

Answers from Croatia

Event on Democratic Participation and Electoral Matters

25-26 April 2018

Questions to Member States' authorities

1. Has your country introduced any measures governing the use of media and social media in the context of election campaigns? These measures may include, but not be limited to:
 - i. the observance of election silence period,
 - ii. prohibition of disinformation (fake news)
 - iii. equal representation of candidates
 - iv. financial rules on campaigning and especially advertising limitations, awareness campaigns or bypassing the established financial limits.If so, please briefly list such measures and explain possible exemptions for example for social media. If not, is your country currently considering introducing such measures in the future and for which media?
2. Is there any existing case law in your country or relevant opinions of the electoral commission regarding the use of media, and of social media platforms, during election period? If so, please provide an overview.
3. Has your country introduced any transparency or disclosure requirements for political entities advertising online in general and social media in particular? Do political digital ads have to be explicitly labelled with an imprint? Does the funding and provenance of these ads have to be clearly displayed?
4. In which way do you monitor the application of relevant provisions of national election laws or other above mentioned measures? Which authority covers political ads (i.e. advertising authority or other authorities)? Have you started to develop online archives of political adverts?
5. Would you consider a possible role for National Statisticians to play in formal fact checking during elections, at least of certain materials where statistical data is at the core?
6. Given the importance of freedom of expression in election campaigning and the democratic process, what is in your view the balance between formal regulation and self-regulation?

7. The use of third party data sources by political parties is increasing significantly - from companies such as Experian, Axion etc. These data sources are then linked to electoral registers. There are significant issues around transparency and whether the public are aware of this. What in your view can be done to make the public more aware of how data is used in campaigning?
8. Has your national data protection authority issued guidance on personal data processing, including with regards to social media, in the context of election campaigns?
9. Does the electoral commission in your country have any specific collaboration with data protection authorities with regard to the issues discussed above? Is this collaboration formalised in any way (e.g. through a Memorandum of Understanding or similar)?

ANSWERS:

1. The provision of Article 21 of the Law on the Election of the Members of the European Parliament in the Republic of Croatia (Official Gazette 92/10, 23/13 and 143/13) regulates some of the issues of using media in the context of electoral campaigns, especially questions of advertising: "The election campaign begins on the day of publication of the legitimately proposed lists and ends 24 hours before the day of the election. On the day of the election until the closing of the polling stations, as well as 24 hours before the day of the elections, any election campaign, the publication of the evaluation of election results, as well as the publication of previous, unofficial election results, publication of photographs in the media, statements and interviews of the list holders, candidates, and mentioning their statements or written works is forbidden. "

Furthermore, Article 22 of the same Law states: "At the time of the electoral campaign, all political parties that have proposed candidate lists and candidate lists of candidates of an electoral group have the right to stand for election and electoral campaign under equal conditions. All means of public communication shall be such as to enable the exercise of the rights of political parties and candidates of the candidate lists of voters' groups, in accordance with the Rules on Operation of Electronic Media with National Concession in the Republic of Croatia during Election Promotion. "

The Law on Election of Members of the European Parliament from the Republic of Croatia provided for misdemeanour sanctions for the violation of electoral silence, not only for election candidates, but also for other natural and legal persons and responsible persons in a legal person.

Regarding the issue of the campaign's financial rules, we point out that the provisions of the Act on Financing Political Activities and Election Promotions (Official Gazette No. 24/11, 61/11, 27/13, 2/14, 96/16 and 70/17) regulate issues related to sources of funding of election subjects, regular annual financing, indirect financial support, membership fees and voluntary contributions (donations), grants limitations, election promotion financing (sources of funding for election promotion, financing from own resources, financing from grants, constraint on electoral campaign costs, limitation of the total amount of election promotion costs), the cost of electoral campaign expenditures from the state budget and the budget of local and regional self-government units (JLP), ban on financing and facilitation, disclosure of donation data election campaign costs, oversight of financial affairs of election subjects, and issues related to audit of financial statements and financial operations, oversight of election campaign financing, administrative sanction and misdemeanor provision (the imposition of fines). All problematic situations and problems arising from the current provisions are planned to be improved when the new Act on Financing Political Activities and Electoral Advertising will be drafted.

With regard to media advertising, the Law on Financing of Political Activities and Electoral Advertising stipulates that the electoral constituents are obliged to publicly

publish the price and the amount of the discounted price for media advertising of electoral advertising, and that the subjects providing media advertising of election promotion are obliged to submit to the State to the Electoral Commission the price list of the advertising services and publish it on its web site. In this way, it is possible to check whether the providers of media advertising of election promotions provide these services to all electoral participants under the same conditions.

2. The State Election Commission of the Republic of Croatia, within its sphere of activity, cares about the legal preparation and implementation of the elections, supervises the regularity of election promotion, oversees the financing of electoral campaign and, in accordance with its scope of activity, develops opinions, answers to inquiries and provides inter alia instructions on media monitoring and their role in the electoral process, in accordance with the provisions of the Election Law of the Members of the European Parliament in the Republic of Croatia and the Act on the State Election Commission. Also, we have to state that we do not have information regarding court practice in this area.

The State Election Commission in the conduct of the election announcements warns electoral constituencies to refrain from violating electoral silence also on social networks.

3. Regarding transparency issues, for example, we state that the provisions of Article 22 of the Election Law of the Members of the European Parliament in the Republic of Croatia (Narodne novine, Nos. 92/10, 23/13 and 143/13) stipulates that: "At the time of electoral campaign, all political parties that have proposed candidate lists and candidates for the candidate list of voter groups have the right to make statements and electoral promotion under equal conditions. All means of public communication shall be such as to enable the exercise of the rights of political parties and candidates of the candidate lists of voter groups, in accordance with the Rules on Operation of Electronic Media with National Concession in the Republic of Croatia during Election Promotion. Pursuant to these provisions it can be said that certain legal provisions have contributed to the transparent exercise of the rights of all political actors as well as that the provisions of the Act on Financing Political Activities and Electoral Publicity also greatly contributed to the transparent election promotion process with special emphasis on transparent funding of the same.

The provision of Article 38 Paragraph 1 of the Act on Financing Political Activities and Electoral Advertising stipulates that the State Election Commission's report on monitoring compliance with the provisions of the Act on Financing Political Activities and Electoral Advertising related to Election Promotion shall be published on the State Election Commission's website within 60 days of the publication of the final official results of the election.

Article 39, Paragraph 3 of the Law on Financing Political Activities and Electoral Advertising stipulates that political parties, holders of the independent lists, ie holders of the list of voter groups and candidates (ie, electoral constituents), publish financial reports on the financing of the electoral campaign on their web pages, or on the websites of the political party that proposed the candidate or in the daily press within 15 days of the deadline for submitting the financial statements to the State Election Commission.

4. Within the scope of the Ministry of Public Administration's administration responsibilities there is no conducting of online political archive or archives, but with regard to the question of the application of the relevant provisions of the national electoral laws, we emphasize that the provisions of each law prescribe exactly who supervises the implementation of the law. For example, oversight over the implementation of the Law on Financing of Political Activities and Electoral Advertising in the part related to the financing of electoral campaign is conducted by the State Election Commission of the Republic of Croatia, which as a permanent and independent body under Article 37 of the Law on Financing Political Activities and Electoral Advertising, supervises based on the documentation submitted by the political parties, the holders of the independent lists or the lister of the list of voters and candidates, through the relevant bodies and services, to check whether the amounts of the funds used correspond to the amounts received in the financial statements and whether the data specified in these reports is accurate .

We also emphasize that the State Election Commission is a permanent and independent state body that carries out its activities in accordance with the Act on the State Election Commission of the Republic of Croatia and the laws governing the election of MPs to the Croatian Parliament, the election of the President of the Republic of Croatia, the election of members of the representative bodies of the local units regional and local self-government units, election of municipal mayors, mayors, prefects and mayors of the City of Zagreb, election of members of councils and representatives of national minorities in local and regional self-government units, implementation of a state, local and advisory referendum as well as taking care of legal preparing and implementing elections for members of the European Parliament

5. In the Republic of Croatia statistical matters are dealt with by the Central Bureau of Statistics within its scope of competence under Article 34 of the Law on Organization and Scope of Ministries and Other Central Government Bodies (Narodne novine, Nos. 93/16 and 104/16) The State Election Commission of the Republic of Croatia, within the scope of its mandate prescribed by the Act on the State Election Commission of the Republic of Croatia (Narodne novine, Nos. 44/06 and 19/07), conducts certain statistical surveys related to electoral processes, campaigns, elections. to say that in the Republic of Croatia there are certain statistical surveys related to electoral processes,

that is, the post-election period, but the Ministry of Administration does not have any concrete data from other bodies about it.

Upon completion of the elections, the State Election Commission publishes statistical data relating to electoral constituencies (in the phase of candidacy - age, gender of candidates, proponents, phase of the outcome - age, sex of candidates, proponents etc.)

6. The balance between formal regulation and self-regulation might be achieved if all electoral process actors, on the one hand, adhere to the regulations governing the electoral process, and on the other hand have in mind the fundamental values laid down in the Constitution of the Republic of Croatia and in compliance with the provisions of those regulations that regulate data protection at the EU level, or at the level of national regulations dealing with data protection issues. Since the electoral process is of great importance to each country, these issues are politically very sensitive and it is difficult to find a formula that would give an answer on how to balance the formal regulation and self-regulation.

7. Election laws and the Law on Financing Political Activities and Election Campaigning give no mandate to the State Election Commission, nor any given tools that would allow control of the described way of using the data.

For its part, the State Election Commission pays special attention to protecting the personal information of electoral constituents in the elections - whether it be electoral constituents, members of electoral bodies, observers, etc. The redesign of the State Election Commission web site by the end of 2017 has enabled in the column of the Election Archive, the published information about the electoral constituents is kept permanently, without mentioning personal data, in order to prevent their misuse.

8. and 9.

At the beginning of 2018, the State Election Commission requested an opinion of the Personal Data Protection Agency regarding the protection of personal data in electoral proceedings and a working meeting was held in connection with that mentioned above. The State Election Commission will continue to resolve all controversial or open issues regarding the data protection issues in cooperation with the Personal Data Protection Agency, regardless of the fact that this cooperation is not "formalized".