

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?

According to Election Acts active election campaigning is prohibited on election day. Both the Media Services Act and the Estonian Public Broadcasting Act state that programming should be politically balanced and that Public Broadcasting shall give equal opportunities to all the political parties/independent candidates.

The Advertising Act covers advertising rules in general and could be applied in certain cases when election campaigns include disinformation

There is no spending limit on campaigning. The Election Acts prohibit political outdoor advertising during the period of active campaigning (ie starting from the end of the registration of candidates, 40 days before election day).

The Election Acts don't cover social media specifically.

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.

In 2013 the Estonian Consumer Protection Board (ECPB) fined a political NGO. The NGO arranged an outdoor advertising campaign with slogans "They can delete your vote", "Every e-vote may be a danger to Estonian independence", "They can give your vote to whomever they want". ECPB found that the content of the campaign was denigrating, as well as degrading law-abiding behaviour, and thus in violation with the The Advertising Act. The decision was unsuccessfully disputed by the NGO (the Supreme Court denied their appeal).

Another case originates from 2013, when prior to Municipal Council Election, Tallinn City funds were used for campaigns showing City Government members. The campaigns were determined to be part of political campaign by the Political Parties Financing Surveillance Committee and the benefiting individuals were demanded to repay the money to the Tallinn City. The main argument was that by the Political Parties Act, it is illegal to accept campaign donations from legal persons, and as the campaign was deemed to be a political donation made by the City Government (which is a legal person) it was deemed illegal. The decision was appealed in all 3 Estonian court levels, but in all instances, the Committees position was confirmed.

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?

There are no specific rules regarding political advertisements. The general rules of advertising established by The Advertising Act apply. This also applies to social media, online media and content marketing. Political ads bear no special label.

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?

There is no authority specifically monitoring social media/online media. Advertising in general is monitored by the Estonian Consumer Protection Board.

An interested party can file a complaint to the National Election Committee if they find that their rights have been infringed which could mean that they can contest election results based on violation of the election law (ie principles of free and fair elections haven't been upheld) but they cannot contest the content of election campaigning specifically.

By the Political Parties Act, all parties (as well as election coalitions and independent candidates) are required to report their campaign spending to Political Parties Financing Surveillance Committee. This includes conventional, online and social media.

The transparency of political campaigns (with significant attention to social media) has been enhanced by several Estonian NGO-s and Estonian National Broadcasting, who have developed "Good election practice" guidelines for political parties and enrol voluntary "election guardians" to observe that these guidelines are followed.

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?

Currently this is not within the scope of tasks of Statistics Estonia.

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?

So far the possibilities of online and social media largely remain unexplored by the stakeholders.

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?

In Estonia voter lists are not public nor accessible to political parties.

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?

The Estonian Data Protection Inspectorate has issued guidelines on using personal data for election campaigning (the latest in 2013). The guide "Using private data in election campaigns" does not explicitly distinguish social media.

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)?

Currently we have no specific collaboration, but the State Electoral Office consults with the EDPI when needed.