

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?

The General Elections Act (Cap. 354 of the Laws of Malta) provides for these restrictions:

- No public meeting/demonstration to be held on the eve and on the day of voting (Art. 65)
- No loitering or making propaganda is allowed within 50 metres from a polling place on the day of the poll (Art. 66)
- Political party clubs physically located within 50 metres from a polling place must remain shut on the day of the poll (Art 66)
- No intimidatory and/or obstructive congregation of persons during voting in any street may assemble (Art 67)
- On the eve and on the day of voting no public meeting/demonstration may be held in any place and no address may be made on the broadcasting media or published in any newspaper, printed matter or other means of communication that influences the electorate (Art 114)
- No bills/posters/advertisements may be displayed in public places, accessible or visible to all. Authorised billboards and streamers are excepted (Art 116).

Social media, *per se*, is not catered for, except for the underlined generic restriction. The need to restrict or liberalise social media is felt, however such consideration is still in the initial stages. Currently there is awareness of the problem but no concrete action to amend the law. Besides, there are now four voting days and not one day as originally catered for by the General Elections Act (Cap. 354).

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.

The Electoral Commission received complaints of social media used politically in the last general elections of June, 2017. Where and whenever it could, control was exercised, but most of the media used could not be controlled. There is apparently a wide consensus that the law should be updated to reflect contemporary communication and mass communication media, however, the law is as yet unchanged. The wide consensus started in a *post-mortem* seminar held by the Electoral Commission immediately after the General Elections of June 2017 and continued to be aired in meetings between the Commission and Party delegates. This subject was also briefly discussed very recently in the Maltese Parliament during the second Reading of a Bill addressing a number of electoral reforms.

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?

No, there are no such requirements for political parties. Political digital ads need not be explicitly labelled with an imprint and funding source.

- 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?**

The Constitutionally appointed Malta Broadcasting Authority monitors local newspapers, radio and television stations. There are no specific authorities to specifically monitor political advertising. Any allegations of breaches are directed to the Electoral Commission, which in turn refers them to the Commissioner of Police. There are no plans to develop online archiving 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?**

This could be a possibility, however it would merit further discussion.

- 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?**

During tense election periods, self-regulation may not work and remedies may not be timely. Hence formal regulation would be a necessity.

- 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?**

The database of the electoral register is not linked to any other system. Awareness of transparency may be the job of the Commissioner for Data Protection.

- 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?**

No generic guidelines exist. Cases are dealt with on a case by case basis.

- 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)?**

Collaboration with the Data Protection Commissioner occurs whenever a case arises. However, no formalised procedures exist.