

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?

In Slovenia Elections and Referendum Campaign Act (hereinafter: **Act**) regulates the issues related to elections campaigns for the election of deputies to the National Assembly, members of the Republic of Slovenia to the European Parliament, President of the Republic, members of representative and individually elected bodies of local communities, and issues relating to referendum campaigns.

One of the main purposes of the Act is to ensure **the equality of participants** in the campaign (i.e. equal representation of candidates) and also to ensure the **transparency of campaign financing**.

Pursuant to this Act, an elections campaign includes all political advertising contents and other forms of political propaganda aimed at influencing voter's decisions when voting in elections. Referendum campaign includes advertising contents and other forms of propaganda aimed at influencing voter's decisions when voting in a referendum.

“Elections campaign” includes particularly the following:

- Propaganda in media and electronic publications, and propaganda through telecommunications services,
- Poster placing and
- Public meetings related to an election or referendum campaign.

The Act explicitly does not regulate campaigns on social media, it uses only term “media”.

Act defines that an elections campaign may begin no earlier than 30 days before the voting day, and shall end no later than 24 hours before the voting day. That means that **elections silence period** begins on the day before the voting day and lasts until the closing of the polling stations.

Elections and referendum campaign in media is regulated in Article 5., 6. and 7. of Act:

Article 5

(1) In order to ensure transparency and unbiased public information when publishing opinion poll and surveys on candidates, lists of candidates, political parties and a referendum question during elections or referendum campaigns, media publishers shall indicate the trade name or the name and family name and the registered office or address of the customer, payer and provider, the period in which the public opinion poll or the survey was carried out, the method of their implementation, the sample and responsiveness of respondents, the questionnaire or questions, and measurement errors.

(2) Publication of opinion poll and surveys on candidates, lists of candidates, political parties and a referendum question shall not be permitted 24 hours before the voting day and until the closure of polling stations on the voting day.

Article 6

(1) Media publishers shall determine and publish the rules (scope, conditions and methods) for the use of airtime or newspaper space for presentations of candidates, political parties and their programmes or for presentations of opinions about the referendum question no later than 45 days prior to the date of voting in elections or 25 days before the date of voting in a referendum.

(2) During the elections campaign, Radio Television Slovenia shall provide airtime for presentations of candidates or views about the referendum question in accordance with the provisions of the law governing Radio Television Slovenia that regulate political propaganda in the Radio Television Slovenia's broadcasting.

(3) Publishers of other print and electronic media being directly or indirectly in majority public ownership shall ensure a level playing field for publication of elections propaganda messages to all organisers, and in accordance with the rules referred to in the first paragraph of this Article, they shall ensure equal treatment of elections campaign organisers in presentations of candidates and their programmes, while specific time or space can be provided for political parties already represented in the National Assembly or political parties and candidate lists already represented in representative bodies of local communities, and specific time or space for political parties and candidate lists not yet represented in the National Assembly or in representative bodies of local communities.

Article 7

(1) In the media determined as such by the regulations on media, media publishers shall publish election advertising contents indicating the customer's name.

(2) Bulletins, catalogues or other information publishing media, in posters, pamphlets, banners and video pages without live images, and in telecommunications messages containing advertising contents for an elections campaign shall contain the name of the customer of such contents. Posters shall also bear their serial number.

- 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.**

Decision of Supreme Court of Slovenia from 2016 (number Ips 31/2016 from 25th of August 2016) regarding elections silence in social media.

Facts: On the day of the election silence for the local elections in 2014 the individual was issued a decision on the violation of the election silence, because he published on his Facebook profile a web

address and a record: "An excellent interview! You are invited to read!" This was an interview with a candidate who was subsequently elected for Mayor.

The Supreme Court denied the violation and said that election propaganda doesn't mean an individual publication of statements about current social or local conditions in newspaper or social networks. Supreme Court also said that the concept of propaganda has a constitutive importance that comes to influencing or attempting to influence to a certain circle or a larger group of people and that the concept of propaganda also includes planned and systematic actions.

- 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?**

Article 7 of Elections and Referendum Campaign Act

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Also - the report on financing the elections campaign, which has to be submitted to the Agency of the Republic of Slovenia for Public Legal Records and Related Services (hereinafter referred to as: AJPES) through the AJPES web portal and is later **publicly available on the AJPES website**, includes data on all individual items of expenditure intended by the elections campaign organiser for financing the elections campaign, including their amount, irrespective of its volume, together with the purpose and the service provider or product vendor.

- 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?**

Article 40 of Elections and Referendum Campaign Act

(1) Supervision of the implementation of the provisions of this Act, the violations of which are defined by this Act as offences, shall be the responsibility of the internal affairs inspectorate, except in the cases referred to in Articles 5 and 6 and the first paragraph of Article 7 hereof, where the responsibility will belong to the culture and media inspectorate, Articles 8, 9 and 11 hereof, where the responsibility belongs to the local community inspection or local community constabulary, and in parts of the provisions referred to in Articles 4, 14, 16, 18, 19, 22, 23, 29 and 30 hereof relating to financing, which shall be the responsibility of the Court of Audit.

(2) The Court of Audit shall perform supervision within the powers laid down by this Act and the law governing the jurisdiction of the Court of Audit.

(3) The inspectorate responsible for internal affairs, inspectorate responsible for culture and media, responsible local community inspection or local community constabulary shall be allowed to impose fines for offences under this Act within the range prescribed hereof, where under an expedited procedure, they may impose fines also in the amounts exceeding the minimum prescribed fine.

(4) If it is established during supervision that an opinion poll or a survey was published during the period of 24 hours before the voting day and the closure of polling stations on the voting day, an

official of the body responsible for supervision may order by a decision the removal of the opinion poll or survey. An appeal shall be allowed against this decision. An appeal shall not stay the execution. The appeal shall be decided by the ministry of culture.

(5) Inspection and other state bodies, and holders of powers conferred by public law, which establish during exercise of their tasks any violation of the provisions of the Act referred to in the first paragraph of this Article, shall provide the offence body with a proposal on initiating offence proceedings.

According to our knowledge there has been no project or regulation on national level in Slovenia for 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?

In Slovenia statistics on election participation by sex and age are recorded and published by the State Election Commission which is an autonomous state body. The statistical data has been published on the web which enables that anyone can freely analyze/re-use it.

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?

The Elections and Referendum Campaign Act stipulates that the election campaign begins 30 days before the election day. This is the period in which the legislator wanted to tighten up the control over the acts of the election campaign, especially on its financing, and on the other hand to facilitate its implementation. The actions of candidates outside of this period are considered in the context of the right to freedom of expression and in the context of the right to assembly and association (as defined by the Constitution of the Republic of Slovenia in Articles 39 and 42), unless they "extend" to the period of the election campaign (eg posters are printed before the beginning of the election campaign, and they are dismantled (also) during the election campaign).

7. The use of third party data sources by political parties is increasing significantly - from companies such as Experian, Axiom 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?

Every citizen of the Republic of Slovenia who has reached the age of 18 by the Election Day shall have the right to vote and to be elected as a deputy. The competent authorities can check the voting rights of the individual in the voting rights register, which is managed on the permanent basis by the Ministry of the Interior. The access to the register is provided only to the official authorities.

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?

While the Information Commissioner of the Republic of Slovenia has issued many guidance on personal data processing, including with regards to social media, it has not issued and particular guidance with the direct connection to the election campaigns. The general legal framework (Personal Data Protection Act) and the GDPR apply. On the web site of the Information

Commissioner also all the decisions and opinions regarding protection of personal data are publicly available.

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)?

To our knowledge there has been no specific collaboration between the State Election Commission and data protection authorities (Information Commissioner). The Information Commissioner performs an inspection of the implementation of the provisions of the law on the protection of personal data.