

REGULATING DISINFORMATION: LOOK-UP ON THE LEGAL FRAMEWORK IN BELGIUM

Disinformation has become one of the central challenges of modern democracies. With the multiplication of discussion spaces as well as the explosion of user generated content, the amount of –and speed at which– disinformation is created and spread is unprecedented. Facing this evolving challenge (disinformation is not something new), multiple legal and non-legal frameworks have been implemented both at European and national level in EU Member States.

This document aims at putting together the key issues regarding the legal framework applicable in Belgium, in June 2023.

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NATIONAL LEGISLATION

Under Belgian law, disinformation/misinformation, as an individual behaviour consisting in sharing fake news (and therefore not as a broad term which encompasses several behaviours), is not yet regulated. However, on 19 November 2021, the Belgian Senate published an information report on the necessary collaboration between the federal authority and the Communities in the fight against fake news¹. In Belgium, each citizen has the right to freedom of speech, which is guaranteed by the Constitution, both for the individuals (Article 19), and for the media (Article 25).

Nevertheless, freedom of speech has limits, any notably an opinion can be freely expressed as long as it does not result in malicious behaviour (e.g., racism, discrimination, etc.). Therefore, even if disinformation is not itself yet regulated under Belgian law, there are laws which regulate the dissemination of illegal content, (e.g., terrorist, racist, denialist, etc. statements), both by individuals and by the media. Furthermore, when a person abuses freedom of press to express punishable opinions, the text can be condemned after publication. This is known as a press offence.

Regarding side regulation touching on paid influence (political advertisement, role of influencers), it seems that Belgian regulation does not focus specifically at its online aspects.

EUROPEAN LEGISLATION

In 2022, the Digital Services Act (DSA) was adopted. Aiming at regulating online platforms and their content moderation processes, this regulation will have an impact on how harmful content is managed by online services.

¹ https://www.senate.be/informatieverslagen/7-110/Senat_rapport_fake_news-2021.pdf

At this stage, there are remaining uncertainties on the DSA's implementation in Belgium.

- As part of the DSA implementation, the Member States have the obligation to designate a Digital Services Coordinator (DSC) who will be responsible for monitoring other intermediate services covered by the DSA. Belgium has until 17 February 2024 to designate its DSC. No indications have been made on who the DSC would be.
- Apart from that, Belgium has not made public any draft law outlining how it will implement the DSA.
- Unlike other EU Member States, Belgian regulators did not show public interest in analyses reports of the Code of Practice on disinformation. Down the line, these reports would help to build evidence of risk assessment and mitigation measures implemented by Very Large Online Platforms in Member States.

SELF-REGULATION

Looking at self-regulation mechanisms, we found that both ethics bodies of journalists are regularly used to complain against disinformation. Most specifically, the French speaking ethics body (Conseil de déontologie journalistique), has issued multiple decisions regarding so-called "[alternative medias](#)" infringing the ethics code.

However, at this stage, this mechanism seems to be open only to regulate media, as it does not seem to cover disinformation spread by other stakeholders (individuals, companies, public authorities, political stakeholders, etc.).

Questionnaire

1 Are there any laws or regulations which focus on regulating disinformation? (including in relation to intentionally deceiving the public, defamation/libel, impersonation of organisations, online content moderation, unfair advertisement, political advertisement). If so, please summarise key provisions for each.

First of all, a distinction must be made between different topics within the broad term “disinformation”, as used in this main question. Indeed, it encompasses a series of topics that may be tackled, under Belgian law, by different laws and regulations. Therefore, we will analyse in turn: disinformation/misinformation, defamation/slander, impersonation of organisations, online content moderation, unfair advertising, political advertising, and information manipulation and foreign interference.

A. Disinformation/misinformation

Under Belgian law, disinformation/misinformation, as an individual behaviour consisting in sharing fake news (and not as a broad term which encompasses several behaviours), is not yet regulated. However, on 19 November 2021, the Belgian Senate published an information report on the necessary collaboration between the federal authority and the Communities in the fight against fake news². In Belgium, each citizen has the right of freedom of speech, which is guaranteed by the Constitution, both for the individuals (Article 19), and for the media (Article 25).

Nevertheless, the freedom of speech has limits, and notably an opinion can be freely expressed as long as it does not result in malicious behaviour (e.g., racism, discrimination, etc.). Therefore, even if disinformation is not yet regulated under Belgian law, there are laws which regulate the dissemination of illegal content, e.g., terrorist, racist, denialist, etc. statements, both by the individuals and by the media. Furthermore, when a person abuses the freedom of the press to express a punishable opinion, the text can be condemned after publication, and this is known as a press offence.

a. Law of 30 July 1981 aimed at punishing certain acts motivated by racism or xenophobia

The law of 30 July 1981 aims to punish certain acts motivated by racism or xenophobia. The key provisions of that law are articles 20, 21 and 22 which punish with imprisonment up to one year and/or a fine of up to 8,000 euros:

- Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code³, incites discrimination against a person, on the basis of one of the protected criteria⁴; (Art. 20, 1°).
- Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code, incites hatred or violence against a person, on the basis of one of the protected criteria; (Art. 20, 2°).
- Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code, incites discrimination or segregation against a group, a community or their members, on the basis of any of the protected criteria; (Art. 20, 3°).
- Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code, incites hatred or violence against a group, a community or their members, on the basis of one of the protected criteria; (Art. 20, 4°).
- Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code, denies, grossly minimises, seeks to justify or approves facts corresponding to a crime of genocide, a crime against humanity or a war crime as referred to in Article 136quater of the Criminal Code, established as such by a final decision of an international court, knowing or having to be aware that such conduct may expose either a person a group, a community or their members, to discrimination, hatred or violence, on the basis of one of the protected criteria or religion, within the meaning of Article 1(3) of the

² https://www.senate.be/informatieverslagen/7-110/Senat_rapport_fake_news-2021.pdf

³ “Either in public meetings or places;

In the presence of several persons, in a place which is not public, but open to a number of persons entitled to assemble there or to frequent it;

Or in any place, in the presence of the person offended and before witnesses;

Or by printed or unprinted writings, images or emblems displayed, distributed or sold, offered for sale or exposed to public view;

Or by writings not made public, but addressed or communicated to several persons” (Art. 444 Belgian Criminal Code).

⁴ Nationality, alleged race, skin colour, descent or national or ethnic origin (Art. 4, 4° Law of 30 July 1981).

Framework Decision of the Council of the European Union of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law; (Art. 20, 5°).

- Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code, disseminates ideas based on racial superiority or hatred; (Art. 21).
- Anyone who is a member of a group or association which manifestly and repeatedly advocates discrimination or segregation based on any of the criteria protected in the circumstances indicated in Article 444 of the Criminal Code, or who assists in such advocacy (Art. 22).

b. Law of 10 May 2007 aimed at combating discrimination between women and men.

The law of 10 May 2007 aims at fighting discrimination between women and men. The key provision of that law is article 27 which punishes with imprisonment up to one year and/or a fine of up to 8,000 euros:

- Anyone who, in any of the circumstances referred to in Article 444 of the Criminal Code, incites discrimination against a person on the basis of a protected criterion⁵;
- Anyone who, in any of the circumstances referred to in Article 444 of the Criminal Code, incites hatred or violence against a person by reason of protected criterion;
- Anyone who, in any of the circumstances referred to in Article 444 of the Criminal Code, incites discrimination or segregation against a group, a community or their members, by reason of protected criterion;
- Anyone who, in any of the circumstances referred to in Article 444 of the Criminal Code, incites hatred or violence against a group, a community or their members on the basis of protected criterion.

c. Law of 23 March 1995 aimed at penalising the denial, minimisation, justification or approval of the genocide committed by the German National Socialist regime during the Second World War

Law of 23 March 1995 aims at penalising the denial, minimisation, justification or approval of the genocide committed by the German National Socialist regime during the Second World War. The key provision of that law is article 1 which punishes with imprisonment up to one year and/or a fine of up to 5,000 euros (updated amount: 40,000 euros), “anyone who denies, grossly minimises, seeks to justify or approves of the genocide committed by the German National Socialist regime during the Second World War”.

B. Defamation/slander

Defamation and slander are regulated under Belgian law by Art. 443, Alinea 1 of the Belgian Criminal Code which punishes the offences of slander and defamation. More precisely, Article 443 provides that: “Whoever has maliciously imputed to a person a specific fact which is of such a nature as to be prejudicial to that person’s honour or to expose him or her to public contempt, and of which legal proof is not adduced, is guilty of slander when the law admits proof of the imputed fact, and of defamation when the law does not admit such proof.”

The article 444 of the Belgian Criminal Code specifies the sanctions that accompany the offences of defamation and slander. More precisely, Article 444 provides that: “The offender shall be punished by imprisonment for a period of eight days to one year and a fine of twenty-six euros (updated amount: 208 euros) to two hundred [euros] (updated amount: 1600 euros), when the imputations have been made :

- Either in public meetings or places;
- In the presence of several individuals, in a non-public place, but open to a certain number of persons having the right to assemble there or to frequent it;
- In any place, in the presence of the person offended and before witnesses;
- Or by printed or unprinted writings, images or emblems displayed, distributed or sold, offered for sale or exposed to public view; or
- Or finally by writings not made public, but addressed or communicated to several persons.

It must be mentioned that the offence of defamation/slander can be established even if the offender merely reproduced a publication made in Belgium or in another country⁶. Therefore, an individual may be charged with

⁵ Sex, pregnancy, assisted reproduction, childbirth, breastfeeding, motherhood, family responsibilities, gender identity, gender expression, sex characteristics and sex reassignment

⁶ Article 451 of the Belgian Criminal Code.

defamation, even if it has only shared what has already been published by somebody else, e. g., on a social media such as Facebook.

C. Impersonation of organisations

a. Criminal offense

The impersonation of a person is punishable under the Belgian Criminal Code by an imprisonment up to 3 months and/or a fine up to 2,400 euros (Art. 231 Belgian Criminal Code). The same article seems to be applicable also to the impersonation of organisations' names.

b. Fraud

Furthermore, the Belgian Criminal Code establishes an offence of fraud (Art. 496 Belgian Criminal Code) which is defined as the offence committed by a person who, with the aim of appropriating something belonging to another, has it delivered to him by fraudulent means. The fraudulent means may include using a false name or capacity, therefore if a person is impersonating an organisation as a way to appropriate something belonging to another, it may constitute fraud under the meaning of the Belgian Criminal Code. The fraud is punishable by imprisonment up to five years and a fine up to 24,000 euros (Art. 496 al. 1). Furthermore, attempting to commit the fraud offence shall be punishable by imprisonment up to three years and a fine up to 16,000 euros (Art. 496 al.3).

c. Domain names

The same applies to the impersonation of a company's domain name. Cybercriminals often use a technique called "spoofing", through which the cybercriminal impersonates the identity of a company in order to get the individuals to reveal their personal details and/or secret bank codes in order to get money out of them straight away. They often use very similar domain names in order to mislead the consumers, and this kind of impersonation is punishable, as a form of fraud, by imprisonment up to five years and a fine up to 24,000 euros (Art. 496 al. 1).

In the absence of any fraudulent situation, Article XII.22 prohibits companies and individuals to register a domain name that may create a risk of confusion for the consumers. If such situation occurs, the Code of Economic Law allows to introduce an injunction procedure before the President of the Enterprise Tribunal or before the President of the First Instance Tribunal⁷. The injunction order may result in the transfer of the domain name to the owner of the trademark, trade name, etc. For the injunction order to be successful, three conditions must be met (Article XII.22):

- 1) The domain name must be either identical to, or is so similar as to create a likelihood of confusion with, a trademark, a geographical indication or appellation of origin, a trade name, an original work or a domain name belonging to another person.
- 2) The holder has no right or legitimate interest in the domain name.
- 3) The holder has acted with the aim of harming a third party or taking undue advantage of it.

D. Online content moderation

There are three main European instruments that play a role, in Belgium, in relation to online content moderation. First, the Directive 2000/31, also called "e-commerce Directive", provides rules for information society services⁸. It includes two main provisions:

- Article 14 establishes the principle of the exemption of accommodation providers conditional on compliance with certain requirements. Belgium transposed Article 14 of the e-Commerce Directive which provides that the hosting service provider is not liable for the information stored at the request of the recipient of the service, if certain conditions are met. It was first transposed in the law of 11 March 2003 which was repealed once the Code of Economic Law was adopted. Now, Art. XII.19 of the Code of Economic Law provides that:

⁷ Code de droit économique, Article XVII.23.

⁸ Directive 2000/31

“§ 1. In the case of the provision of an information society service consisting of the storage of information provided by a recipient of the service, the provider shall not be liable for information stored at the request of a recipient of the service provided that:

- 1) the provider does not have actual knowledge of the unlawful activity or information or, in the case of a civil action for damages, does not have knowledge of facts or circumstances from which the unlawful nature of the activity or information may be inferred; or*
- 2) that it acts promptly, from the moment it has such knowledge, to remove the information or to make access to it impossible and provided that it acts in accordance with the procedure laid down in paragraph 3.*

§ 2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or control of the provider.

§ 3. Where the service provider has actual knowledge of an unlawful activity or information, he shall immediately notify the Public Prosecutor, who shall take the appropriate measures in accordance with Article 39bis of the Code of Criminal Procedure. As long as the Public Prosecutor has not taken any decision concerning the copying, inaccessibility and removal of documents stored in a computer system, the service provider may only take measures to prevent access to the information.”

- Article 15 prohibits to create a general obligation to actively search for facts or circumstances revealing unlawful activities. Belgium transposed Article 15 of the e-Commerce Directive first in the law of 11 March 2003 which was repealed once the Code of Economic Law was adopted. Now, Art. XII.20 of the Code of Economic Law provides that:

“§ 1. For the provision of the services referred to in Articles XII.17, XII.18 and XII.19, service providers shall have no general obligation to monitor the information they transmit or store, nor any general obligation to actively seek facts or circumstances indicating illegal activities.

The principle set out in paragraph 1 applies only to obligations of a general nature. It does not prevent the competent judicial authorities from imposing a temporary monitoring obligation in a specific case, where this possibility is provided for by law.

§ 2 The service providers referred to in paragraph 1 shall be obliged to inform the competent judicial or administrative authorities without delay of any alleged unlawful activities carried out by the recipients of their services or of any alleged unlawful information provided by the latter. Without prejudice to other legal or regulatory provisions, the same service providers shall be obliged to communicate to the competent judicial or administrative authorities, at their request, any information at their disposal which is relevant to the investigation and establishment of offences committed through them.”

Second, the Directive 2010/13, also called “Directive SMA”, created a legal regime for video content sharing platform, essentially through Article 28b of the Directive which was included through the adoption of Directive 2018/1808. Article 28b imposes on Member States to ensure that video-sharing platform providers take appropriate measures to protect:

- minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);
- the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;
- the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council (1) and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA

This article was transposed, under Belgian law, through the adoption of several community decrees:

- Decrees of the Dutch Region of 29 June 2018, 22 March 2019, and 8 May 2020
- Decree of the French Community of 4 February 2021
- Decree of the German Community of 1 March 2021

Finally, the Commission Recommendation (EU) 2018/334 on measures to effectively tackle illegal content online was adopted as a way to guide Member States in tackling effectively illegal online content while respecting certain fundamental principles⁹.

“Internet and service providers active on the internet contribute significantly to innovation, economic growth and job creation in the Union. Many of those service providers play an essential role in the digital economy by connecting business and citizens and by facilitating public debate and the distribution and reception of factual information, opinions and ideas. However, their services are in certain cases abused by third parties to carry out illegal activities online, for instance disseminating certain information relating to terrorism, child sexual abuse, illegal hate speech or infringements of consumer protection laws, which can undermine the trust of their users and damage their business models.

*In certain cases the service providers concerned might even gain some advantages from such activities, for instance as a consequence of the availability of copyright protected content without authorisation of the right holders.”*¹⁰

In February 2020, the Belgian *Conseil Supérieur de l’Audiovisuel (CSA)* published an orientation note to imagine how the objectives of user protection could be put in place to complement existing instruments and better achieve public policy objectives in terms of reconciling fundamental rights and safeguarding public order in the new media of expression¹¹ (e.g., social networks, online forums, etc.). The CSA proposes to create a legal framework that would impose obligations on online content sharing platform providers within the Belgian French Community.

The first set of obligations relates to measures that would increase transparency¹². Therefore, operators of online content sharing platforms must:

- formulate in precise, easily understandable, objective and non-discriminatory terms the general conditions of use of the service they make available to the public when they relate to illegal content;
- provide, when a minor under the age of 16 or 18 registers for one of their services, information for the minor and the holder(s) of parental authority on the civic and responsible use of the said service and the legal risks incurred in the event of the minor disseminating illicit content;
- make available to users, in a public, clear and detailed manner, easily accessible and visible, information relating to:
 - o the internal and judicial appeal mechanisms, including the time limits for these appeal, available to victims of illegal content and the actors able to provide support for these victims. They shall inform notifiers of the risks they run in the event of improper notification. They shall also inform users who have published content that has been removed, made inaccessible or delisted of the internal and judicial remedies available to them;
 - o the sanctions, including judicial sanctions, which their users incur in the event of publication of illicit content;
 - o the general modalities of the system they put in place for the moderation of content.

The second set of obligations relates to measures relating to notification/reporting procedures for illegal content. It includes notably the following obligations for operators of online content sharing platforms:

- set up for users located on the territory of the French-speaking region or the bilingual region of Brussels-Capital a directly accessible notification system, "opposite the shared content", which is uniform and

⁹ Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online, C/2018/1177, L 63/50.

¹⁰ Ibid., recital 1.

¹¹ P.2 – Note CSA, available at: https://www.csa.be/wp-content/uploads/2020/02/Note-dorientation-contenus-illicites_f%C3%A9vrier-2020.pdf.

¹² Pp. 27-28.

allows any person to notify illegal content in the language in which the service is used and reminds notifiers of the risks they run in the event of improper notification;

- remove or make inaccessible, within twenty-four hours of receipt of the notification by one or more persons, any manifestly illegal content or to stop, within the same period, the referencing of such content;
- implement the appropriate means to prevent the redistribution of manifestly unlawful content;
- acknowledge receipt of any notification without delay;
- inform the notifier and, where they have the information to contact him or her, the user who published the notified content, of the date and time of the notification, of the action taken on the notification and of the reasons for their decisions within twenty-four hours when they remove or make inaccessible the content or stop its referencing or, where the content cannot be considered manifestly unlawful, within seven days of receiving the notification;
- remind the user at the origin of the publication that civil and penal sanctions are incurred for the publication of manifestly illicit content;
- implement a mechanism enabling a user whose content has been removed or rendered inaccessible or whose referencing has ceased, to contest this decision;
- implement a mechanism enabling the notifier to contest the decision not to remove or make inaccessible a content or not to stop referencing it; and
- implement procedures and human and, where appropriate, technological resources that are proportionate to ensure that notifications received are processed as quickly as possible, that notified content is examined appropriately so as to prevent the risk of unjustified removal and that the obligation to remove/disable manifestly unlawful content

Finally, the third set of obligations relates to general obligations which aim to fight against illegal content sharing, and it includes notably the obligation to share biannual reports to the CSA on illegal content¹³.

E. Unfair advertising

Unfair advertising is a form of misleading commercial practice towards consumers that is tackled by Articles VI.97 to VI.100 of the Belgian Code of Economic Law. First, Article VI.97 provides that:

“a commercial practice shall be regarded as misleading if it contains false information and is therefore deceptive or in any way, including its general presentation, misleads or is likely to mislead the average consumer with respect to one or more of the following, even if the information presented is factually correct, and in either case causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise not otherwise have made” (Annex I).

Second, Article VI.98 provides that *“a commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not otherwise have taken, where it involves :*

- 1) *any marketing activity concerning a product, including comparative advertising, which creates confusion with another product, trademark, trade name or other distinguishing feature of a competitor*
- 2) *failure by the undertaking to comply with commitments contained in a code of conduct by which it has undertaken to be bound, where:*
 - a. *these commitments are not declarations of intent, but are firm and verifiable, and*
 - b. *the undertaking, as part of a commercial practice, indicates that it is bound by the code;*
- 3) *any marketing activity concerning a good in one Member State as identical to a good marketed in other Member States, when that good has a substantially different composition or characteristics, unless this is justified by legitimate and objective factors.”*

¹³ P. 29

Third Article VI.99 provides that a misleading omission may also be considered as a misleading commercial practice (**Annex I**). Therefore if a piece of advertising does not mention an element that may be important for the consumers to make an informed decision, it may be considered as a misleading omission. Finally, Article VI.100 lists a series of practices that are always considered as misleading commercial practices (**Annex I**).

F. Political advertising

In Belgium, each political party has a limited budget for spending on election propaganda, in order to limit the financial inequality between parties and candidates as much as possible. There are strict rules in place for the installation of election posters and the use of billboards¹⁴. Candidates, political parties and lists are allowed to use social media during the electoral period. They should declare it as an election expense if the use of the social media differs from other periods of use (outside of the electoral period).

There are no rules that regulates the content of the online political advertising unless the advertisement contains illegal content. Currently, there is an EU proposal which aims to harmonise transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services¹⁵. Furthermore, it aims at harmonising rules on the use of targeting and amplifications techniques in the context of the publication, dissemination or promotion of political advertising that involve the use of personal data.

In relation to electoral regulatory bodies, the Walloon Parliament is responsible for the control of electoral expenses for the local elections.¹⁶ These powers are exercised by the “*Commission de contrôle des dépenses électorales et des communications*”, which has adopted a notice containing its comments and recommendations concerning the interpretation of the regulations relating to the limitation and control of election expenses incurred for local elections¹⁷.

A similar Commission is in place at the Federal Parliament for the control of electoral expenses incurred for federal elections, and as well for the other Parliaments. However, these regulatory bodies do not regulate the content of the political advertising.

G. Information manipulation and foreign interference

On 23 December 2022, the Intelligence Services Review Committee, also called “*Comité R or Comité I*” addressed a recommendation to the Belgian Parliament for a control investigation to be carried out rapidly to ensure that the Belgian services have sufficient means, both legal and operational, to detect the threat of interference by foreign powers through the financing of political parties, institutions or personalities. A previous investigation regarding the elections of 2019 did not show any serious interference however, it is well-known that Belgium is not spared a certain amount of interference through denial, disinformation and manipulation of information.

There are no rules or regulations that prohibit or regulate the foreign interference through denial, disinformation and manipulation of information. This is due to the fact that no rules or regulations in general exist, under Belgian law, to regulate disinformation, misinformation, denial or manipulation of information. As long as the information shared is not illegal, it cannot be tackled by the authorities and/or the online service providers.

H. Extracontractual civil liability

Article 1382 of the Belgian Civil Code is the legal basis of the extracontractual liability in Belgium. It has been interpreted extensively by the judges, and therefore it may be used as a way to restrict the freedom of speech. Notably, the existence of a fault within the meaning of Article 1382 of the Civil Code can be assessed in the

¹⁴ Besluit van de Vlaamse Regering van 20 april 2012 houdende de algemene regels voor het aanbrengen van verkiezingsaffiches en het organiseren van gemotoriseerde optochten; Ordonnance du 12 juillet 2012 visant le contrôle des communications et la promotion des autorités publiques locales en période électorale; Code de la démocratie locale, art. L.4130-1 to L4130-4.

¹⁵ https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/AUTRES_INSTITUTIONS/COMM/COM/2023/01-23/COM_COM20210731_EN.pdf.

¹⁶ <http://electionslocales.wallonie.be/candidat/d%C3%A9penses-electorales>.

¹⁷ http://electionslocales.wallonie.be/sites/default/files/documents_telechargeables/Presentation_par_conseillers_COM/vade-mecum-DepensesPW-loc.pdf.

light of the violation of journalistic ethical standards, such as the prohibition on disseminating information whose origin is unknown, or the obligation to verify the veracity of information and to report it honestly¹⁸.

On 21 January 2014, the Brussels Court of First Instance ruled that the dissemination by a journalist of a Facebook page that is freely accessible to the public must be assessed in the light of journalistic ethics¹⁹. This jurisprudence is part of a pattern. Between 2012 and 2014, several judgments have used the standards of journalistic ethics to define the scope of the general duty of care, the breach of which may constitute a fault for which the journalist could, if this fault is causally linked to a damage, be held liable on the basis of Article 1382 of the Civil Code²⁰.

However, caution should be exercised, as the violation of a code of ethics does not ipso facto constitute a fault within the meaning of Belgian civil liability. The Brussels Court of Appeal states that "the courts and tribunals of the judicial order are not bodies empowered to rule on the whether or not the defendant has respected his journalistic obligations"; 'the violation of an ethical rule may constitute a civil fault'²¹

I. Influencers

Contrary to the new developments that occur in France in relation to the regulation of influencers²², Belgium has currently no plans to introduce a similar law within its regulatory framework. However, the Code of Economic Law provides that advertising must always be recognisable as such and that it must be made clear to the consumer that it is a commercial message. An advertising that does not clearly indicate its commercial nature constitutes a misleading commercial practice and is therefore prohibited.

The prohibition applies only if the influencers are in a commercial relationship with the undertaking concerned. A commercial relationship will be deemed to exist if the influencer receives a counterpart or the opportunity to receive such counterpart in exchange of the advertising. According to Article VI.100, 11° of the Code, undertakings must ensure that influencers who are paid to promote their products on social media clearly state that it is an advertisement. Failing to do so, the undertakings could be sued for misleading commercial practice.

In 2022, the Belgian Centre of Communication published its updated recommendations on influencers²³. If there is a commercial relationship, the influencer must clearly show that such relationship exists, through the use of labels such as "*publicité/reclame*" (advertising), "*sponsorisé/gesponsord*" (sponsored), "*placement de produit/productplaatsing*" (product placement). In addition to the use of labels, influencers are advised to mention the name of the company, and/or to include the logo of the brand. The influencer will be held responsible in case of non-respect of these recommendations. In addition to these recommendations, influencers must follow the applicable ethics codes, published by the JEP²⁴ (Advertising Ethics Jury).

1.1 *How are concepts of disinformation, misinformation, foreign interference and other related topics defined at law?*

Disinformation/Misinformation

The abovementioned report of the Belgian Senate refers to disinformation, by reference to the definition used in the Communication from the Commission on tackling online disinformation²⁵. Therefore, disinformation is defined 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."²⁶

The report also defines the concept of misinformation as: "false information that is disseminated without the intention of harming or misleading anyone. This may include, for example, disseminating a mistranslation or a

¹⁸ EPRS, *Liberté d'expression, une perspective de droit comparé – Belgique*, October 2019, <https://orbi.uliege.be/bitstream/2268/241586/1/Liberte#:~:text=En%20droit%20belge%2C%20la%20libert%C3%A9%2C%2024%2C%2025%20et%2058,p.12>.

¹⁹ Civ. Bruxelles (14e ch.), 21 janvier 2014, inédit, R.G. 2013/3312/A.

²⁰ Civ. Bruxelles (20e ch.), 27 mars 2012, A. & M., 2012, p. 602 ; Civ. Bruges, 30 avril 2012, A. & M., 2012, p. 592.

²¹ Bruxelles, 27 novembre 2012, A. & M., 2013, p. 254.

²² On 9 June 2023, the French Parliament adopted a law aiming at regulating commercial influence and combating abuses by influencers on social networks: Loi n° 2023-451 du 9 juin 2023 visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux, Journal Officiel de la République Française, 10 juin 2023.

²³ JEP, *Recommandations du Centre de la Communication en matière d'influenceurs*, https://www.jep.be/wp-content/uploads/2022/04/influenceurs_FR.pdf.

²⁴ <https://www.jep.be/fr/codes-regles/>.

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Tackling online disinformation: a European Approach, COM(2018) 236 final, 26 April 2018.

²⁶ Ibidem, pps. 3-4.

satirical message while taking it seriously. Such false information is therefore spread by naive or fanciful people, rather than by liars or impostors".²⁷

There is another kind of misinformation called "malinformation", which is defined as: "information that is partially correct but taken out of context to cause harm to an individual, group or society. Hate speech falls into this category. The emphasis here is on the intention to cause harm, for example to for example, to get back at someone."²⁸

Defamation/Slander

On the one hand, defamation is defined by the Belgian Criminal Code as: "a behaviour where a person has maliciously imputed to another person a specific fact which is of such a nature as to be prejudicial to that person's honour or to expose him or her to public contempt, and of which legal proof is not adduced, when the law does not admit proof of the imputed fact (e.g., because it is obtained illegally or because of prescription)".²⁹

On the other hand, slander is defined by the Belgian Criminal Code as: "a behaviour where a person has maliciously imputed to another person a specific fact which is of such a nature as to be prejudicial to that person's honour or to expose him or her to public contempt, and of which legal proof is not adduced, when the law admits proof of the imputed fact".³⁰

Impersonation of organisations

The Belgian Criminal Code does not define specifically the impersonation of organisations, however it contains a general information of what is considered as impersonation. Indeed, the Belgian Criminal Code punishes anyone "who publicly takes on a name that does not belong to them".³¹

Online content moderation

Despite the fact that online content moderation is partly regulated, under Belgian law, through the implementation of the above-mentioned directives, there is no legal definition on the meaning of "online content moderation".

Unfair advertising

By reference to Belgian Code of Economic Law, unfair advertising is defined as a form of misleading commercial practice, i.e., a commercial practice which contains false information and is therefore deceptive or in any way, including its general presentation, misleads or is likely to mislead the average consumer with respect to certain elements, even if the information presented is factually correct, and in either case causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise not otherwise have made.³²

Political advertising

By reference to the Brussels Law of 7 July 1994, five modes of propaganda (or political advertising) are strictly prohibited during a period of three months before the elections (during which election expenses are limited):

- the sale or distribution of gadgets ;
- commercial campaigns by telephone;
- the broadcasting of advertising spots in the media or at the cinema;
- the use of commercial billboards or posters;
- non-commercial billboards or posters when they cover more than 4 m².

Information manipulation and foreign interference

As these topics are not regulated under Belgian law, there is no legal definition of information manipulation and foreign interference.

²⁷ Senate report

²⁸ Senate report

²⁹ Art. 443, al.1 of the Belgian Criminal Code

³⁰ Art. 443, al.1 of the Belgian Criminal Code.

³¹ Art. 231 of the Belgian Criminal Code.

³² Article VI.97 of the Belgian Code of Economic Law.

1.2 Do laws/regulations exist at the regional, national or local level?

As abovementioned, there are no rules regulating disinformation or misinformation. However, there are rules to regulate the dissemination of illegal content (e.g., racist statements), and these rules exist at national level. Rules at national level exist also for defamation/slander, impersonation or organisations, online content moderation (implementation of e-commerce Directive), and unfair advertising. For online content moderation, the implementation of the SMA Directive was made through the adoption of Community Decrees. The rules on political advertising must be found mainly at the regional level. For the moment, there are no rules on information manipulation and foreign interference. However if such rules are created, it will be most likely at the national level.

1.3 Do prohibitions on information sharing in law/regulation change/heighten in the months preceding an election?

The laws and regulations on the various aspects of disinformation do not change/heighten in the months preceding an election.

However, it is likely that the scrutiny on illegal content in the months preceding an election is increased. Furthermore, during the three months preceding the election, the candidates are subject to stricter rules on political advertising and electoral expenses. Article 7 of the Law of 7 July 1994 on the limitation and control of control of election expenses incurred for provincial for the elections of the provincial, communal and district councils and district councils and for the direct election of councils and for the direct election of social welfare councils, provides that:

“During the three months preceding the municipal, provincial and sectoral elections and the direct election of social action councils or from the day of the convocation of voters in the case of extraordinary elections, political parties, lists and candidates, as well as third parties wishing to make propaganda for parties, lists or candidates

1° do not sell or distribute gifts and gadgets

2° do not organise commercial campaigns by telephone

3° do not broadcast advertising spots on radio, television and in cinemas

4° do not use commercial signs or posters

*5° do not use non-commercial billboards or posters larger than four square metres”.*³³

Anyone who contravenes this rule may be punished³⁴ in accordance with Article 181 of the Electoral Code, i.e., an imprisonment up to one month and a fine up to 4,000 euros.

1.4 Do specific laws/ regulations exist in relation to online political advertising? If so, please summarise key provisions. If not, are there any plans to introduce a law covering this in 2023/2024?

Contrary to what exist in relation to political advertising in radio, television and cinemas, or in relation to advertising via billboards, there are no specific laws/regulations in relation to **online** political advertising. However there are ongoing discussions at the EU level to adopt a new regulation on transparency and targeting of political advertising.³⁵ This regulation will be strongly appreciated in Belgium which is one of the countries where the political parties invest the most heavily in online political advertising, notably via social networks.

1.5 Were specific laws in disinformation introduced in response to the COVID-19 pandemic?

No specific rules on disinformation were adopted in response to the Covid-19 pandemic. Therefore, anybody can publish any wrongful statement in relation to the pandemic. However, in January 2023, the FPS Economy published a report from 2022 of the AB-REOC (Association belge de recherche et d'expertise des organisations

³³ Loi du 7 juillet 1994 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des conseils provinciaux, communaux et de districts et pour l'élection directe des conseils de l'aide sociale, M.B., 16 juillet 1994, art. 7.

³⁴ Ibid., art. 12.

³⁵ Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, 25 November 2021, COM(2021) 731 final.

de consommateurs) which deals with the consumption of health products via social networks, and notably the impact of Covid-19 pandemic in relation to disinformation, false advertising, etc.³⁶

1.6 *Were any specific laws/regulations introduced in response to the war in Ukraine and associated sanctions?*

The same as previously said in relation to the Covid-19 pandemic is true for the war in Ukraine. No specific rules on disinformation were adopted in response to the war in Ukraine. Therefore, anybody can publish any wrongful statement in relation to the war, as long as the publication does not contain any illegal content.

1.7 *How have laws/regulations been interpreted by the courts? Please provide case study examples.*

Racism, discrimination and incitement to hatred

In November 2022, two significant judgments were handed down by Flemish courts, one in relation to incitement to hatred, and the other one to cyberhate speech³⁷. The first case was tried at the Bruges Criminal Court on 8 November 2022. The author of an alternative salute to the Nazi salute was sentenced for incitement to hatred to a fine of 800 euros with a suspended sentence of 3 years. The condemnation of an alternative Nazi salute on the basis of the anti-racism law is a first in Belgium.

The second case concerns a man who had published numerous messages and memes inciting hatred and discrimination on the VK platform between October 2020 and January 2021. The Court of First Instance of East Flanders, Dendermonde Division, sentenced him on November 9 to a prison sentence of 6 months and a fine of 800 euros suspended for a period of 3 years under certain conditions, including a guided visit to the Dossin Barracks, a museum and research center on the Holocaust and human rights. On his public profile, the defendant had posted numerous neo-Nazi and white supremacist symbols while dehumanizing migrants, black people and Jews.

Negationism/denial

On 21 September 2011, the Brussels Court of Appeal confirmed the judgment of the Brussels Correctional Court of 16 June 2008 in the case *Centre et Commune de Berchem Ste Agathe v. Vincent Reynouard*. M. Reynouard had been convicted of violating the 1995 anti-negationist law, following the widespread distribution of brochures and leaflets of a negationist nature. Mr. Reynouard was sentenced to one year of imprisonment, and a fine of ~25,000 euros.

Defamation/slander

The elements of the offence of defamation include the imputation of a specific fact to a person, i.e., attributing a behaviour or a word to someone. Mere allegation, i.e., the fact of echoing an act committed by another person while leaving doubt as to the truth of this allegation, is not punishable under Article 433 of the Criminal Code.

The fact imputed to the person must also be sufficiently precise. According to the Court of Cassation, the factual precision means that its truth or falsity can be proven directly or by proof to the contrary³⁸. It is irrelevant whether the defamatory statements relate to a positive or negative fact. If the fact invoked is not sufficiently, the imputation cannot be qualified as defamation but simply as insult.

The person who is the victim of the defamation must be clearly identified, however it is not necessary for the person to be named. It is sufficient that the person is indicated in such a way that the person himself or herself and third parties can clearly identify the person targeted by the defamatory remarks. Furthermore, the act imputed must be of such a nature as to damage the honour of the person or expose him or her to public

³⁶ <https://economie.fgov.be/fr/publications/etude-medias-sociaux-et-sante#:~:text=Les%20consommateurs%20qui%20ach%C3%A8tent%20occasionnellement,15%25%20d'entre%20eux.>

³⁷ <https://www.unia.be/fr/articles/deux-militants-dextreme-droite-condamnes-pour-alternative-au-salut-nazi-et.>

³⁸ Cass., 15 December 1958, *Pas.*, 1959, I, p. 395.

contempt. This is a question of fact, and it is therefore the judge who will assess the consequences that the defamatory statements may have on the victim's conception and on public opinion³⁹.

The allegation must be public, i.e. the defamatory words must have been uttered in public meetings or places, in a non-public place but in the presence of several persons, in any place but in the presence of the offended person and before witnesses, by printed or unprinted matter, images or emblems displayed, distributed or sold, offered for sale or exposed to public view; or finally by writings not made public but addressed or communicated to several persons.

Finally, the law requires special fraud, which implies that the perpetrator acted with the special intention of harming or offending the person defamed. This special fraud cannot be presumed but must be proven by the prosecution.⁴⁰

2 Which national authorities have countering disinformation as part of their mandate, and what powers do they have to do this?

Conseil Supérieur de l'Audiovisuel (French) / Vlaamse Regulator voor de Media (Flemish)

On the one hand, the *Conseil Supérieur de l'Audiovisuel (CSA)* is the independent administrative authority responsible for regulating the audiovisual media sector in the Wallonia-Brussels Federation (French Community).

Created initially as a consultative body integrated into the administration of the French Community, the decree of 24 July 1997 gave it powers of control and sanction alongside institutional independence.⁴¹ In 2020, the CSA published a guidance note on combating certain forms of illegal content on the Internet, in particular hate speech⁴². The CSA regulates disinformation and has recently hired an advisor in charge of disinformation issues.

On the other hand, the *Vlaamse Regulator voor de Media (VRM)* is the independent regulator for the Flemish audiovisual media. In the interest of Flemish viewers and listeners, it ensures that the media regulations as described in the Media Decree are complied with in Flanders. The VRM intervenes in any disputes and handles complaints and reports on possible breaches of the regulations.⁴³

It also specifically monitors the protection of minors and impartiality on Flemish radio and TV. Finally, the VRM manages the granting of media licences to Flemish audiovisual media. The VRM was set up by the Flemish government in 2006. The VRM has already adopted several infringement decisions against influencers active on TikTok because it was not sufficiently clear that the influencers were in a commercial relationship with an undertaking for the promotion of their products/services.

In December 2021, the VRM published the Content Creator Protocol (**CCP**)⁴⁴ as a tool available for content creators, vloggers and influencers who post videos on social media platforms. It allows them to easily find out which rules they have to take into account before posting online content. The CCP covers also the commercial communications aimed at minors, and the ban on hate speech.

VSSE (State Security)

The Belgian Internal security bodies such as the VSSE (State Security) are fully aware of the danger of disinformation. It is even a major priority for them to fight against this phenomenon. The VSSE observes an increase in mistrust of the authorities, which is also a factor in disinformation.

To fight against fake news, the VSSE deploys various countermeasures. One of its priority tasks is to prevent and raise awareness of the threats of interference and extremism by means of press releases, publications or media interventions on the issue. The aim here is to contribute to building the resilience of society.

³⁹ Cass. Fr., 7 November 1989, *Gaz. Pal.*, 1990, II, p. 230.

⁴⁰ Liège, 6 août 1885, *A.J.*, 1886, p.107; Civ. Bruxelles, 25 juillet 2001, *J.L.M.B.*, 2001, p. 1575.

⁴¹ <https://www.csa.be/le-csa/>.

⁴² CSA, *Note d'orientation du CSA sur la lutte contre certaines formes de contenus illicites sur Internet, en particulier le discours de haine*, February 2020, https://www.csa.be/wp-content/uploads/2020/02/Note-dorientation-contenus-illicites_f%C3%A9vrier-2020.pdf.

⁴³ <https://www.vlaamseregulatormedia.be/nl/over-vm/rapporten/2022/jaarverslag/jaarverslag-2022/1-organisatie/11-missie>.

⁴⁴ <https://www.vlaamseregulatormedia.be/nl/content-creator-protocol>.

Where possible and appropriate, VSSE also takes secondary disruptive measures by reporting, for example to social media platforms, blatant acts of misinformation or problematic activities on genuine or fake user profiles. In its 2017-2018 activity report, the VSSE indicated that it had developed expertise in researching social media and mobile messaging applications, including through its Social Media Intelligence (Socmint) unit.

In 2018, in anticipation of the 2019 federal and European elections, the VSSE's Socmint cell participated in a joint project with the military intelligence services (the General Intelligence and Security Service, SGRS), the Joint Intelligence Project "Elections". This project aimed to detect and counter possible foreign interference in our electoral process, including through disinformation campaigns.

Other support

Additionally, the support of fact-checking and media literacy has been mostly improved through tenders and call for propositions led by linguistic communities (these are the public entities in charge of Cultural matter, under the Belgian Federal constitution) or resources from media literacy knowledge centers. We can for instance quote:

- The call for projects by the Flemish region <https://www.vlaanderen.be/cjm/nl/media/subsidies/projectoproep-desinformatie>. This has already awarded grants to 5 projects ([see results here](#))
- Resources put in place by [Mediawijs](#) (dutch-speaking) or by the [Center for Media Literacy](#) (CESM, French speaking)

3 What is the impact of the European Commission's Code of Practice on Disinformation in each country? How is data collected through this mechanism fed back into national law and regulation?

In some EU countries, regulatory bodies have analysed the code of practice and submitted recommendations for further improvements. In Ireland, notably the national broadcasting authority published in 2021 a report on the assessment of the implementation of the EU Code of Practice on Disinformation in relation to the Covid-19 crisis.⁴⁵ However, in Belgium, the relevant regulatory bodies have not yet analysed the Commission's Code of Practice.

4 Has draft law/regulation been made public outlining how each country will implement the forthcoming European Digital Services Act? If so, please summarise key provisions.

As part of the DSA implementation, the Member States have the obligation to designate a Digital Services Coordinator (DSC) who will be responsible for monitoring other intermediate services covered by the DSA. Belgium has until 17 February 2024 to designate its DSC. Apart from that, Belgium has not made public any draft law outlining how it will implement the DSA.

5 Do other non-legal mechanisms exist for regulating disinformation in each country?

Media deontology bodies

For the French and German Communities, the "*Conseil de déontologie journalistique*" (**French/German Council**) was created in 2009 as the self-regulatory body for the French- and German-speaking media in Belgium. It has three main missions: information, mediation (ombudsman) and self-regulation (opinions, decisions, directives, recommendations).⁴⁶ The French/German Council has already had the opportunity to rule on potential cases of disinformation in the media.

⁴⁵ <https://www.bai.ie/en/new-report-recommends-development-of-robust-procedures-for-reporting-and-monitoring-online-disinformation/>.

⁴⁶ <https://www.lecdj.be/fr/le-conseil/mission/>.

On 19 April 2023, the Council considered RTL Belux's (**RTL**) complaint against Kairos, introduced on 26 April 2021, to be well-founded⁴⁷. The complaint concerned four Kairos Facebook Lives organised following government press conferences on the management of the Covid crisis.

The CDJ found that the editor-in-chief of Kairos, in his commentary on the various videos, constantly confused the relationship between facts and personal opinion. It also noted that he repeatedly insinuated, in support of the image of a simple interview between a journalist and a minister, that there was a collusion between them that he denounced. The CDJ considered that this was a serious and unproven accusation likely to cast doubt on the probity, loyalty and professional independence of the journalist and his clearly identified media.

For the Flemish Community, the "*Raad voor de Journalistiek*" (**Flemish Council**) is an independent body for journalistic self-regulation and handles questions and complaints about journalistic professional ethics.⁴⁸ We are not aware of any decision taken by the Flemish Council in relation to disinformation.

Factcheckers

In Belgium, the public service broadcaster "RTBF" created in 2019 a digital platform of fast-checking called "[Faky](#)" which helps to fight against disinformation/misinformation. Fact checking is a form of journalistic treatment that aims to examine and verify statements made by officials or institutions, or to check the veracity of information circulating on social networks.

The aim of this practice is to gather factual and objective elements in order to verify the veracity of facts or the accuracy of figures presented. Faky allows the reader to check the link of the article (written in French), and the platform will analyse different elements to verify whether the article might be fake: source, content, subjectivity, and spread.

In Flanders, [deCheckers](#) is a non-profit organisation working in partnership with Dutch-speaking fact-checkers. deCheckers gathers fact-check articles from various media (e.g., VRT, Fact-check.Vlaanderen, etc.) in a single place. Therefore, this initiative allows the public to access this information in one portal instead of searching for debunks on multiple websites.

EDMO Belux

EDMO Belux, a cross-community, multilingual collaboration between Vrije Universiteit Brussel, Université Saint-Louis – Bruxelles, Mediawijs, Média Animation, EU DisinfoLab, Agence France-Presse, RTBF, RTL Luxembourg and Athens Technology Center, allows to monitor disinformation in Belgium and Luxembourg⁴⁹.

⁴⁷ Conseil de déontologie – Réunion du 19 avril 2023, Plainte 21-23, RTL Belux c. A. Penasse / Kairos (Facebook), <https://www.lecdj.be/wp-content/uploads/CDJ-21-23-RTL-Belux-c-A-Penasse-Kairos-Facebook-decision-19avril2023.pdf>.

⁴⁸ <https://www.rvdj.be/>.

⁴⁹ <https://belux.edmo.eu/>.

Annex I – Legal provisions

Article VI.97

1° the existence or nature of the product

2° the main characteristics of the product, such as its availability, advantages, risks, execution, composition, accessories, after-sales service and complaint handling, method and date of manufacture or performance, delivery, fitness for purpose, use, quantity, specifications, geographical or commercial origin or the results that may be expected from its use, or the results and essential characteristics of the tests or checks carried out on it

3° the extent of the company's commitments, the motivation of the commercial practice and the nature of the sales process, as well as any statement or symbol that the company or the product benefits from direct or indirect sponsorship or support

4° the price or the method of calculating the price, or the existence of a specific price advantage

5° the need for a service, spare part, replacement or repair

6° the nature, qualities and rights of the undertaking or its intermediary, such as its identity and assets, its qualifications, status, approval, affiliation or links and its industrial, commercial or intellectual property rights or awards and distinctions

7° the consumer's rights, in particular the right to replacement or reimbursement of a good, digital content or digital service in accordance with Articles 1649bis to 1649nonies and 1701/1 to 1701/19 of the former Civil Code, or the risks he may incur”

Article VI.99

§ 1. A commercial practice shall be regarded as a misleading omission if, in its factual context, taking account of all its features and circumstances and the limitations of the medium used, it omits material information which the average consumer needs, having regard to the context, in order to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision which he would not have taken otherwise.

§ 2. A commercial practice by which an undertaking conceals material information as referred to in paragraph 1, or provides it in an unclear, unintelligible, ambiguous or untimely manner, or does not indicate its commercial intent, shall also be regarded as a misleading omission where this is not already apparent from the context and where, in either case, the average consumer is thereby induced or is likely to be induced to take a transactional decision which he would not otherwise have taken.

§ 3. Where the means of communication used for the purpose of the commercial practice imposes limitations of space or time, in determining whether information has been omitted, account shall be taken of those limitations and of any steps taken by the undertaking to make the information available to the consumer by other means.

§ 4. In an invitation to purchase, the following information shall be regarded as material, provided it is not already apparent from the context

1° the main characteristics of the product, to the extent appropriate to the means of communication used and the product concerned

2° the geographical address and identity of the undertaking and, where appropriate, the geographical address and identity of the undertaking on whose behalf it is acting

3° the price inclusive of taxes or, where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, any

additional transport, delivery and postal costs or, where such costs cannot reasonably be calculated in advance, a statement that such costs may be borne by the consumer

4° the terms of payment, delivery and performance, if they differ from the terms of professional diligence

5° where appropriate, the existence of a right of withdrawal or cancellation;

6° for products offered on online marketplaces, whether the third party offering the products is a business or not, based on the declaration of this third party to the provider of the online marketplace.

§ 5. Information relating to commercial communications, including advertising and marketing, provided for by Community law, in particular the articles of the Directives referred to in Annex II to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, shall also be deemed to be substantial.

§ 6. Where the possibility is given to consumers to search for products offered by different businesses or consumers based on a query consisting of a keyword, a phrase or the input of other data, irrespective of where such transactions are ultimately concluded, the general information made available in a specific section of the online interface, which is directly and easily accessible from the page on which the query results are presented, concerning the main parameters which determine the ranking of the products presented to the consumer in response to his search query, and the order of importance of those parameters, as opposed to other parameters, shall be deemed to be material. This paragraph shall not apply to online search engine providers as referred to in Article 2(6) of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 promoting fairness and transparency for business users of online intermediation services.

§ 7. Where a business provides access to consumer reviews of products, information on whether and how the business ensures that the reviews published are from consumers who have actually used or purchased the product shall be deemed to be substantial.

Article VI.100

(1) claiming to be a signatory to a code of conduct when this is not the case

(2) display a certificate, quality label or equivalent without having obtained the necessary authorisation

(3) claiming that a code of conduct has been approved by a public or other body when it has not

(4) claiming that an enterprise, including its business practices, or a product has been approved, endorsed or authorised by a public or private body when it has not, or without complying with the conditions of the approval, endorsement or authorisation received

(5) offering to purchase products at an indicated price without disclosing any plausible reason why the undertaking might believe that it will not be able to supply itself, or have another undertaking supply it, with the products in question or with equivalent products at the indicated price, for a period and in quantities that are reasonable in view of the product, the extent of the publicity given to the product and the price offered

(6) offer to purchase products at a stated price and then, for the purpose of promoting a different product :

(a) refuse to show the consumer the product offered; or

(b) refuse to take orders for that product or to deliver it within a reasonable time; or

(c) present a defective sample of the product;

(7) falsely stating that the product will only be available for a very limited period of time or that it will only be available under particular conditions for a very limited period of time, in order to obtain an immediate decision and deprive the consumer of an opportunity or sufficient time to make an informed choice

(8) undertaking to provide after-sales service to consumers, with whom the undertaking has communicated prior to the transaction, in a language which is not one of the national languages, and then providing that service solely in another language, without clearly informing the consumer before the latter enters into the transaction

(9) stating or giving the impression that the sale of a product is lawful when it is not;

(10) presenting the rights conferred on the consumer by legal or regulatory provisions as constituting a characteristic specific to the proposal made by the undertaking

- (11) using editorial content in the media to promote a product, when the company has financed the promotion itself, without clearly indicating this in the content or using images or sounds that are clearly identifiable by the consumer
- (12) make factually inaccurate statements regarding the nature and extent of the risks to the consumer's personal safety or that of his family if he does not purchase the product
- (13) promote a product similar to that of a particular manufacturer in such a way as to deliberately induce the consumer to believe that the product comes from that same manufacturer, when this is not the case
- (14) create, operate or promote a pyramid scheme in which the consumer pays a fee in exchange for the possibility of receiving consideration from the entry of new consumers into the scheme rather than from the sale or consumption of products
- (15) stating that the business is about to cease its activities or to establish them elsewhere, when this is not the case, without prejudice to Articles VI.22 et seq;
- (16) stating that a product increases the chances of winning at games of chance
- (17) falsely claiming that a product is likely to cure diseases, dysfunctions or malformations
- (18) communicating factually inaccurate information on market conditions or on the possibilities of finding the product, with the aim of inciting the consumer to acquire the product under less favourable conditions than the normal market conditions
- (19) stating, in the context of a commercial practice, that a contest is being held or that a prize can be won without awarding the prizes described or a reasonable equivalent
- (20) describe a product as "free", "complimentary", "no charge" or similar terms if the consumer has to pay anything other than the unavoidable costs of responding to the offer and taking possession or delivery of the item taking possession or delivery of the item
- (21) include in the promotional material an invoice or similar document requesting payment, which gives the consumer the impression that he or she has already ordered the promoted product, when this is not the case
- (22) falsely stating or giving the impression that the business is not acting for purposes that fall within the scope of its professional activity, or falsely presenting itself as a consumer
- (23) falsely creating the impression that after-sales service in relation to a product is available in a Member State of the European Union other than that in which it is sold;]¹
- (24) providing search results in response to a consumer's online search query without clearly informing the consumer of any paid advertising or payment made specifically to obtain a higher ranking of the products in the search results;
- (25) claiming that product reviews are submitted by consumers who have actually used or purchased the product, without taking reasonable and proportionate steps to verify that they come from such consumers
- (26) sending or instructing another legal or natural person to send false consumer reviews or recommendations, or distorting consumer reviews or social recommendations in order to promote products
- (27) resell tickets for events to consumers if the business acquired them by using an automated means to circumvent any limit on the number of tickets a person may purchase or any other rule applicable to the purchase of tickets.