

ELECTORAL MATTERS COMMITTEE

Inquiry into the Impact of Social Media on Elections and Electoral Administration

Melbourne—Thursday, 19 November 2020

(via videoconference)

MEMBERS

Mr Lee Tarlamis—Chair

Mrs Bev McArthur—Deputy Chair

Ms Lizzie Blandthorn

Mr Matthew Guy

Ms Katie Hall

Ms Wendy Lovell

Mr Andy Meddick

Mr Cesar Melhem

Mr Tim Quilty

Dr Tim Read

WITNESS

Mr Luboš Kukliš, Board Member, European Regulators Group for Audiovisual Media Services.

The CHAIR: I declare open the committee hearing for the Electoral Matters Committee Inquiry into the Impact of Social Media on Elections and Electoral Administration. I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on today, and paying my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here to impart their knowledge of this issue to the community or who are watching the broadcast of these proceedings.

I welcome Luboš Kukliš, a Board Member from the European Regulators Group for Audiovisual Media Services. I am Lee Tarlamis, the Chair of the committee and a Member for South Eastern Metropolitan region. The other members of the committee here today are Bev McArthur, Deputy Chair and a Member for Western Victoria; the Honourable Wendy Lovell, a Member for Northern Victoria; Andy Meddick, a Member for Western Victoria; and Dr Tim Read, the Member for Brunswick.

All evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action in Australia for what you say here today. However, if you repeat the same things outside of this hearing, including on social media, those comments may not be protected by this privilege. While you are covered in Australia under parliamentary privilege for any comments you make today, you should note that Australian law cannot give you the same protection with respect to the publication of your evidence in the jurisdiction you are giving evidence from.

All evidence today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check as soon as it is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible. I now invite you to proceed with a brief opening statement, which will be followed by questions from the committee.

Mr KUKLIŠ: Can I give an opening statement?

The CHAIR: Absolutely.

Mr KUKLIŠ: ERGA is the European Regulators Group for Audiovisual Media Services, and we are an organisation that consists of the media regulators from all the EU member states. We are predominantly an advisory body to the commission. In terms of elections and the problem of disinformation, we have been tasked by the commission to monitor the implementation of the code of practice. The code of practice is a self-regulatory instrument that has been devised by major digital platforms—mainly Facebook, Google and Twitter—to handle the problem of disinformation, not only during the elections. It was put forward just before the European elections, which is a major electoral event in Europe of course, so we had the opportunity to monitor closely the developments there. Then we continued—two years—and earlier this year we published our report on that with our recommendations to the commission and to the wider public on what we think might be important to enhance the tackling of the problem of disinformation and what any future instalment of the code of practice should consist of. So this is my background, and now we can probably proceed to questions.

The CHAIR: Dr Read, would you like to start the questioning?

Dr READ: Yes. I am curious about ad repositories and whether people really make use of them much. They seem like a good idea, but how does the community really make use of such a thing to verify or authenticate messages?

Mr KUKLIŠ: Well, of course, one of the commitments was to establish these repositories, and there should be an element on the ads themselves that people just can click and can get to that information. We do not know how many people actually use those possibilities, but the important part of that is that there are people—there are campaigns on media literacy, for example—who are following these things closely. And then there is a way this information can get to a journalist, for example, and to people who are doing those campaigns and that information then can get to people. So I think it is not only about the users themselves but also the organisations that are following the elections and that are focused on the transparency of elections.

Dr READ: Okay, great. Thank you.

The CHAIR: Mrs McArthur.

Mrs McARTHUR: Thank you, Chair. I am inherently sceptical about regulators. I am inherently sceptical because somebody has got to appoint the regulators. So did the European Parliament appoint your group or the European Commission? How do you get appointed, and how do we verify that you are independent, you regulators?

Mr KUKLIŠ: Thank you. Very good question. Now, the media regulators that are gathered in the ERGA are national regulators in all of the member states. One of the requirements for media regulators, stemming from the EU law, is that they should be independent. Every member state is dealing with this differently. For example, in my country, Slovakia, the members of the board of the media authority are elected by Parliament. I am Executive Director, so I am elected by those members. And there are, well, guarantees in the law that the members are independent. They cannot be taken out of the board—only if there is a crime committed, for example, and so on. There are also budgetary issues of course—how the media authorities are funded, and again, it is different in every member state.

Now, the ERGA itself is created by the commission as its advisory body. So the independent media regulators from all of the member states are members of ERGA. There are no special guarantees for the independence of ERGA itself, but again, practically it is done by all the members being independent as media regulators from their member states. The other thing is that, in this matter—on the problem of disinformation—ERGA has no decision-making powers. These are only recommendations that we are giving to the commission, on the one hand. On the other, even at the member state level, it is currently only France and the media authority there that have any power over the problem of disinformation in the digital environment. All the other member states do not have currently, as far as I know, legislation directly aimed at disinformation in the digital space.

The CHAIR: I might jump in with a question. Are there any approaches that have been taken in the EU, or that EU member states have taken, with regard to disinformation that have already had some impacts with regard to social media and online advertising and that have been effective?

Mr KUKLIŠ: Well, I think a code of practice is a good start. We are acknowledging that in our report, because just to have the repositories of the digital advertising is a very good thing. Now, of course, for the effectiveness of the whole thing, we need more transparency. Because it is one thing for the platforms to say, ‘We have those measures in place’; it is another to ascertain that this is really happening, and of course to find out how effective those measures are. For example, when we are talking about repositories, the problem is that they are full of the ads that have been assigned or labelled as political advertising by the platforms themselves. Now, if you cannot see all the other ads that have been on the service itself and find out whether really all those that would fulfil the definition of political ads are indeed in the repositories, we cannot say what is the percentage of accuracy in those.

So one of our recommendations, and probably the most important one, is to enhance the transparency of the whole thing. Now, how do you do that? We are saying that there is needed some kind of co-regulatory system, which means that the rules and the measures will be established by the platforms themselves but that there will be an independent means of how to verify that those things are actually in place and to have the opportunity and ability to verify that the data that you are getting are actually right.

The CHAIR: How responsive are they being? I know you are saying in your documentation that self-regulation has not worked. You are saying there needs to be more rigour around transparency around how they comply with the code rather than them just saying, ‘Yes, we’re doing it’—actually proving that they are doing it. Do you think you will need a great deal of regulation to force them to be transparent, or do you think that they will eventually come to the party and do that without regulation, or do you think you will need the regulation to make them do that?

Mr KUKLIŠ: We spent two years talking to the platforms, and I really do think that a lot that they have been doing has been a genuine effort to help this environment. But there are limits to what you can see and what they will make available for the regulators or for the public for that matter. There is always an argument—for example, GDPR. I do not know if you are familiar with this particular legislation of the EU, but it is about data protection. But we know from our other colleagues that are in the authorities that are dealing with GDPR

that probably this cannot be the right answer, or when this is not the answer, sometimes it has been that, with the data for which we are asking, there is just an extreme volume of that. So it is technically improbable that we can get those.

But it is not that we are not trusting their answers. It is that we have to create a system that has trust inherently in it, so that you can trust the platforms and the data you are getting from them and you can trust the independent oversight body or whatever it will be called that is doing its work independently and that everything that is claimed to be transparent actually is. So there should not be a kind of ask and answer policy in this. It should be absolutely clear what is the kind of data that you are making available in order to be transparent and so that everybody can rely on it.

The CHAIR: Thank you. Ms Lovell.

Ms LOVELL: No. I do not have a question at this stage.

The CHAIR: Mr Meddick, did you have a question? No. Did any other committee members have a question? Sorry, Bev, did you have a question?

Mrs McARTHUR: I was just waiting to see if there was anybody else. What successes have EU regulators had in particular around elections that you think are significant?

Mr KUKLIŠ: Well, the most successful thing is probably that nothing that harmful transpired during the European elections, and then we were able to see a lot of what has been happening there on the digital platforms because of the code of practice. As I said, the code of practice is a subregulatory thing, but it was a good start because previously you did not have that access to that information. So again this is a good start. Now we are following up on that because elections are happening in the member states. Every year you have at least two major elections in summer in Europe, so we are following up on that and using the information that we got, the skills that we acquired, the technical knowledge and the means that has been allowed by the code of practice to monitor what is happening in the digital arena at the member state level during the elections. And of course we think this is not enough, as I said, so there are two new major initiatives now coming up from the European Commission to the European Parliament. One is called the *Digital Services Act*, which is a legislative proposal, and the other is a more broad strategic initiative called the European Democracy Action Plan. Those will be probably very important also to the problem of disinformation. The drafts should be out on 9 December, so we are all waiting on what will be in them. But our hope is that there will be at least a basis for dealing with things for the future—for example, to have the opportunity to establish the co-regulatory regime that I have been talking about, because when you have co-regulation, the subregulatory part is quite clear. Now, for the other part you need some kind of legislative basis.

The CHAIR: No worries. Mr Meddick.

Mr MEDDICK: I am terribly sorry. I know I said I did not, but it is just something you were talking about there before about regulations coming forward—

The CHAIR: That is all right.

Mr MEDDICK: Thank you. Because you are talking about moving from a self-regulatory environment to one that is at least semiregulated by another body, what resources are you going to have at your disposal where you find misinformation deliberately being spread and those sorts of things? Are there punitive measures that are being proposed, such as fines or that sort of thing? Are you looking at going that far?

Mr KUKLIŠ: Certainly not me, but we will see what will be in the legislation. But as I said, the most important part now is transparency. So we have to start with clear rules on transparency, and I think all the other things will just follow. If you understand what is happening—and if you have the ability to understand what is happening, actually—you can then come up with the idea of whether further regulation is needed or not. We know that transparency is the absolute key here. So what I do expect is to have legislation that will ensure that transparency, and all the other things will follow. The code of practice as it is stated now is subregulatory. There are no sanctions. There is no legal enforcement written in it.

Mr MEDDICK: Okay. Thank you so much. Ta.

The CHAIR: Ms Lovell.

Ms LOVELL: Thank you. I just wanted to follow up on that and ask you: when you are talking about regulating for social media—and you are obviously talking about the whole of Europe—how do you regulate for what happens in one jurisdiction when the platform is operating in another jurisdiction?

Mr KUKLIŠ: In Europe the question of course in many areas—for example, in media—is dealt with by the principle that is called ‘country of origin’. It means, for example, in media legislation, that when you have a broadcaster that is broadcasting from France, the regulation that this broadcaster has to follow is the French regulation. All the other members need to respect that, but France has the obligation to really ensure and enforce the regulation. Then you have basic kinds of rules that are common for all the member states. Those ensure that at least the basic level of regulation is there for everybody, and very probably in the digital environment these things will follow. For example, the *Digital Services Act*—that I have mentioned the draft of should be published on 9 December—is a follow-up to legislation called the ecommerce directive, and this directive is aimed at electronic commerce, of course, and it is following the country-of-origin principle too. So it is very much expected that this country of origin will be followed also in the new *Digital Services Act*.

Ms LOVELL: That is going to make it very difficult given that these platforms are largely based in America and they are going to be commenting on Australian elections or European elections. Everyone has a much different view of what is acceptable—to get a base level that is going to be acceptable to one jurisdiction will be very difficult to get in another jurisdiction.

Mr KUKLIŠ: Well, for the purposes of e-law they are based in Ireland currently. Facebook is based in Ireland, Google is based in Ireland, so it will be Irish legislation and regulation that they will have to follow in order to operate in Europe. It has been largely working. For example, when I mentioned GDPR, this is based on the same system. For the purposes of e-law they are based somewhere in Europe. There are criteria that you follow to ascertain and to find out which member state they are based in. So in those terms, in order to conduct business in the EU there will be a member state as a country of origin for the purpose of e-law. Of course, you know, factually they are coming from the US.

Ms LOVELL: Thank you very much, Ľuboš.

The CHAIR: Thank you. Are there any further questions from committee members? No. All right, in that case I would thank you, Mr Kukliš, for your submission and for presenting to us today. Your insights have been very valuable. There may be some follow-up questions because some of our committee could not be here with us today, and we hope that we might be able to submit those to you if that is the case.

Mr KUKLIŠ: Sure. Thank you very much for having me. Have a nice day. Bye-bye.

The CHAIR: No worries. Thank you. That ends this session.

Witness withdrew.