality, legitimacy, the necessity and proportionality of the legal acts are ensured. In addition, the methodology used to identify and analyse disinformation must be made publicly available, for the scrutiny of civil society, journalists, academia and the general public, to ensure transparency of how disinformation is being monitored in the Republic of Moldova, and how its information space may be affected.

Additionally, it is worth noting the need to establish mechanisms to prevent and combat disinformation at national level, including by ensuring cooperation with large tech companies (e.g. META, YouTube, Telegram, etc.) and, respectively, to regulate the rigors of preventing and contracting disinformation on social media platforms, establishing cooperative rules and measures and encouraging companies in the field to undertake adequate measures to moderate content, blocking accounts and countering malicious actions, respectively.

In this regard, the following recommendations are proposed:

- A need for an exhaustive determination of the field of competence to be covered by a possible public authority with functions to prevent disinformation and protection of the information space;
- Ensure the correlation of the new normative provisions with the provisions of the Code of Audiovisual Media Services of the Republic of Moldova no. 174/2018, especially those inserted by Law no. 143/2018 for the amendment of the Code of Audiovisual Media Services of the Republic of Moldova, which aimed to counter disinformation in the audiovisual field, also defining disinformation in this respect;
- Consider providing for a sanctioning mechanism depending on the seriousness of the deeds, focusing also on countering the disinformation activities against national security, public and constitutional order. While ensuring that the sanctioning process provided by the law includes transparency and monitoring tools for solid guarantees to prevent abuses or violation of human rights;
- Establish a national authority with the primary role of preventing disinformation and securing the online information space following the model of a Center for Strategic Communication;
- Providing for an effective budget and motivating salary system for future employees of the future public authority to be created at national level;
- Government has to assign to a central specialized body (Ministry) responsible for developing policies in the field of mass-media, including preventing and combating disinformation;

- Ensure a clear delimitation of competences between the Government, ministries, the competent public authority in the field of prevention of disinformation and protection of the information space, as well as other public institutions;
- Introduce regulations on preventing and combating disinformation on online social media platforms, which would provide for:
 - i) clearly establishing in the national legislation the cooperation with national authorities and accountability of big tech companies in the Republic of Moldova to prevent disinformation in the online environment;
 - ii) appointment by big tech companies of clear contact points with the authorities of the Republic of Moldova,
 - iii) recruiting within the tech companies of content moderators in Romanian and Russian language to monitor the content in the information space of the Republic of Moldova and to prevent disinformation activities;
 - iv) establishing the obligation of periodic reporting on the activity of monitoring and moderating the activity on social platforms.

