



1. Introduction

1.1 Disinformation refers to false information that is deliberately spread offline and/or online with malicious intent to influence public opinion or obscure the truth.¹ Nowadays online disinformation has become more of a concern as technological advancement enables the use of tools such as big data, bots, Internet trolling and deepfakes² to spread fake news and false information **rapidly to a large number of specific or general audiences** through the Internet platforms. Governments around the world are particularly concerned with respect to the reach and speed of online disinformation and its ensuing threats to social harmony, trust in public institutions, and public safety and security. Indeed, regulating online disinformation has presented a challenge to many governments due to the difficulties in achieving a delicate balance between online regulation and the freedom of speech, locating the original disinformation outlets in the cyberspace, and classifying and interpreting online disinformation that can arrive rapidly and evolve dramatically.^{3, 4}

1.2 In Hong Kong, online disinformation has also drawn growing concern consequential to the social incidents in mid-2019 and the subsequent Coronavirus Disease 2019 ("COVID-19") pandemic in early 2020. Currently, the

¹ See Insider Inc. (2021) and United States Library of Congress (2020).

² Bots run autonomous programmes on social media networks to spread fake news in two ways: keeping "saying" or tweeting fake news items, and using the same pieces of false information to reply to or comment on the postings of real social media users. Internet trolling is a behaviour in which users post derogatory or false messages in a public forum (e.g. newsgroup or social media) to make other people angry and frustrate them to carry on substantive discussions. Meanwhile, deepfakes use deep learning artificial intelligence to yield fabricated images and sounds that appear to be real.

³ For example, there are views that "harmful" content is highly contextual and hard to define, rendering online regulation difficult to enforce and prone to abuse.

⁴ See S. Rajaratnam School of International Studies, Nanyang Technological University (2018) and United States Library of Congress (2020).

Government has addressed the issue of online disinformation through **existing legislation** and **various publicity channels to clarify rumours and speculations**.

1.3 Unlike Hong Kong, many places around the world have tackled online disinformation by introducing various **dedicated measures** to address the many difficulties encountered in regulating online disinformation. Some places have introduced **non-legislative measures** to combat online disinformation; for example, the European Union ("the EU") has adopted a self-regulatory regime to facilitate the implementation of online regulation in its member states with minimal change to the existing legislative framework and greater acceptance by key stakeholders. There are also some places implementing **legislative measures** to (a) deal with illegal online disinformation that has been identified under the relevant legislation (e.g. the Network Enforcement Act in Germany); or (b) focus explicitly on specific areas of online disinformation (e.g. election disinformation in France).

1.4 In contrast with the above places, Singapore has implemented a relatively stringent approach with **legislative and non-legislative measures** in place to regulate a broader scope of online disinformation over a wide range of communication platforms. On legislative measures, Singapore's dedicated anti-disinformation legislation seeks to define the conceptual elements of what constitute disinformation and set out early intervention measures to prevent the online spread of falsehoods.

1.5 At the request of Hon SHIU Ka-fai, the Research Office has prepared this information note which studies the major legislative and non-legislative measures adopted in selected places for tackling online disinformation. The information note will first review the anti-disinformation measures adopted in Hong Kong, followed by an overview of measures implemented by overseas places in combatting online disinformation. It will then study selected overseas places in detail for their experiences in implementing dedicated measures to combat online disinformation, covering (a) the non-legislative measures adopted by the EU as a whole; (b) the legislative measures taken by Germany and France; and (c) the legislative and non-legislative measures implemented by Singapore. The focus of study will be on the salient features of their anti-disinformation measures and the related implementation experiences, outcomes and issues of concern.

2. Hong Kong

2.1 In Hong Kong, online platforms have been the most common source of news for many local people,⁵ with increased usage after the outbreak of the social incidents in mid-2019.⁶ This has helped the spread of fake news and false information through the Internet and social media. According to a global survey on Internet security and trust, 64% of the sampled Internet users in Hong Kong claimed that they had seen fake news on the Internet while 58% on social media in general.⁷ These figures were higher than the 43% on mainstream media sources.

2.2 The proliferation of fake news and false information online during the social incidents in mid-2019 and the COVID-19 pandemic has posed challenges to public security and public health. According to the Government, online disinformation has fuelled division of society over social and political issues and undermined trust in the public authorities.⁸ While the freedoms of speech and expression of local residents are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383),⁹ the Government has iterated that the exercising of such rights is not without limits.¹⁰ The Hong Kong Bill of Rights Ordinance specifies that while the freedom of expression applies regardless of frontiers or media, it may be subject to certain restrictions that are provided by law and necessary for (a) respect of the rights or reputations of others; or (b) the protection of public health or morals, national security or public order.¹¹

⁵ The Reuters Institute for the Study of Journalism conducted a global survey on digital news consumption in 40 economies between January and February 2020 ("Reuters Institute Digital News Report 2020"). It was revealed that 85% of the sampled respondents in Hong Kong used online platforms, including social media, as a source of news in the week before enumeration, compared with television's 71% and print media's 31%. See Reuters Institute for the Study of Journalism (2020).

⁶ The Reuters Institute Digital News Report found that usage of social media as a news source among Hong Kong respondents in the week before enumeration increased from 57% in early 2019 to 66% in early 2020. See Reuters Institute for the Study of Journalism (2019 & 2020).

⁷ The survey was conducted by Ipsos on 25 economies across the world about their Internet security and trust. Ipsos is a multinational market research and consulting firm with headquarters in Paris. See Centre for International Governance Innovation and Ipsos (2019).

⁸ See News.gov.hk (2019a & 2019c) and South China Morning Post (2019a & 2020).

⁹ The Hong Kong Bill of Rights Ordinance is the domestic enactment of the International Covenant on Civil and Political Rights adopted by the United Nations as applied to Hong Kong.

¹⁰ See GovHK (2019a & 2020) and News.gov.hk (2020).

¹¹ See Hong Kong e-Legislation (2017).

2.3 There is currently no legislation in Hong Kong that specifically deals with online disinformation, and most of the laws in the real world are applicable to the online world. In this connection, the Government regulates illicit online content such as copyright infringements, speech inciting the use or threat of violence, and other criminal material under existing legislation. For example, criminal intimidation under the Crimes Ordinance (Cap. 200) and blackmail under the Theft Ordinance (Cap. 210) are applicable to online acts. Furthermore, making inappropriate speech online may be illegal if it involves contravention of the data protection principles under the Personal Data (Privacy) Ordinance (Cap. 486), infringement of copyright, or libel, etc. Publishing information online that might threaten public safety may also infringe the common law offence of incitement to commit public nuisance.¹²

2.4 To combat online disinformation that has become more prevalent over the past two years, the Government has also stepped up its publicity efforts to clarify rumours and speculations through various channels. For example, the Information Services Department has set up a clarifications section on its online news platform whereby members of the public can gain access to the clarifications issued by the Government.

2.5 Meanwhile, the Hong Kong Police Force has proactively rebutted rumours and fake news through channels such as social media and press conferences.¹³ It has also requested cooperation from relevant persons or organizations to remove postings allegedly containing misinformation or defamatory content.¹⁴ Individual government departments, such as the Department of Health, have also requested the operators of social media platforms and/or websites to remove postings or revise the contents of postings where necessary.¹⁵

Issues of concern

2.6 Notwithstanding the afore-mentioned anti-disinformation measures taken by the Government, some stakeholders are concerned about the lack of a dedicated legislative regime for dealing with online fake news and false

¹² See GovHK (2020).

¹³ See GovHK (2020) and News.gov.hk (2019b).

¹⁴ According to the latest information available, the Hong Kong Police Force had made 621 requests to operators of social media platforms to remove postings as at end-November 2019, up from 81 in 2017. See GovHK (2019b).

¹⁵ See GovHK (2019b).

information promptly.¹⁶ There are also concerns that the spread of disinformation may not often be linked with or result in offences, but its impact could be detrimental. Clarifications made by the Government against such disinformation may not be effective in mitigating the damage done once fake news and rumours have been widely spread online.¹⁷

2.7 There are suggestions of tightening the regulation of online disinformation through dedicated legislative and/or non-legislative measures. This is to help swiftly stem the spread of disinformation and facilitate the collaboration with online platforms to promptly remove online false information and harmful content.¹⁸ In response, the Government has assured that the relevant policy bureaux would make clarifications as quickly as possible when coming across false information. As for the suggestion to introduce dedicated legislation to address online disinformation, the Government unveiled in May 2021 that a policy bureau had been conducting a study on introducing relevant legislative measures in Hong Kong. The study would take into consideration the relevant experiences of overseas jurisdictions.^{19, 20}

2.8 However, some key stakeholders have voiced concerns over (a) the extent to which the introduction of dedicated anti-disinformation measures might affect the current freedoms of speech and expression enjoyed by Internet users in Hong Kong; and (b) the availability of due process safeguards against any misinterpretations and/or abuse by the enforcement authorities.²¹

3. Overview of anti-disinformation measures in overseas places

3.1 Disinformation is not a new phenomenon globally, but the issue has drawn global attention in the wake of the United States ("US") presidential election in 2016. The allegation of online election fake news has triggered great concern about the threats of disinformation to public interest in the digital

¹⁶ See China Daily (2019), Official Record of Proceedings of the Legislative Council (2019 & 2020) and Wong, T. (2020).

¹⁷ See South China Morning Post (2019b).

¹⁸ See China Daily (2019) and Official Record of Proceedings of the Legislative Council (2019 & 2020).

¹⁹ See GovHK (2021).

²⁰ Earlier on, the Law Reform Commission has already set up a sub-committee in January 2019 to review the existing legislation for tackling cybercrime in the changing cyber environment in Hong Kong. It will recommend reform measures, where necessary, to the Government after completing the study.

²¹ See Hong Kong Free Press (2020), 立場新聞 (2019) and Legislative Council Secretariat (2020a).

age.²² Similar disinformation incidents reported during the subsequent French presidential election in 2017 and the Italian election in 2018 have added to the concerns about online disinformation, which might undermine the integrity of elections and other democratic procedures and pose threats to national security.²³ The recent outbreak of the COVID-19 pandemic has heightened the threat of online disinformation to public interest as evidenced by its disruption of efforts of governments in protecting public health amidst the pandemic.²⁴

3.2 The growing prevalence of disinformation around the world has been fuelled by increased use of the Internet and other online platforms as the major sources of news and information. In particular, the content recommendation algorithms of online platforms²⁵ allow the formation of polarized crowds who are prone to share content that reinforces their prior beliefs without necessarily ascertaining its truthfulness. Coupled with today's relatively easy use of technology to corrupt otherwise legitimate messages and amplify the spread of false information, malicious actors can easily spread disinformation for their own ends.²⁶

3.3 Some major online platform operators have reportedly used artificial intelligence to detect and delete bots, fake accounts and pages in recent years.²⁷ Some others have also addressed the disinformation issue by adjusting their own community guidelines²⁸ and content moderation policies.²⁹ Meanwhile,

²² The term "fake news" became mainstream during the US presidential election campaign in 2016 in which hundreds of websites and social media platforms allegedly published falsified or heavily biased stories – many of them in the pursuit of capitalizing on social media advertising revenue. See Victoria University (2021).

²³ See European Parliamentary Research Service (2019) and S. Rajaratnam School of International Studies, Nanyang Technological University (2018).

²⁴ According to World Health Organization (2020), disinformation can lead to poor observance of public health measures, thus reducing their effectiveness and endangering governments' ability to stop the pandemic.

²⁵ Recommendation systems are algorithmic tools that Internet platforms use to identify and recommend content, products and services that may be of interest to their users. Today, Internet platforms are employing personalized recommendation systems for everything from social media to e-commerce and media streaming.

²⁶ See Council of Europe (2019) and European Parliamentary Research Service (2019).

²⁷ See CNET (2018).

²⁸ Community guidelines are a set of rules created by an online platform to ensure a standard of behaviour expected on the platform to create a safe environment for users to interact. They tend to cover advice on what is prohibited, i.e. activities and actions that can lead to accounts being suspended or permanently deleted.

²⁹ For example, Twitter requires people to remove posts that include statements which are intended to influence others to violate recommended COVID-19 related guidance from global or local health authorities to decrease someone's likelihood of exposure to COVID-19. See Twitter (2021).

the possible threat of online disinformation to social stability and national security has enticed many governments around the world to devise dedicated regulatory measures to deal with the online spread of falsehoods. The common anti-disinformation measures employed include:³⁰

- (a) **non-legislative measures** adopted by places such as the EU and the United Kingdom to promote self-regulation of online platforms, promptly respond to disinformation in a coordinated manner, nurture media literacy of the public, and/or support fact-checking initiatives;
- (b) **dedicated legislative measures** adopted by places such as France,³¹ Canada³² and the US³³ which focus explicitly on specific areas of online disinformation, such as countering interference in elections or foreign disinformation campaigns that pose serious threats to national security; and
- (c) **dedicated legislative measures** adopted by places like Germany and Singapore to regulate disinformation that has been identified or defined under the relevant legislation.

3.4 The introduction of dedicated regulatory measures to tackle online disinformation has been a contentious issue in many overseas places. Of particular relevance is whether these regulatory measures are proportionate and strike the right balance with securing the freedom of expression and taking into account that some misinformation can be harmful but is not illegal. Disproportionate regulatory measures can damage freedom of speech, human rights and democracy in the end.³⁴ As such, there have been calls for ensuring

³⁰ See The Regulatory Institute's Blog (2018), S. Rajaratnam School of International Studies, Nanyang Technological University (2018), United States Library of Congress (2020) and Wilson Centre (2020).

³¹ The Law against the Manipulation of Information was enacted in France in 2018 to tackle election disinformation.

³² Canada introduced the Elections Modernization Act in 2018 with a view to prohibiting false statements about a candidate for the purpose of influencing the outcome of an election. The Act also regulates paid political advertising on online platforms to prevent foreign interference in elections.

³³ In the US, the National Defense Authorization Act 2017 includes specific provisions for the establishment of a Global Engagement Center under the Department of State and consolidation of power of several federal broadcasting entities under one authority to counter foreign propaganda.

³⁴ See European Parliamentary Research Service (2019), United States Library of Congress (2020) and Wilson Center (2020).

that the anti-disinformation measures are developed with the engagement of the major stakeholders to ensure that these measures are proportionate and transparent with an oversight mechanism.³⁵

3.5 Following the global overview above, the ensuing sections will specifically review the experience of the EU as a whole, as well as that of Germany, France and Singapore independently, in formulating and implementing dedicated measures to fight online disinformation. The focus of study will be on (a) the background and considerations for introducing the respective anti-disinformation measures; (b) the major features of the measures; (c) the outcomes; and (d) issues of concern.

4. The European Union

4.1 In the EU, online disinformation has become more prevalent with increased number of people using online media as the main sources of news.³⁶ The European Commission³⁷ ("the EC") first recognized the threat of online disinformation in 2015 when it commenced a review on the challenges of and responses to online disinformation.³⁸ At that time, the EC saw the growing prevalence of online disinformation as a major challenge to Europe. In particular, disinformation might result in deepening tensions in society, undermining the democratic decision making and election processes, and threatening the security of Europe.

Regulatory measures adopted in the European Union

4.2 The EC came up with a coordinated approach to tackle disinformation in April 2018 in accordance with the overall direction to devise **effective and proportionate** measures to counter online disinformation **without damaging**

³⁵ See Wilson Center (2020).

³⁶ According to the Reuters Institute Digital News Report 2020, 66% to 92% of the sampled respondents in 20 EU member states used online platforms, including social media, as a source of news in the week before enumeration. The corresponding figures for using social media as a source of news in the week before enumeration ranged from 37% to 71%. See Reuters Institute for the Study of Journalism (2020).

³⁷ The EC is the EU's politically independent executive arm. It is responsible for drawing up proposals for new European legislation and implementing the decisions of the European Parliament, among others.

³⁸ See European Commission (2018a & 2018b).

the freedom of expression safeguarded by the Charter of Fundamental Rights of the European Union.³⁹ Subsequently, the **Code of Practice on Disinformation** ("Code of Practice") and the **Action Plan against Disinformation** ("Action Plan")⁴⁰ were introduced in September and December 2018 respectively. The Code of Practice is the most prominent anti-disinformation self-regulatory standards agreed by online platforms to address the spread of disinformation, whereas the Action Plan aims to strengthen the EU's capability to proactively tackle the spread of online disinformation in a coordinated approach.

Code of Practice on Disinformation

4.3 The Code of Practice lays down a set of **self-regulatory standards** for online platforms and relevant stakeholders to follow, when they operate in a platform ecosystem vulnerable to the creation, amplification and dissemination of disinformation. The signatories of the Code of Practice, including online platforms like Facebook, Google, Twitter and associations of the advertising industry, have committed to taking actions in the following five areas to combat online disinformation:

- (a) disrupting advertising revenues of accounts and websites that spread disinformation;
- (b) making political advertising and issue-based advertising more transparent;
- (c) addressing the issue of fake accounts and bots;
- (d) empowering users to report disinformation and access different news sources, while improving the visibility and accessibility of authoritative contents; and
- (e) empowering the research community to monitor online disinformation through privacy-compliant access to the platforms' data.

³⁹ See European Commission (2018d).

⁴⁰ See European Commission (2018a).

4.4 The EC has also put in place a **monitoring mechanism** to track the signatories' implementation of their commitments. The mechanism includes requiring the signatories to (a) submit an annual self-assessment report on their implementation progress; and (b) provide special reports in response to specific events such as the European Parliament elections and the COVID-19 pandemic.⁴¹

Action Plan against Disinformation

4.5 One of the key initiatives introduced under the Action Plan is the establishment of a **rapid alert system** in March 2019. The alert system is to provide alerts on disinformation campaigns in real-time through a dedicated technological infrastructure. This facilitates the sharing of data, insights and best practices related to fighting disinformation campaigns, as well as strengthening coordinated responses among member states and relevant EU institutions. Recently, the system has been used to tackle disinformation related to the COVID-19 pandemic. Another key initiative under the Action Plan is the establishment of the **European Digital Media Observatory** ("EDMO") in 2020. EDMO serves as an independent European hub for fact-checkers, academics and other relevant stakeholders to collaborate in detecting, raising awareness of and improving societal resilience to online disinformation.⁴²

Observed outcomes and limitations

4.6 The coordinated approach taken by the EC under the Action Plan has helped strengthen the preparedness and coordination of EU member states in countering disinformation. A case in point is its contribution to maintaining the integrity of the European Parliament elections in May 2019 while protecting freedom of expression.⁴³

⁴¹ For example, in the five months before the European Parliament elections held in May 2019, the three major online platform signatories – Facebook, Google and Twitter – were required to report on a monthly basis on their actions taken to improve the scrutiny of advertising placements, ensure transparency of political and issue-based advertising and tackle fake accounts and malicious use of bots. See European Commission (2021a).

⁴² EC has so far committed €13.5 million (HK\$126 million) to supporting the development of EDMO. See European Commission (2021b).

⁴³ See European Commission (2019).

4.7 As to the Code of Practice, the EC has identified a number of limitations of the Code that might undermine its effectiveness in countering disinformation. These include (a) the voluntary nature of the Code of Practice that renders regulatory asymmetry between code signatories and non-signatories;⁴⁴ and (b) lacking an independent oversight mechanism for monitoring the effectiveness and impact of the signatories' actions in tackling disinformation.⁴⁵ As a result, the EC has proposed to overhaul the Code of Practice into a co-regulatory framework, under which it would set out obligations and accountability of online platforms in a legislative act with regard to tackling disinformation. Online platforms would be subject to the provisions in the legislation to introduce relevant anti-disinformation measures under the enhanced Code of Practice for addressing the current limitations.⁴⁶

Regulatory measures adopted in individual member states

4.8 At the member state level, rising local concerns have prompted some EU member states to implement their own legislative measures to regulate online disinformation. In particular, Germany enacted the Network Enforcement Act in 2017 and France introduced the Law against the Manipulation of Information in 2018.

Germany

4.9 Germany has been facing rising threat of online disinformation in recent years, noticeably during the mid-2010s when the European migrant crisis⁴⁷ precipitated the fabrication of fake news to invent crimes committed by migrants and refugees entering the country.⁴⁸ In 2015, the German government attempted to control the spread of online disinformation by engaging the major online platform operators to

⁴⁴ The Code of Practice is limited as not all the online platforms active in the EU have signed it. This may encourage malicious actors to migrate towards platforms that are not Code signatories.

⁴⁵ See European Commission (2020a).

⁴⁶ See European Commission (2020b).

⁴⁷ During the migrant crisis, Germany admitted over 1 million migrants/refugees from the Middle East and the Balkans, instigating xenophobia and hate racism among the locals.

⁴⁸ For example, in 2016, a prominent Member of the Parliament was falsely suggested to be sympathetic to a refugee who had murdered a German student. Another high-profile case in 2016 involved the false reports of a 13-year-old Russian-German girl having been raped by refugees leading to diplomatic tension between Germany and Russia. See BBC (2017) and The Regulatory Institute's Blog (2018).

voluntarily review and remove questionable content such as hate speech and defamation violating their policies or prohibited under the German law.⁴⁹ However, this approach was found to be ineffective by an independent audit commissioned by the government.⁵⁰

4.10 In response, the German government enacted the **Network Enforcement Act** in 2017 to **tighten enforcement of the law against illegal online content** as defined in the relevant provisions of the German Criminal Code.⁵¹ It stated that fighting fake news on social media platforms is a priority. To do so requires improvements in law enforcement on social media platforms in order to promptly remove objectively criminal content, such as incitement to hatred, abuse, defamation or content that could lead to a breach of the peace by misleading authorities into thinking a crime has been committed.⁵²

4.11 The Network Enforcement Act came into effect in January 2018, regulating **large social media platforms** with over 2 million registered users in Germany,⁵³ and obliging them to **put in place a system to handle complaints about illegal content**. The **social media platforms** are held accountable to **remove content that is "manifestly illegal"** within 24 hours after receiving a user complaint and up to seven days to review and remove content if legality is unclear.

4.12 The social media platforms may face a heavy fine of up to €50 million (HK\$466 million) for failing to comply with specified provisions of the Network Enforcement Act, e.g. the provision to remove illegal content within the required timeframe.⁵⁴ The platform operators may apply to the Federal Office of Justice, the responsible authority for administering the penalty, to set aside

⁴⁹ Germany has some of the strictest speech laws among democratic nations such as imposing strict restriction on hate speech or defamation in light of its experience with Nazism during the World War II period. See Wilson Center (2020).

⁵⁰ The audit report indicated that YouTube removed 90% of the reported illegal content during 2016-2017. However, Facebook and Twitter only removed 39% and 1% of the reported illegal content respectively. See Wilson Center (2020).

⁵¹ Illegal content includes fake news and false information to incite hatred and bring insult and defamation.

⁵² See United States Library of Congress (2020).

⁵³ The Network Enforcement Act does not apply to platforms that post original journalistic content, or to email or messaging services.

⁵⁴ If the Federal Office of Justice intends to issue a fine for failing to remove a piece of illegal content, a court decision on the illegality of the content must be obtained and the decision is final and binding on the Federal Office of Justice. See German Law Archive (2017).

its order. They can appeal to the court if the Federal Office of Justice refuses to set its order aside.

4.13 Against the above, the Network Enforcement Act in its current form does not create any new duties for social media platforms to remove content. According to the half yearly reports⁵⁵ submitted by the major social media platforms (namely Facebook, YouTube and Twitter) for the period between January and June 2020, they removed some 215 000 items of content as a result of complaints lodged, representing **a mere 3% increase** over the previous reporting period. The removal rates ranged from about 16% to 38% of the reported items of content. Nevertheless, the Act imposes high fines for noncompliance with existing legal obligations. The Federal Office of Justice has so far issued one fine since the implementation of the Act.⁵⁶ The German government had indicated in the latest evaluation report on the Network Enforcement Act that hatred and agitation on the Internet was countered more consistently and effectively with the introduction of the law and significant improvements in how social media platforms dealt with user complaints about criminal content had been seen.⁵⁷

4.14 However, there are concerns that social media platform operators might become more conservative to remove objectionable material **at the point of upload** in order to avoid being held liable for illicit content posted on their platforms, leading to the risk of curbing legal speech. Indeed, there are observations that the social media platforms have **tightened their community guidelines** regarding the definition of hate speech, resulting in increased number of cases where alleged objectionable content was removed by the platform operators even before receiving complaints against the content. For example, Facebook has reportedly broadened its definition of hate speech under its community standards recently. The removal of content for containing hate speech totalled 9.5 million items in the first quarter of 2020, up from 4.0 million items in the same period a year earlier.⁵⁸

⁵⁵ Under the Network Enforcement Act, social media platforms receiving more than 100 complaints in a year are required to publish half yearly reports on their practices in handling complaints about illegal content on their platforms. The report has to include information such as the general efforts taken to remove illegal content, the complaint procedure, the number of complaints received and those leading to content removal and the time taken to remove the content.

⁵⁶ The Federal Office of Justice imposed a fine of €2 million (HK17.5 million) on Facebook in July 2019 for underreporting complaints about illegal content and violating its obligation to provide an easily accessible complaint channel for users for the period between January and June 2018. See Federal Office of Justice of Germany (2019).

⁵⁷ See Federal Ministry of Justice and Consumer Protection (2020).

⁵⁸ See Facebook (2021) and Justitia (2020).

France

4.15 Unlike the case of Germany, the anti-disinformation legislation adopted in France focuses explicitly on combatting **election disinformation**. The dedicated legislation, the **Law against the Manipulation of Information**, was enacted in December 2018 in response to the attempted foreign interference in the 2017 French presidential election (the so-called "Macron Leaks" incident).⁵⁹

4.16 The Law against the Manipulation of Information specifically targets **large-scale online platforms**,⁶⁰ including news and social media platforms. It imposes **transparent obligations** for these platforms which must put in place an easily accessible mechanism for users to **report fake information that can disrupt public order or affect the validity of an election**, as well as submitting an annual report to the French Broadcasting Authority on the measures taken to combat disinformation.⁶¹ In addition, large-scale online platforms are required in the three months preceding a general election to **disclose the sources and funding of sponsored content** relating to "a debate of national interest" such as political advertising, and **inform users on the use of their personal data** for promoting such content.

4.17 The Law also features the creation of legal measures allowing the circulation of fake news to be swiftly halted. For example, **a judge may order to stop the dissemination of fake information**⁶² **online** within 48 hours of receiving a referral from a public prosecutor, a candidate or any other relevant parties. Any violation of the election-related disclosure obligations imposed is liable to one year's imprisonment and a fine of €75,000 (HK\$698,000).

⁵⁹ There was a coordinated attempt to undermine Emmanuel Macron's presidential candidacy, with a disinformation campaign consisting of a leak of stolen data hacked from the computers of his campaign staff two days before the second and final round of the French presidential election in May 2017. The leak was reportedly the pinnacle of the coordinated operation that started months before the presidential election, with a disinformation campaign and a hack.

⁶⁰ Large scale online platforms refer to those having more than 5 million distinct visitors per month in France based on the previous calendar year.

⁶¹ The online platforms are encouraged to take relevant measures to combat disinformation such as increasing transparency of their algorithms and devising measures to handle accounts that massively disseminate fake information.

⁶² To qualify a piece of information as "fake" is based on three criteria. The information must be manifestly fake and disseminated deliberately on a massive scale, and it can disrupt public order or affect the outcome of an election.

4.18 According to the French government, the Law against the Manipulation of Information intends to forestall deliberate attempts at information manipulation. In ensuring the protection of freedom of expression, it has stated that the legal provisions will have no impact on journalistic work, which may, at any time, reveal information on matters of public interest. In addition, the Law against the Manipulation of Information establishes a more protective legal framework than a situation which is not governed by law, where platforms censor content themselves without even being required to explain the criteria for this censorship.⁶³

4.19 However, the legislative process has **met with strong criticisms as the new law was considered by some stakeholders to jeopardize democracy and censor the press.**⁶⁴ It may also weaken freedom of expression as online platforms **may over-block content** in order to avoid any liability for posting objectionable content.⁶⁵ Besides, there have been concerns about the **difficulty for a judge to determine whether a piece of information is false within a short timeframe.** The assessment is considered to be complex in an electoral context where many people may express opinions and contradictory arguments that can be perceived as erroneous.⁶⁶

5. Singapore

5.1 Similar to Hong Kong, Singapore has seen the emergence of online platforms as the main sources of news in the country⁶⁷ and increased risk of

⁶³ See The French Government (2018a & 2018b).

⁶⁴ In November 2018, the Parliament adopted two bills laying down the relevant regulatory provisions for the Law against the Manipulation of Information. After the adoption, over 60 Senators had submitted an appeal to the Constitutional Council to challenge the legality of the bills. They considered that the bills had violated the freedom of expression and communication in France. However, the Constitutional Council ruled that the bills adopted by the Parliament complied with the French constitutional principles, provided that the inaccuracy and misleading nature of the allegations is obvious and the allegations do not include opinions, parodies, partial inaccuracies or simple exaggerations. See Euronews (2018) and MediaWrites (2019).

⁶⁵ In 2019, a campaign by the French government encouraging people to register to vote in the European Parliament elections was blocked on Twitter. The platform claimed it risked violating the Law against the Manipulation of Information. See Euronews (2019).

⁶⁶ See The European Centre of Excellence for Countering Hybrid Threats (2019).

⁶⁷ According to the Reuters Institute Digital News Report 2020, 87% of the respondents in Singapore used online platforms, including social media, as a source of news in the week before enumeration, compared with television's 44% and print media's 29%. Specifically, the figure for the past week usage of social media as a source of news was 63%. See Reuters Institute for the Study of Journalism (2020).

online disinformation.⁶⁸ As an open and globally connected country with multi-racial communities, the Singaporean government has been concerned about its vulnerability to deliberate online falsehoods initiated by foreign countries or private individuals/entities that may provoke racial and religious discord, undermine social cohesion, erode trust in public institutions and/or threaten national security.⁶⁹ Hence, Singapore has since 2019 adopted a multi-pronged approach involving both legislative and non-legislative measures to deal with the issue of online falsehoods.

Legislative measures to combat online disinformation

5.2 In January 2018, the Parliament of Singapore established the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures ("the Select Committee")⁷⁰ to examine the guiding principles for responding to online falsehoods. The Select Committee considered that falsehoods would undermine democracy and harm the democratic contestation of ideas which freedom of speech served to protect. While the existing legislative framework could apply to punish the perpetrators of disinformation, the Select Committee observed that it was inadequate in empowering the government authorities to **stem the spread of deliberate online falsehoods fast enough to minimize their damage to society**.

5.3 Among the anti-disinformation measures recommended by the Select Committee, the most prominent one is the introduction of new dedicated legislation to provide the necessary scope and speed for the government to deal with online falsehoods that can be widely spread at a fast pace. Upon the recommendation of the Select Committee, the Parliament passed the **Protection from Online Falsehoods and Manipulation Act** ("POFMA") in May 2019 that came into effect in October 2019. The Act seeks to protect society from deliberate online falsehoods created by malicious actors by targeting falsehoods, **excluding opinions and criticisms, nor satire or parody**.

⁶⁸ For example, in 2015, the editors of a local website were alleged of posting articles featuring false information to stir up racial and religious tension. In 2016, a hoax was widely shared about the alleged collapse of a roof at a public housing estate which caused anxiety among residents and wastage of public resources in tackling the disorder it brought about. See Ministry of Communications and Information and the Ministry of Law (2018) and SingaporeLegalAdvice.com (2020).

⁶⁹ See Ministry of Communications and Information and the Ministry of Law (2018).

⁷⁰ The Select Committee was established on the request of the Ministry of Law and its report was released in September 2018.

5.4 In contrast to the anti-disinformation legislation in Germany and France, POFMA regulates a broader scope of falsehoods over a wide range of communication platforms. POFMA identifies the conceptual element related to online falsehoods, i.e. the communication of **false statements of fact** which is likely to **pose threat to public interest** through the Internet, social media platforms, as well as Multimedia Messaging Service and Short Message Service.

5.5 POFMA defines a false statement of fact as a false or misleading statement which a reasonable person seeing, hearing or otherwise perceiving it would consider it to be a representation of fact. The Act also sets out a non-exhaustive definition of public interest, which includes interests in Singapore's security, public safety, friendly relations with other countries, preventing influence on the outcome of an election or referendum, incitement of ill-feeling between different groups in the community, or loss of public confidence in the functionality of government institutions.

5.6 In addition to defining online falsehoods, POFMA also seeks to prevent the use of online platforms, particularly social media, for the communication of falsehoods. As such, the Act provides for a range of **regulatory tools** for the government authorities to regulate online falsehoods posted by **individuals as well as organizations**. These regulatory tools include: (a) making use of early intervention notices to direct the person or organization communicating a falsehood to **put up a correction notice** alongside the falsehood or **remove the disinformation**; (b) directing Internet service providers or online platforms to **disable end-users' access to the online location** of the falsehoods or access to the subject material; (c) ordering online platforms to **shut down any fake accounts and bots** on their platforms; and (d) **declaring an online location or website** that repeatedly spreads falsehoods,⁷¹ thereby reducing its ability to profit though it can continue to operate.^{72, 73}

⁷¹ Under POFMA, an online location or website can be declared a declared online location if it publishes three or more different falsehoods that are the subject of direction under the Act (such as being directed to correct or remove the falsehoods) in the preceding six months.

⁷² It is an offence under POFMA to receive any benefit from operating a declared online location, which includes selling advertising space on the location or providing access to any part of the location for payment.

⁷³ The POFMA Office under the Infocomm Media Development Authority is tasked with administering POFMA, including issuing directions and removal orders upon the instruction of ministers and ensuring compliance with the directions/orders issued.

5.7 The Singaporean government has also set out **binding codes of practice** for online platforms and digital advertising intermediaries. Three codes of practice have been issued for countering online falsehoods in each of the following specific areas respectively: (a) preventing and countering the use of fake online accounts and bots for spreading falsehoods; (b) enhancing the transparency of online political advertising; and (c) prioritizing relevant and authoritative information and de-prioritizing falsehoods.

5.8 POFMA imposes heavy **criminal sanctions** on "malicious actors" who deliberately spread falsehoods to undermine society as a deterrent to committing such activities. A person found guilty of committing any act, whether in or outside of Singapore, to knowingly communicating falsehoods in Singapore that pose a threat to public interest is liable to a fine up to S\$50,000 (HK\$291,500) and/or a term of imprisonment up to five years. An offender is liable to harsher penalties of a fine up to S\$100,000 (HK\$583,000) and/or a term of imprisonment up to 10 years if he or she spreads falsehoods through a fake online account or bot. Contravention of the codes of practice is subject to a fine up to S\$1 million (HK\$5.83 million) on conviction and S\$100,000 (HK\$583,000) per day for continuing the offence after conviction.

Non-legislative measures to combat online disinformation

5.9 The Select Committee has also recommended the implementation of non-legislative countermeasures which include nurturing an informed public and promoting fact-checking. To this end, the Singaporean government has stepped up **public education** efforts to **nurture an informed public** with the knowledge and skills to discern truth from falsehood. The measures so implemented include (a) introducing the overarching Digital Media and Information Literacy Framework in 2019 to guide relevant agencies and institutions in developing public education programmes on media and information literacy;⁷⁴ and (b) expanding the existing public education programmes on information literacy to incorporate topics on discerning false information.⁷⁵

⁷⁴ The Framework sets out the key learning outcomes of relevant public education programmes including how to protect oneself on the Internet and use digital technologies safely and responsibly. See Ministry of Communications and Information (2019).

⁷⁵ For example, the National Library Board has implemented a public education programme, the "Source, Understand, Research, Evaluate" since 2013 to promote information literacy and awareness of the dangers of fake news among the general public.

5.10 As for the promotion of fact-checking, the Select Committee has proposed setting up a fact-checking coalition comprising media organizations and other relevant partners to fact-check falsehoods promptly. While the Singaporean government has no concrete plan for implementing the proposal, it has committed to **providing relevant support to credible fact-checking initiatives** as appropriate.⁷⁶ Meanwhile, individual media and organizations have undertaken fact-checking on issues of public concern and the National Library Board has provided links to these resources to facilitate fact-checking by the public.

Issues of concern

5.11 As for the enforcement of POFMA, the Singaporean government iterates that **corrections will be the primary response** to online falsehoods, while other regulatory directions or orders such as removals or declarations may only be imposed for more serious cases.⁷⁷ Under the correction direction, posts do not have to be taken down, but the pages must run a correction notice with links to the facts. As such, POFMA is designed specifically to allow authorities to respond to fake news or false information through a graduated approach. It starts with enforcing links to fact-checking statements (correction directions), then blocking links to online locations containing the falsehoods, and finally to imposing criminal charges on "malicious actors".

5.12 According to the Minister for Home Affairs and Minister for Law, most of the POFMA orders issued have been correction directions.⁷⁸ As at September 2020, the POFMA Office reportedly issued (a) 51 correction directions to parties communicating falsehoods; (b) 12 correction directions ordering online platforms or other service providers to communicate a correction notice to their users about the falsehoods; (c) four declarations for online locations; and (d) four orders requiring Internet service providers to block Singapore users' access to online locations containing falsehoods.⁷⁹

5.13 Furthermore, the current process of allowing any government minister to determine what constitutes a false statement of fact and issue correction directions/removal orders if necessary is designed to swiftly break virality of falsehoods in an effective manner. According to the Singaporean government,

⁷⁶ See Ministry of Law (2019) and Yahoo News Singapore (2019).

⁷⁷ See Ministry of Law (2019).

⁷⁸ See CNA (2020).

⁷⁹ See CNA (2021).

an individual or organization may apply to the minister⁸⁰ who issued a correction direction or removal order to withdraw his or her decision, and appeal to the High Court to set it aside in case the application is refused by the minister concerned. As such, the courts will be the final arbiter of any disputes over falsehoods under POFMA. The individual or organization concerned may also apply for judicial review of a minister's direction or order as a safeguard.

5.14 Notwithstanding the above, the introduction of POFMA to combat disinformation has been considered contentious by some key stakeholders. There are criticisms that the two key preconditions for exercising the powers of POFMA, i.e. a "false statement of fact" and "against the public interest" are overly broad and vague, which might allow grey areas and interpretations and leaving the door open for abuse.⁸¹ The recent months have seen increasing public concerns about POFMA as the government invoked the law during the parliamentary election in July 2020 to correct a number of online media posts made by opposition parties commenting on government policies.⁸²

5.15 Meanwhile, some suggest the need to ensure transparency of the enforcement actions and prevent any abuse of power. They propose setting up an independent fact-checking body to be the "arbiter of truth" and review alleged falsehoods instead of vesting such power in the government ministers. There are some others proposing the government to make periodic accounting, perhaps in Parliament, of all the occasions when the government has compelled corrections and takedowns.⁸³

6. Concluding remarks

6.1 The growing prevalence of disinformation fuelled by technological advancement has posed challenges to the socio-economic stability, public safety and national security of many places around the world. In Hong Kong, most of the laws in the real world are applicable to the online world. The Government has regulated online disinformation through the existing legislative framework and enhanced publicity efforts to clarify rumours and speculations through

⁸⁰ Under POFMA, any minister can issue a correction direction or a take-down order for anything he or she considers to be a "false statement of fact", and he or she feels it is in the "public interest" to do so.

⁸¹ See Society for Computers and Law (2019) and Wilson Center (2020).

⁸² See CNA (2021), Reuters (2021), Wilson Center (2020) and POFMA Office (2021).

⁸³ See CNA (2021) and Yahoo News Singapore (2019).

various mass media channels. Nonetheless, there have been concerns about the effectiveness of such an approach in mitigating the damage that disinformation can bring once it goes viral.

6.2 All the overseas places studied have set out dedicated anti-disinformation regulatory measures to promptly deal with fake news and false information amid the wide reach and fast speed of online disinformation. For example, the EC has adopted a self-regulatory approach to facilitate the implementation of online regulation in its member states with minimal change to existing legislative framework and greater acceptance by key stakeholders. Under the approach, the EC has promoted self-regulation of online platforms through a voluntary Code of Practice; supported research, fact-checking and resilience-building activities; and strengthened coordinated responses to online disinformation among member states. However, in light of the limitations of the voluntary Code of Practice, the EC has considered to impose a clearer set of obligations and accountability on the online platforms through a co-regulatory approach to enhance the regulation of online disinformation in the near future.

6.3 Germany, France and Singapore have launched their respective anti-disinformation legislation, aiming at swiftly stemming the spread of disinformation before it becomes viral and mitigating the damage so caused. The salient features of their regulatory regimes are summarized in the [Appendix](#). On balancing the need to counter online disinformation and the safeguard for freedom of speech, Germany, France and Singapore have set out their respective dedicated anti-disinformation legislation with varying scope and focus. Germany and France **mainly regulate large-scale online platforms** through the anti-disinformation legislation. Germany aims at curbing illegal content identified under the relevant legislation (such as hate speech and defamation), while France focuses mainly on explicitly regulating election-related fake news and information in the three months before the day of a general election.

6.4 In contrast to Germany and France, Singapore regulates a broader scope of disinformation over a wide range of communication platforms. Its anti-disinformation law identifies falsehoods **conceptually** as the communication of false statements of fact which is likely to pose a threat to public interest. In addition, Singapore **regulates not only online platforms for being the channels of information dissemination, but also individuals and organizations posting disinformation content**. Furthermore, any government minister can determine what constitutes a false statement of fact and take

action to correct or remove it. Though issuing correction directions is the primary response to falsehoods identified, heavy penalty provisions are set to deter the spread of falsehoods. Nevertheless, the Singaporean government iterates that individuals or organizations affected can appeal to the High Court, and the court will be the final arbiter of any disputes over falsehoods under the anti-disinformation law.

6.5 As online platforms are playing an important role as gatekeepers of information and the channels of information dissemination, all the overseas places studied also enlist the **involvement of online platform operators in containing disinformation**. These include imposing one or more of the following requirements on the operators to: (a) put in place a mechanism for users to report disinformation; (b) address the issue of fake accounts and bots; (c) enhance transparency of their content recommendation algorithms; and (d) increase transparency of the sources and funding of sponsored content, especially for political advertising. Online platform operators follow the above anti-disinformation measures on a voluntary basis in the EU, but they are obliged to do so in Singapore, France and Germany.

6.6 The introduction of dedicated anti-disinformation legislation in Germany, France and Singapore have met with strong criticisms before and after the legislation. In particular, there have been serious concerns over the definition of disinformation being too vague or overly broad, damage to the freedom of speech caused by disproportionate regulatory measures, and/or the arbiter of dispute over falsehoods. Some stakeholders have also worried that some conservative online platforms may over-block content at the point of upload or tighten their community guidelines in order to avoid being held liable for illicit content posted on their platforms. Hence, there have been calls for putting in place adequate safeguards and oversight in the regulatory regime and ensuring transparency in implementing the anti-disinformation legislation.

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Dedicated legislation to tackle disinformation in Germany, France and Singapore

	Germany	France	Singapore
Relevant legislation	<ul style="list-style-type: none"> Network Enforcement Act 	<ul style="list-style-type: none"> Law against the Manipulation of Information 	<ul style="list-style-type: none"> Protection from Online Falsehoods and Manipulation Act
Objectives	<ul style="list-style-type: none"> Strengthening enforcement of the law against online illegal content 	<ul style="list-style-type: none"> Countering election disinformation 	<ul style="list-style-type: none"> Swiftly disrupting and deterring the spread of online falsehoods Preventing the abuse of digital tools and platforms for spreading falsehoods
Types of disinformation tackled	<ul style="list-style-type: none"> Illegal content as defined in the relevant provisions of the German Criminal Code that is posted on large social media platforms 	<ul style="list-style-type: none"> Online fake information that can disrupt public order or affect the validity of an election 	<ul style="list-style-type: none"> False statements of fact communicated on the Internet, social media platforms and closed platforms that pose a threat to public interest Opinions, criticisms, satire or parody are not covered
Parties responsible for determining falsehoods	<ul style="list-style-type: none"> Social media platforms 	<ul style="list-style-type: none"> Judges 	<ul style="list-style-type: none"> Government ministers
Parties regulated	<ul style="list-style-type: none"> Social media platforms with over 2 million registered users in Germany 	<ul style="list-style-type: none"> Online platforms with more than 5 million distinct visitors per month in France 	<ul style="list-style-type: none"> Individuals or organizations posting disinformation Internet service providers and online platform operators

Dedicated legislation to tackle disinformation in Germany, France and Singapore

	Germany	France	Singapore
Major regulatory tools	<ul style="list-style-type: none"> • Requiring social media platforms to remove reported illegal content within the specified timeframe • Obliging social media platforms that receive more than 100 complaints in a year to publish half-yearly reports on their practices in handling complaints about illegal content 	<ul style="list-style-type: none"> • Imposing obligations for online platforms to provide a mechanism for users to report fake information and submit an annual report on the measures taken to combat disinformation • Requiring online platforms to disclose the sources and funding of specified sponsored content in the three months before a general election • Empowering judges to order a halt on the dissemination of fake information online in the three months before a general election 	<ul style="list-style-type: none"> • Issuing a direction to put up a correction notice alongside the falsehood or remove the falsehood; • issuing a direction to disable end-users' access to the falsehoods, or shut down any fake account or bot; or • declaring an online location or website that repeatedly spreads falsehoods
Penalty	<ul style="list-style-type: none"> • Imposing a fine of up to €50 million (HK\$466 million) on social media platforms for failing to comply with specified legislative provisions 	<ul style="list-style-type: none"> • Imposing one year of imprisonment and a fine of €75,000 (HK\$698,000) for any violation of the election-related disclosure obligations 	<ul style="list-style-type: none"> • Individuals who deliberately spread falsehoods to undermine society are liable to a fine up to S\$50,000 (HK\$291,500) and/or a term of imprisonment up to five years. The maximum penalties are doubled if a bot or an inauthentic account is used to spread falsehoods.

Dedicated legislation to tackle disinformation in Germany, France and Singapore

	Germany	France	Singapore
Appeal mechanism	<ul style="list-style-type: none"> Applying to the Federal Office of Justice to set aside the order, or appealing to the court if the Federal Office of Justice refuses to set the order aside 	<ul style="list-style-type: none"> Appealing to a court of appeal for an order issued by a judge to stop the dissemination of certain content online 	<ul style="list-style-type: none"> Applying to the minister who issued a direction to cancel it; appealing to the High Court to set a direction aside in case the application to cancel it is refused Alternatively applying for judicial review of a minister's direction
Enforcement	<ul style="list-style-type: none"> Some 215 000 items of content were removed by the three major social media platforms between January and June 2020 under the framework of the Network Enforcement Act, and the removal rates ranged from about 16% to 38% of the reported items of content. 	<ul style="list-style-type: none"> Information not available 	<ul style="list-style-type: none"> 71 directions were issued between October 2019 and September 2020, of which 89% were correction directions.
Issues of concern	<ul style="list-style-type: none"> Prompting social media platforms to over-block content or tighten their community guidelines to avoid any liability, possibly incurring the risk of curbing legal speech 	<ul style="list-style-type: none"> Curbing freedom of speech and freedom of press Difficulties faced by judges to determine whether a piece of content is inaccurate within a short timeframe 	<ul style="list-style-type: none"> Power to determine falsehood is vested in the government ministers. The definition of falsehoods is considered overly broad and vague, allowing grey areas and interpretations and leaving the door open to abuse.

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