

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,

Answer: Under Republic of Lithuania Law on Elections to the European Parliament¹ (hereinafter referred to as “Law on Elections to the European Parliament”): Campaigning, regardless of its methods, forms and measures, shall be prohibited during 30 hours before the beginning of an election and on polling day until the end of voting, with the exception of permanent visual campaign material provided it was placed before the beginning of this election campaign prohibition. During the period of election campaign prohibition and the period of early voting no visual campaigning material (with the exception of those issued by the Central Electoral Commission) may be displayed in a polling station or within 50 meters of the building which houses a polling station or in which special postal voting is carried out.

ii. prohibition of disinformation (fake news)

Answer: Under Law on Elections to the European Parliament if, after the announcement by the Central Electoral Commission of lists of candidates as well as candidates, the mass media publicise any material compromising a candidate, party or an election committee which has nominated a list of candidates, it must provide the candidate, party or the election committee with a possibility of expressing a countering opinion. The countering opinion shall consist of a short exposition of the released compromising material and the response. Usually, the extent of the countering opinion may not exceed the volume of the compromising material more than three times. The means of the mass media must make public the countering opinion within seven days after it has been expressed, but not

¹ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/93249de2f1a011e5bf4ee4a6d3cdb874?jfwid=rivwzvpvg>

later than two days before the campaign prohibition becomes effective. If the said means of the mass media may not itself make public the countering opinion within the time limit set by this Law, it must publicise with its own funds the countering opinion in another means of the mass media.

The material which is aimed at influencing voters not to vote for an individual candidate (candidates) nominated by a particular party or election committee and which contains information negatively describing the party (its branch or division), election committee or the candidate shall be considered as compromising material. An opinion about the party, election committee or the candidate announced in the mass media (unlike hard news, the criteria of truth shall not apply to an opinion), including a negative opinion, shall not be considered as compromising material and shall not entitle the candidate or the party to demand announcing a countering opinion. The demand to announce a countering opinion may also be rejected in cases when: the released material does not concern that party, election committee or candidate; the released material is not compromising; the compromising material about the party, election committee or the candidate is released by a candidate nominated by that party or election committee; the material contains no information characterising the party, election committee or the candidate; the party, election committee or the candidate has already exercised the right to a countering opinion.

If the compromising material was released during the time period when its release is not permitted under this Law, the candidate's countering opinion shall, by the decision of the Central Electoral Commission, be broadcast on the Lithuanian national radio or television and shall be paid for at the rates of advertisement fees. In this event, the means of mass media must pay the Central Electoral Commission three times the amount of the broadcast costs.

In any case a countering opinion shall not be announced during the period when election campaigning is prohibited. Announcement of a countering opinion shall not exempt the means of the mass media from liability under laws of the Republic of Lithuania.

iii. equal representation of candidates

Answer: Under Law on Elections to the European Parliament: After the announcement of candidates and lists of candidates by the Central Electoral Commission, the candidates shall have equal rights to speak at voters' meetings or any other meetings, gatherings, conferences as well as through the state mass media, and to announce their respective election programmes. Heads of state and municipal institutions and agencies, also directors of the administrations of municipalities or persons authorised by them must help candidates to organise meetings with voters, to obtain necessary information, with the

exception of the information which is considered confidential according to laws of the Republic of Lithuania and resolutions of the Government.

After the announcement by the Central Electoral Commission of candidates as well as lists of candidates, candidates shall be granted the right to use the national mass media free of charge. The Lithuanian National Radio and Television shall prepare, and broadcast programmes intended for campaigning from the funds allocated in the state budget. The Central Electoral Commission shall cover additional expenses related to broadcasting of such programmes. The rules for preparing programs intended for election campaigning shall be approved and the actual duration and time of the Lithuanian National Radio and Television programs shall be set by the Central Electoral Commission after consultation with the head of the Lithuanian National Radio and Television. Moreover, the Central Electoral Commission shall allocate the time of the programs distributing it in such a manner that the principle of equality of the lists of candidates is preserved.

Debates of candidates over the radio and television shall be financed with state budget funds from the appropriations allocated for the Central Electoral Commission. The Central Electoral Commission shall: in accordance with the procedure laid down by the law, choose producers and broadcasters of debate programmes and approve the rules on producing debates.

All broadcasters shall have the right to produce, on their own initiative, debate programmes in compliance with the provisions of the Law on Funding of, and Control Over Funding of, Political Parties and Political Campaigns. Other terms and conditions provided for in this Article shall not apply to the said broadcasters.

iv. financial rules on campaigning and especially advertising limitations, awareness campaigns or bypassing the established financial limits.

Answer: Under Law on Funding of, and Control over Funding of, Political Campaigns (hereinafter referred to as “Law on Political Campaigns”): Expenditure and assumed liabilities of a political campaign participant during a political campaign shall be recognised as political campaign expenditure, where such liabilities and expenditure are designated for production or distribution of political advertising or any other campaigning material through any means of the mass media or in any other public mode (other needs related to the political campaign as prescribed by this Law). Same expenditure incurred not during a

political campaign, if the property and other assets are intended for the political campaign or if the services are received during the political campaign, shall be recognized as political campaign expenditure, too. In this case political campaign participants must inform the Central Electoral Commission about this, attaching copies of the documents confirming the expenditure. Where necessary, the Central Electoral Commission may request additional information.

When a political campaign begins all political campaign, expenditure may be paid only from the funds kept in the political campaign account.

Under Law on Political Campaigns the expenditure limits are linked to the number of voters per constituency (depends on constituency, number of voters is multiplied by EUR 0,29 (whole territory of Lithuania) or EUR 0,58 (part of territory of Lithuania). The amount of every political campaign participant's expenditure may not exceed the limit.

Law on Political Campaigns describes the gross violations. Gross violations of this Law shall be considered to be: exceeding of the limit by 10 or more per cent; if political campaign participant's expenditure on undeclared political advertising or undeclared political campaign expenditure makes up 10 or more per cent of the limit; if undeclared funds of a political campaign participant received for a political campaign makes up 10 or more per cent of the limit; dissemination of hidden political advertising, if the expenditure on hidden political advertising makes up 10 or more per cent of the fixed maximum amount of political campaign expenditure; dissemination of political campaign through foreign broadcasters by violating the requirements of this Law for political advertising.

The decisions on that may be taken by the Central Electoral Commission in Lithuania, several sanctions may be applied because of gross violations of Law on Political Campaigns:

- Political party is not being eligible for funding from state budget up to two years (Law on Political Parties ²).
- If the Central Electoral Commission recognizes not later than nine days before the election date that an independent political campaign grossly violated the law the Central Electoral Commission can revoke the registration as an independent political campaign participant and it means that candidate or political party loses registration for election.
- the electoral deposit shouldn't be refunded.

² <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/09450a307a1c11e4a8a7b07c53dc637c?jfwid=rivwzvpvg>

An appeal of such Central Electoral Commission decisions must be investigated in Supreme Administrative Court of Lithuania.

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?

To date there is no specific regulation for social media in Lithuania. Special requirements laid down in Laws and the principles for political advertising are applicable to social media as well as for political advertising disseminated by other means.

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.

Answer: Central Electoral Commission taking into account the existing case law and recommendations of international organizations prepares recommendations and advises the media how to prevent the offence.

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?

Answer: In reference to a first question, requirements for political advertising are applicable to social media as well as for all political advertising.

Under the Law on Political Campaigns: During a political campaign, political advertising (on social media to) must be marked in accordance with the procedure laid down by the law by indicating the source of funding and visibly separated from other disseminated information.

Political advertising which is not marked during a political campaign pursuant to the requirements set out by legal acts or marked not in compliance with legal acts shall be regarded as hidden political advertising and shall be prohibited. Dissemination of hidden political advertising shall impose liability established by the law.

Besides the special requirements laid down in this Law, The Central Electoral Commission prepared a list of fundamental recommendations on dissemination of political advertising during the political campaign. Under Recommendations political advertising must be marked inseparable from the item.

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?

Answer: The Central Electoral Commission is also responsible for organising the monitoring of the funding of political campaigns, and of political advertising during election campaigns. For this purpose, Central Electoral Commission hires the services of external entities to act as monitoring groups. Each electoral committee in the constituencies is responsible for media monitoring in its area and providing the data to the Central Electoral Commission, too. The monitoring information is provided using the Central Electoral Commission information system.

There are some requirements for media:

1) Under the Law on Political Campaigns during a political campaign, public information producers or disseminators may disseminate political advertising only at the rates and under the conditions which are equal to all political campaign participants and which are submitted to the Central Electoral Commission. The rates and conditions of political advertising applicable during a political campaign may not be presented or changed during the political campaign.

2) During a political campaign, public information producers or disseminators must to the Central Electoral Commission a public information producer's or disseminator's declaration on disseminated political advertisements, indicates the price, rates, sources of funding before and after election.

The Central Electoral Commission shall immediately announce the rates and declarations on its website.

The participants of political campaign (political parties during election to European Parliament) submit the detailed information on their political advertising, too.

These data are provided through the Central Electoral Commission information system, reports are published on website of commission.

Central Electoral Commission compares all the data on political advertising received from political campaign participants, monitoring and information producers or disseminators. It helps to established undeclared expenses and hidden advertising facts.

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?

Answer: There are no special requirements for content of political advertising, including objectivity. Media analyses the content of political advertising, participants of political campaign analyse the adverting of competitors and announce about big statistical mistakes.

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?

Answer: Free and fair elections are one of the basic foundations of democratic societies.

The law should to ensure legality, transparency and openness of funding of political campaign and guarantee the principles of equality of all participants of political campaign. On the other hand, it cannot restrict the freedom of expression. So some issues should be left to self-regulation.

The Central Electoral Commission cooperates with a media self-regulatory body, Public Information Ethics Association, and ask the expert opinion of it before making decisions on complaints on hidden advertising involving journalistic activities.

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?

Answer: –

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?

Answer: State Data Protection Inspectorate, national data protection authority, has not issued any specific guidance with regards to social media, in the context of election campaigns. The protection of personal data is regulated by the Law on legal protection of personal data (direct link: <https://goo.gl/EwzKUE>).

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)?

Answer: The Central Electoral Commission cooperates and exchanges information with several state institutions, including the State Data Protection Inspectorate. Yet, cooperation is not formalised in the form of a document to date, but we do not exclude this possibility in the near future.