



**STÁTNÍ ZEMĚDĚLSKÁ  
A POTRAVINÁŘSKÁ INSPEKCE**

**ÚSTŘEDNÍ INSPEKTORÁT**

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Čj.: SZPI/AA966-145/2020

Datum: 2. února 2021

Ivan Krejčí  
předseda Rady pro rozhlasové a televizní vysílání  
Škrétova 44/6  
122 00 Praha

Stanovisko k posuzování tvrzení u doplňku stravy ČAGA + REISHI a RAKYTNÍK

Dne 22. 1. 2021 přijala Státní zemědělská a potravinářská inspekce (SZPI) vaši žádost o stanovisko k posouzení tvrzení u doplňku stravy ČAGA + REISHI a RAKYTNÍK.

Co se týče zdravotních tvrzení, tak v pořadí zaznívá tato formulace: „Čaga je možné kombinovat s dalšími přírodními surovinami, jako je například reishi, tedy lesklou korku lesklou a rakytníkem řešetlakovým, který je vynikajícím zdrojem vitamínu C. Např. v tomto doplňku stravy je navíc doplněn o vitamín E. Výsledkem je antioxidant pro vaše tělo a prostředek na podporu imunity, ve kterém všechny tyto složky působí ve vzájemné harmonii a synergii.“

Konkrétně jste nás pak žádali o vyjádření k následujícím dotazům:

- 1) Došlo v případě houby Čaga ke schválení zdravotních tvrzení?
- 2) Shledáváte balení produktu Čaga v souladu s právními předpisy týkajícími se zdravotních tvrzení? Balení obsahuje označení Obranschopnost, Antioxidant. Není to možné považovat za nespécifické zdravotní tvrzení?

Souhlasíme s tím, že v reklamě je uvedeno několik zdravotních tvrzení k danému výrobku, který je kombinací hub Čaga a Reishi a rostliny rakytník řešetlakový obohacený vitamínem E.

Ad1)

Houba Čaga nemá schválené žádné zdravotní tvrzení a není pro ni uvedeno ani žádné tvrzení na seznamu On Hold, což je seznam dosud neposouzených tvrzení, která mohou být používána do doby, než o nich bude rozhodnuto.

Ad 2)

Tvrzení Obranschopnost, Antioxidant lze považovat za nespécifická zdravotní tvrzení, pro která platí, že je lze použít, pokud jsou doplněna nejméně jedním specifickým zdravotním tvrzením podle čl. 13 nebo 14, které je v souladu s právními předpisy. Lze použít i v případě použití specifického tvrzení k rostlinám uvedeného na seznamu On hold.

V tomto případě výrobek fakticky tento požadavek splňuje, protože houba Reishi má na On hold seznamu tvrzení k obranschopnosti/imunitě a rakytník řešetlakový je podle On Hold

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seznamu antioxidantem. Nelze říci, zda balení daného doplňku stravy je v souladu s právním předpisy, protože nemáme k dispozici fotku celého obalu. Pokud by na obalu byla uvedena specifická zdravotní tvrzení k Reishi i rakytníku řešetlákovému, k porušení právního předpisu by nedocházelo.

Pokud bychom se vyjádřili k textu mluvené reklamy (viz výše), mělo by zde být jasněji uvedeno, ke které složce se dané tvrzení vztahuje – tedy že vliv na imunitu má Reishi a antioxidantem je rakytník řešetlákový. Možné formulace jsou například „Tento doplněk díky účinkům Reishi přispívá k dobré imunitě a díky rakytníku je i s dobrým antioxidantem“.

V textu mluvené reklamy tak podle našeho názoru došlo k porušení níže uvedených zásad slovní flexibility ve vazbě na čl. 10 odst. 1, čl. 13 nařízení (ES) 1924/2006 a preambuli č. 9 nařízení (EU) 432/2012.

Další zásady:	
1	<p>Tvrzení se <b> nemá vztahovat k výrobku (Y), ale k potravině nebo její složce (X)</b>, na jejichž základě bylo povoleno.</p> <p>✓ „<b>Výrodek Y obsahuje X, který přispívá k normální funkci...</b>“  <b>„X přispívá k normální funkci...“</b></p> <p>✗ „<b>Výrodek Y přispívá k normální funkci...</b>“</p>
2	<p>Pokud výrobek (Y) obsahuje <b> více složek se schválenými zdravotními tvrzeními</b>, nesmí být formulace zdravotního tvrzení zavádějící a musí z ní jasně vyplývat, ke které složce se dané tvrzení vztahuje. Nelze také uvádět, že tyto složky se vzájemně pozitivně ovlivňují či dokonce mají <b>synergický efekt</b>.</p> <p>✓ „<b>Y obsahuje směs vitamínů (B6, B12 a C), která přispívá ke snížení únavy a vyčerpání</b>“  Tato formulace je možná, jelikož pro všechny tři vitamíny bylo schváleno tvrzení ke snížení únavy a vyčerpání.</p> <p>✗ „<b>Y obsahuje směs hořčíku a draslíku, která přispívá k udržení normálního stavu svalů a kostí</b>“  Tato formulace je zavádějící, jelikož pro draslík bylo schváleno pouze tvrzení k udržení stavu svalů (a žádné ke stavu kostí).</p>
3	<p>Pokud výrobek (většinou doplněk stravy) obsahuje <b> více složek</b>, přičemž pro <b> některé</b> bylo zdravotní tvrzení <b>schváleno a pro jiné ne</b>, je velmi důležité posouzení celého kontextu tvrzení. Například pro lutein nebylo schváleno žádné zdravotní tvrzení.</p> <p>✓ „<b>Y obsahuje lutein a Vitamin A, který přispívá k udržení normálního stavu zraku</b>“</p> <p>✗ „<b>Y obsahuje lutein a Vitamin A, které přispívají k udržení normálního stavu zraku</b>“</p>

S pozdravem

Ing. Jindřich Pokora  
ředitel odboru kontroly, laboratoří a certifikace



ombudsman

veřejný ochránce práv

Sp. zn.	787/2020/VOP/VBG	Vážený pan
Č. j.	KVOP-12456/2021	Bc. Ivan Krejčí
Datum	23. března 2021	předseda
		Rada pro rozhlasové a televizní vysílání
		Škrétova 44/6
		120 00 Praha 2

Vážený pane předsedo,

reaguji na Vaši odpověď k mému závěrečnému stanovisku, které jsem vydal 1. února t. r. v rámci šetření zahájeném z vlastní iniciativy mojí zástupkyní ohledně postupu Rady pro rozhlasové a televizní vysílání (dále jen „Rada“) při uplatňování dohledových oprávnění nad vysíláním televizního pořadu TV Nova, s. r. o., **Výměna manželek**.

Informujete mě, že již před obdržением mého závěrečného stanoviska Rada postoupila v souvislosti s pořadem odvysílaným dne 6. ledna 2021 podnět k prošetření příslušnému orgánu sociálně-právní ochrany dětí. Tento krok vnímám tak, že **Rada zčásti** (v souvislosti s uvedeným dílem pořadu) **přijala mé opatření k nápravě spočívající v plnění oznamovací povinnosti orgánům sociálně-právní ochrany**. Věřím, že daný podnět byl první z dalších, které Rada v budoucnu učiní. Uvítal bych, pokud by tentýž podnět učinila (byť zpětně) i v případě odvysílaných dílů, které byly předmětem šetření mé zástupkyně.

Pokud jde o další mnou navržené opatření k nápravě spočívající v uplatnění dozorových oprávnění Rady vůči TV Nova, s. r. o., či přesvědčivému zdůvodnění, proč Rada v odvysílaném pořadu nespátřuje porušení zákona, usuzuji z Vaší odpovědi, že Rada navržené opatření nepřijala. Připomínáte, že je Rada nezávislým ústředním správním úřadem, který není podřízen jinému správnímu úřadu ani komukoliv jinému, a členové Rady, v souladu s § 7 odst. 10 zákona č. 213/2001 Sb., nesmějí pro výkon jejich funkce přijímat žádné pokyny a instrukce.

Dovolte mi na Vaši námitku reagovat.

Zmiňujete-li nezávislost Rady pro rozhlasové a televizní vysílání, domnívám se, že nezávislost je třeba chápat především tak, že jde o nezávislost na jiných orgánech moci výkonné, tj. Rada není podřízena vládě ani jinému správnímu úřadu; při své činnosti se řídí pouze právními předpisy, absentuje i podřízenost instanční – jediným orgánem, který může zvrátit její rozhodnutí je pouze soud.

Z hlediska působnosti veřejného ochránce práv je nesporné, že Rada pro rozhlasové a televizní vysílání spadá do mé působnosti, neboť je výslovně zmíněna v ustanovení § 1 odst. 2 zákona č. 349/1999 Sb., o veřejném ochránci práv, ve znění pozdějších předpisů. Z hlediska působnosti ochránce se jedná o správní úřad ve smyslu čl. 79 Ústavy (s působností pro celé území státu) a není ani pochyb, že činnost Rady je výkonem státní správy.

Je-li v působnosti ochránce Rada, pak mi náleží se postupem Rady v souladu se zákonem o veřejném ochránci práv zabývat, ať už na základě podnětu nebo z vlastní iniciativy.<sup>1</sup> Zákon o veřejném ochránci práv předpokládá, že pokud zjistím šetřením porušení právních předpisů či jiná pochybení, vyzvu úřad, aby se k zjištění vyjádřil. Pokud úřad na výzvu neprovede opatření k nápravě, sdělím úřadu své závěrečné stanovisko, jehož součástí je návrh opatření k nápravě.<sup>2</sup>

Jsem si vědom toho, že můj návrh opatření k nápravě má toliko iniciační charakter, nemůže nahrazovat vlastní činnost Rady. Opatření, jejichž přijetí jsem Radě navrhoval, měla za cíl napravit pochybení, k nimž dospěla má zástupkyně ve zprávě o šetření ze dne 26. listopadu 2020, a která jsem svým závěrečným stanoviskem potvrdil.

Dovolte mi připomenout, že Radě Vámi zmíněný zákon č. 213/2001 Sb. přiznává určité kompetence – Rada je ústřední správní úřad, který vykonává státní správu v oblasti rozhlasového a televizního vysílání, převzatého vysílání a v oblasti audiovizuálních mediálních služeb na vyžádání poskytovaných podle jiného právního předpisu, a dohlíží na zachování a rozvoj plurality programové nabídky a informací v oblasti rozhlasového a televizního vysílání a převzatého vysílání, dbá na jeho obsahovou nezávislost a plní další úkoly stanovené tímto zákonem a zvláštními právními předpisy.<sup>3</sup>

**Vámi zmiňovaná nezávislost nedává Radě možnost rezignovat na svoji zákonem svěřenou působnost. Nezávislost nemůže znamenat libovůli. Rada jako každý jiný správní úřad podléhá veřejné kontrole, její postup musí být předvídatelný, přesvědčivý, v souladu s vývojem judikatury. Pokud na základě šetření mé zástupkyně vyvstaly pochybnosti, zda Rada nerezignovala na svoji zákonem svěřenou působnost, je na místě, aby „obhájila“ svůj dosavadní postup, a to věcnými argumenty, nikoliv odkazem na svoji nezávislost a nemožnost členů Rady přijímat pokyny a instrukce.**

Vážený pane předsedo, z popsanych důvodů Vás opětovně **žádám o přehodnocení** dosavadního postupu Rady a mého návrhu k přijetí opatření k nápravě.

S pozdravem

JUDr. Stanislav Křeček v. r.  
veřejný ochránce práv  
(dopis je opatřen elektronickým podpisem)

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1 Srov. § 9 zákona o veřejném ochránci práv.

2 Srov. § 18 zákona o veřejném ochránci práv.

3 Srov. § 4 odst. 2 zákona č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání a o změně dalších zákonů.



Jedn. identifikátor 401997-RRTV

Váš dopis zn. 787/2020/VOP/VBG  
Naše č. j. RRTV/4910/2021-  
rud  
Sp. zn. RRTV/2020/907/rud  
Zasedání Rady 7-2021/poř. č. 40

Vyřizuje: Analytický odbor

Datum, místo 13. dubna 2021, Praha

**JUDr. Stanislav Křeček**  
**veřejný ochránce práv**  
**Kancelář veřejného ochránce**  
**práv**  
**Údolní 39**  
**602 00 Brno**

Vážený pane doktore,

Radě pro rozhlasové a televizní vysílání (dále jen Rada) byla dne 24. března 2021 doručena Vaše reakce na odpověď Rady na Vaše závěrečné stanovisko ve věci pořadu Výměna manželek, kde konstatujete, že Rada zčásti přijala opatření k nápravě spočívající v plnění oznamovací povinnosti orgánům sociálně-právní ochrany, avšak pokud jde o další navržené opatření k nápravě spočívající v uplatnění dozorových oprávnění Rady vůči TV Nova, s. r. o., či přesvědčivému zdůvodnění, proč Rada v odvysílaném pořadu nespátňuje porušení zákona, usuzujete, že Rada navržené opatření nepřijala. Uvádíte, že Váš návrh opatření k nápravě má toliko iniciační charakter a nemůže nahrazovat vlastní činnost Rady, nicméně Radou zmiňovaná nezávislost jí dle Vašeho názoru nedává možnost rezignovat na svoji zákonem svěřenou působnost; nezávislost nemůže znamenat libovůli. Rada jako každý jiný správní úřad podléhá veřejné kontrole, její postup musí být předvídatelný, přesvědčivý, v souladu s vývojem judikatury. Pokud na základě šetření vyvstaly pochybnosti, zda Rada nerezignovala na svoji zákonem svěřenou působnost, je dle Vašeho mínění na místě, aby „obhájila“ svůj dosavadní postup, a to věcnými argumenty, nikoliv odkazem na svoji nezávislost a nemožnost členů Rady přijímat pokyny a instrukce.

Z popsanych důvodů opětovně žádáte Radu o přehodnocení jejího dosavadního postupu v dané věci a přijetí Vámi navrhovaného opatření k nápravě.

**Dovolte mi, prosím, Vás informovat, že Rada se Vaší žádostí zabývala na svém 7. zasedání konaném dne 13. dubna 2021 a dospěla k následujícím závěrům:**

Rada je přesvědčena, že svůj dosavadní postup v dané věci přesvědčivě, tedy věcnými argumenty, obhájila již ve své první odpovědi zaslané Vaší zástupkyni, kde Rada například uvedla:

„Lze snad jen zmínit to nejpodstatnější – pořad Výměna manželek je klasickou reality show, která staví na vyhocených konfrontacích či odchylkách chování, neboť to ji činí divácky atraktivní. Mnohdy jsou takové kontroverzní momenty součástí jakéhosi „scénáře“, kterým se mají aktéři pořadu řídit. Tyto situace jsou tedy dramaturgií pořadu záměrně podněcované vnějšími okolnostmi, tj. „výměna manželek“ bývá z co nejodlišnějšího typu svazku, divák pak sleduje, jak se rozdílily a z nich vyvolané neshody budou vyvíjet a stupňovat. Výměna manželek tak může být i v jistém směru pořadem přínosným, osvětovým, pokud přináší demonstraci fungování bezproblémové, „idyllické“ rodiny v kontrastu se špatným fungováním rodiny druhé. Hojně užívané vulgarismy jsou vždy striktně ze strany provozovatele tzv. vypípány, a to způsobem v televizním vysílání zcela standardním.

Co se týče účasti dětí při natáčení a při tomto typu „sociálního experimentu“, Rada se touto problematikou již v minulosti podrobně zabývala a konstatovala, že se otázka ochrany práv zúčastněných dětí nachází mimo její kompetence. Zákon o vysílání akcentuje dopad vysílaného obsahu na diváky, potenciálními negativními jevy doprovázejícími přípravu programu se nezabývá, a to ani v případě, že se jedná o dopad na nezletilé děti. Zodpovědnost tak leží především na samotných rodičích, případně na orgánech

sociálněprávní ochrany dětí, pokud by vzniklo důvodné podezření, že jsou konkrétní nezletilé či mladistvé osoby vystaveny nějakému typu ohrožení.“

Rada rovněž již v předchozí korespondenci uvedla, a to s odkazem na judikaturu zejména Nejvyššího správního soudu, že Rada je specializovaným regulačním orgánem, který sám je oprávněn nastavovat standardy týkající se obsahu vysílání a sám je oprávněn utvořit si vlastní úsudek o možném negativním vlivu určitého pořadu na vývoj dětí a mladistvých, a není nikde stanovena povinnost Rady vyžádat si v případě podezření na možné ohrožení dětí a mladistvých znalecký posudek. Naopak, soudy jednoznačně deklarovaly, že je zcela vyloučeno, aby se znalec vyjadřoval k otázkám právním – hodnocení, zda byla naplněna skutková podstata deliktu, je otázkou právní a je otázkou výhradně Rady. Znalec tedy nemůže vyvracet právní závěry správního orgánu.

Lze tedy zcela jednoznačně konstatovat, že Rada již ve své první odpovědi veřejnému ochránci práv (respektive zástupkyni veřejného ochránce práv) svůj postup ve věci pořadu Výměna manželek podepřela věcnými argumenty i odkazem na příslušnou judikaturu, tedy přesně tak, jak nyní po Radě vyžadujete. Pokud ze své pozice veřejného ochránce práv nesouhlasíte s právním posouzením skutkových otázek tak, jak je provedla Rada, pak to ale neznamená, že by se Rada dopouštěla jakékoli libovůle či netransparentnosti rozhodování.

Rada samozřejmě chápe, že jedním z úkolů veřejného ochránce práv je prověřovat postup správních úřadů, včetně Rady pro rozhlasové a televizní vysílání, ale domníváme se, že tato kontrola má spočívat v tom, zda dotýčný správní úřad nějakou stížnost neignoroval, zda ji skutečně věcně diskutoval, zda měl k dispozici relevantní podklady (záznam pořadu, výhrady stěžovatele, analýzu svého odborného aparátu) a zda přistoupil odpovědně a se znalostí věci k rozhodování. A samozřejmě, zda dodržel všechny procesní postupy a zda stěžovatele správným způsobem a ve stanovených lhůtách o výsledku projednání informoval. To vše má veřejný ochránce práv plné právo prověřit, ale skutečně nemůže nařídít správnímu úřadu „aby rozhodl jinak“, respektive, aby členové Rady rozhodli v rozporu se svým přesvědčením.

**S ohledem na uvedené je tedy Rada přesvědčena, že její postup v dané věci byl správný a zákonný.**

**Dovolte mi, prosím, Vás současně informovat, že Rada rozhodla provést monitoring aktuálně vysílané série pořadu Výměna manželek za období šesti týdnů a vyhodnotit ji z hlediska dodržení zákona. O výsledku projednání Radou budete poté informován.**

S pozdravem

**Ivan Krejčí**  
předseda Rady  
pro rozhlasové a televizní vysílání  
elektronicky podepsáno



MINISTERSTVO ZEMĚDĚLSTVÍ

13362/2021-MZE-18123/3



mze000020092035

ÚTVAR: Odbor potravinářský  
ČÍSLO ÚTVARU: 18120

SPISOVÁ ZN.: 15PV4100/2021-18123  
NAŠE ČJ.: 13362/2021-MZE-18123

VYŘIZUJE: Ing. Veronika Vodolánová  
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Rada pro rozhlasové a televizní  
vysílání  
Vážená paní  
Mgr. Jitka Hrubá  
ředitelka odboru  
Škrétova 44/6  
Vinohrady  
120 00 Praha 2

ADRESA: Těšnov 65/17, Nové Město, 110 00 Praha 1

DATUM: 16. 3. 2021

## Kompetence dozorových orgánů k novému ustanovení zákona o regulaci reklamy

Vážená paní ředitelko,

Vážený pane řediteli,

dovolte mi, abych reagoval na vývoj legislativy, který se týká zákona č. 90/2021 Sb., kterým se mění zákon č. 268/2014 Sb., o zdravotnických prostředcích a o změně zákona č. 634/2004 Sb., o správních poplatcích, ve znění pozdějších předpisů, zákon č. 634/2004 Sb., o správních poplatcích, ve znění pozdějších předpisů, a zákon č. 40/1995 Sb., o regulaci reklamy a o změně a doplnění zákona č. 468/1991 Sb., o provozování rozhlasového a televizního vysílání, ve znění pozdějších předpisů.

Pokud jde o zákon č. 40/1995 Sb., o regulaci reklamy, dochází v něm k vložení nového § 5n. V ustanovení § 5n odst. 1 se zakazuje reklama na výrobek (tedy jakýkoliv výrobek, včetně potravin) cílící na zdraví, který není léčivým přípravkem, ani zdravotnickým prostředkem, ani diagnostickým zdravotnickým prostředkem in vitro, která naznačuje, že výrobek je léčivým přípravkem, zdravotnickým prostředkem nebo diagnostickým zdravotnickým prostředkem in vitro a dále v odst. 2 písm. a) se zakazuje reklama naznačující, že používáním výrobku se zlepší nebo zachová zdravotní stav toho, kdo jej užívá.

Vzhledem k dotazům provozovatelů potravinářských podniků a skutečnosti, že se nová úprava provedená v § 5n týká i potravin, bychom chtěli právě v případě potravin vyjasnit kompetence dozorových orgánů a přístup k aplikaci tohoto ustanovení. Dle našeho názoru, z ustanovení § 7 písm. a) a i) zákona č. 40/1995 Sb., o regulaci reklamy vyplývá, že kompetence k provádění dozoru nad povinnostmi uvedenou v § 5n zákona č. 40/1995 Sb., přísluší Radě pro

rozhlasové a televizní vysílání a krajskému živnostenskému úřadu. SZPI dle našeho názoru kompetence k provádění dozoru nad ustanovením § 5n zákona č. 40/1995 Sb. nemá.

K povinnosti uvedené v § 5n bych chtěl ve vztahu k potravinám upozornit na následující skutečnosti. Existují informace o potravinách poskytované spotřebitelům, které by při použití v reklamě mohly být považovány za informace „cílicí na zdraví“. Možnost a oprávněnost jejich legálního použití však jednoznačně vyplývá z legislativy EU. Jedná se zejména o informace poskytované na základě nařízení (ES) č. 1924/2006 o výživových a zdravotních tvrzeních, nařízení (EU) č. 609/2013 o potravinách určených pro kojence a malé děti, potravinách pro zvláštní lékařské účely a náhradě celodenní stravy pro regulaci hmotnosti nebo o směrnici č. 2008/54 o využívání a prodeji přírodních minerálních vod.

Na základě výše uvedeného si dovoluji navrhnout, aby při použití informací o potravinách v reklamě „cílicích na zdraví“ nebo odkazujících na „zlepšení nebo zachování zdravotní stavu“, jejichž legální použití je oprávněno platnou legislativou EU, byly aplikovány právě tyto specifické předpisy EU, a to přednostně, před obecným národním ustanovením uvedeným v § 5n zákona č. 40/1995 Sb., ve znění pozdějších předpisů.

Rád bych Vás požádal o stanovisko k rozdělení dozorových kompetencí k nové povinnosti v ustanovení § 5n zákona č. 40/1995 Sb., ve znění pozdějších předpisů a také k výše uvedenému návrhu přístupu k reklamě na potraviny obsahující informace „cílicí na zdraví“ nebo odkazující na „zlepšení nebo zachování zdravotní stavu“ používané na základě unijní legislativy.

O Vaši odpověď prosím do 19. dubna 2021.

Děkuji Vám za spolupráci.

S pozdravem

Ing. Martin Štěpánek  
ředitel odboru



Rada pro rozhlasové a televizní vysílání  
Škrétova 44/6  
120 00 Praha 2

**Věc: Oznámení o prodloužení vysílání programu ČT 3**

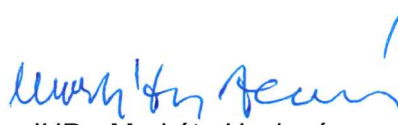
Vážení,

sdělením ze dne 20. března 2020 jsme Vám oznámili v souladu s ust. § 32 odst. 1 písm. s) zák. č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání, zahájení vysílání programu ČT3, poté jsme postupně oznamovali pokračování vysílání programu ČT3 do 31. října 2020 a do 22. března 2021.

Tímto vám sdělujeme, že Rada České televize na včerejším řádném zasedání schválila po skončení testovacího období provozování televizního vysílání programu ČT3 i nadále. Provozování televizního vysílání uvedeného programu je v souladu s ust. § 3 odst. 1 písm. a) zák. č. 483/1991 Sb., o provozování rozhlasového a televizního vysílání, v platném znění.

S pozdravem

V Praze dne 25. března 2021



JUDr. Markéta Havlová  
vedoucí právního úseku



**REGULATION OF  
POLITICAL ADVERTISING:  
A COMPARATIVE STUDY WITH  
REFLECTIONS ON THE  
SITUATION IN  
SOUTH-EAST EUROPE**



**Jean-François Furnémont  
Deirdre Kevin**

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Funded  
by the European Union  
and the Council of Europe



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# REGULATION OF POLITICAL ADVERTISING:

## A COMPARATIVE STUDY WITH REFLECTIONS ON THE SITUATION IN SOUTH-EAST EUROPE

Authors:

Jean-François Furnémont

Deirdre Kevin

September 2020

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Funded  
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**Regulation of political advertising:  
A comparative study with reflections on  
the situation in South-East Europe**

Authors: Jean-François Furnémont  
and Deirdre Kevin.

The Study was prepared in the framework of European Union and Council of Europe joint programme “Horizontal Facility for the Western Balkans and Turkey 2019–2022” and its action on “Freedom of Expression and Freedom of the Media in South-East Europe (JUFREX)”.

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# 1. Introduction and context of the Study

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**T**he joint European Union and Council of Europe action “**Freedom of expression and freedom of the media in South-East Europe (JUFREX 2)**” is conceived to promote freedom of expression and freedom of the media in line with with Council of Europe and European Union standards. The current project is embedded in the Horizontal Facility for the Western Balkans and Turkey 2019–2022 (HF) and builds upon the results achieved during a previous regional joint action “Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe” (JUFREX 1, 2016–2019). It is strongly interconnected with, and sets the direction for, the six Beneficiary-specific JUFREX Actions in Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia.

As part of the annual dialogue among media regulatory authorities in the region under the auspices of JUFREX regional action, on 3 July 2020 the online regional round table on “Elections, pandemics and disinformation”<sup>1</sup> was organised. It was deemed to be vital to discuss the issue of elections and to relate the experiences of regulatory authorities, especially considering that a number of elections are taking place in the region in 2020. Many participants raised issues relating to political advertising, including the following:

- ▶ campaigning by political actors outside of dedicated pre-election campaign periods, when relevant legislations in some cases do not allow this outside of these periods;
- ▶ questions of proper identification and defining of political advertising, types of political advertising as well as the identification of subjects that create and offer this;
- ▶ non-differentiation between “regular” and political advertising;
- ▶ elections-related influence of media from neighbouring countries during the elections;
- ▶ cross-platform and cross-border overspill of information in election-related matters and interference/ influence of political representatives from neighbouring countries during the elections;
- ▶ political advertising and the influence of political parties through changing the advertising rules for each campaign.

Based on the conclusions of the event, the JUFREX team decided to support the elaboration of the present Study that addresses the issue of political campaigning and advertising from a media regulatory perspective and provides the beneficiaries with valuable and applicable references. In the context of the issues raised, the Study also offers guidelines, in line with European standards and best practices in this field.

In order to get a full understanding of the needs of the beneficiaries, the authors of this Study prepared a list of questions for the national media regulatory authorities, the responses to which can be found in Annex 1.

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

1 JUFREX regional online round table “Elections, pandemic and disinformation” organised on 3 July 2020.



Some of the issues identified by the beneficiaries include the fact that in some countries there are no legal references to bans of paid political advertising outside of the election period. In the majority of cases, paid political advertising is prohibited in the period from the announcement of elections to the official beginning of campaign. Outside of this period, it is mainly considered to be allowed, but it is subject to the same rules as any other form of advertising, including duration limits. In some cases there are bans on political advertising on public service media but without any corresponding references to private broadcasters.

Another major area of concern in the region that has been identified relates to the influence of media from neighbouring countries during elections.

Lastly, the various legal frameworks related to election campaigns in the region are analogue in their nature, not taking into account online platforms. Some examples of where media that wish to air political advertising are required to register (as in North Macedonia) have not achieved the desired results, as these requirements do not refer to social network accounts.

This Study is prepared having in mind all the issues and related questions identified by the beneficiaries, from the perspective of relevant European standards, presenting examples of legal frameworks and practices of a series of diverse and potentially relevant European countries, and concluding with recommendations intended to support the regulators in developing appropriate policies.

It should be noted that this region has some unique features stemming from the historic and linguistic proximity of the countries concerned. This specificity gives rise to several of the challenging issues that have been highlighted. The Study also provides an opportunity to investigate the extent to which there exists any innovative responses to these problems, that are in line with European standards and best practices.

## 2. European Union and Council of Europe standards and initiatives

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### 2.1. EUROPEAN UNION

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**A**rticle 2 of the Treaty on European Union (TEU)<sup>2</sup> states that the EU is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”.

As the EU has become an “ever closer union” through the progression of treaties, this has necessitated the development of EU citizenship, and the incorporation of democratic and human rights values in the treaties.

#### Protection and promotion of these values

Under the external action and specific provisions on the Union’s Common Foreign and Security Policy, Article 21 of the TEU states that (among others) “2. *The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: [...] (b) consolidate and support democracy, the rule of law, human rights and the principles of international law*”.<sup>3</sup>

In relation to the procedures for EU candidacy and accession, countries wishing to accede to the EU must comply with the so-called Copenhagen criteria which include “stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.<sup>4</sup>

The [Stabilisation and Association Process \(SAP\)](#) is the European Union’s policy towards the Western Balkans, established with the aim of eventual EU membership. Western Balkan countries are involved in a progressive partnership with a view of stabilising the region and establishing a free-trade area. The SAP sets out common political and economic goals although progress evaluation is based on countries’ own merits. The SAP was launched in June 1999 and strengthened at the Thessaloniki Summit in June 2003 taking over elements of the accession process. Some of the key aspects of this process include co-operation and “friendly neighbour” policies, which have long been strongly present in the co-operation of media regulatory authorities in the region.

Candidates and potential candidates are required to implement the *acquis communautaire* of the Union including chapter 10 on information society and media, which has (among others) the aim of establishing a “transparent, predictable and effective regulatory framework for public and private broadcasting in line with European standards”.<sup>5</sup>

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2 [Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union \(TFEU\)](#) [2016] OJ C202/1.

3 [Ibid](#), Article 21.

4 See more detail at the website of the [European Commission – European Neighbourhood Policy And Enlargement](#).

5 Chapter 10 of the [acquis](#).

With regard to EU member states, Article 7 of the TEU provides a procedure by which the European Council of the EU may determine if there is a clear risk of a serious breach by a member state of the values referred to in Article 2.<sup>6</sup> It allows for investigation, and possible sanctions, such as a removal of voting rights. The procedure for investigating requires agreement of 4/5<sup>th</sup> of the members. The procedure for sanctions requires a qualified majority. This procedure has been launched against two member states – Hungary and Poland – but with no clear outcome as yet. In the case of Hungary, among many concerns listed by the European Parliament were the functioning of the constitutional and electoral system, and the status of freedom of expression.

## Protecting and promoting media pluralism and media freedom

The regulation of media systems in relation to pluralism of the media for many years remained the competence of the member states of the European Union. The regulation of broadcasting has developed through the Television Without Frontiers Directive (1987), updated by the Audiovisual Media Services Directive (2010) and the revised AVMS Directive of 2018<sup>7</sup>. The focus has been on ensuring minimum standards of regulation and protection, and the promotion of European audiovisual works, in order to ensure the free flow of audiovisual services across Europe.

The most recent revision of 2018 has included more reference to media pluralism, for example under Article 30 (2) in relation to regulatory authorities: *“Member States shall ensure that national regulatory authorities or bodies exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition”*.

The Charter of Fundamental Rights of the European Union of 2000 (which came into full legal effect with the entry into force of the Lisbon Treaty in 2009)<sup>8</sup> brought issues such as freedom of expression, media freedom and pluralism into the sphere of European Union activity, under Article 11: *“Freedom of expression and information. 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected”*.

Since 2007, the European Commission has been active in several areas with regard to media freedom and pluralism. In 2009 it commissioned the Independent Study on Indicators for Media Pluralism in the Member States<sup>9</sup>. The Study (as described in the introduction) *“was part of the three-step approach on media pluralism in the European Union (EU) in response to continuing concerns from the European Parliament and non-governmental organisations about media concentration, and its possible effects on pluralism and freedom of expression”*.

In 2011, the Commission established a High Level Group on Media Freedom and Pluralism<sup>10</sup>. Its mandate was to draw up a report for the Commission with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe. In 2013, the High Level Group on Media Freedom and Pluralism presented its final report, with 30 recommendations. The first of these recommended an area where the EU would have the competence to act in this matter: *“Recommendations*

6 [Consolidated version of the Treaty on European Union](#).

7 [Directive \(EU\) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\) in view of changing market realities](#).

8 [Charter of Fundamental Rights of the European Union](#). OJ C 326, 26.10.2012, p. 391–407.

9 [Katholieke Universiteit Leuven/ ICRI, Jönköping International Business School /MMTC, Central European University / CMCS, Ernst & Young Consultancy Belgium \(2009\) \*Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach\*. Leuven: Katholieke Universiteit Leuven.](#)

10 [European Commission High-Level Group on Media Freedom and Pluralism](#).

*tion 1: The EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular the rights of free movement and to representative democracy. The link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights<sup>11</sup>.*

One outcome of the report was the continued work of the Centre for Media Pluralism and Media Freedom, in particular with regard to the Media Pluralism Monitor. Since 2014, the Centre for Media Pluralism and Media Freedom have been developing a tool for the measurement of risks to media pluralism in the EU member states. It is worth noting that the Media Pluralism Monitor now includes the candidate countries Albania and Turkey. Hence, it may be of value to countries in the South East Europe region to also join this research exercise.

In 2014, the DG Enlargement published Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020<sup>12</sup>. These include actions on enabling legal, regulatory and policy environments for exercising the rights of freedom of expression and media and media integrity; advancing media to a modern level of internal governance; and increasing capacity and representativeness of journalist professional organisations.

## Fighting information disorder

The European Commission in March 2018 published a report on fake news and information disorder which provides a range of recommendations on the basis of what they describe as five pillars:

- enhance transparency of online news, involving an adequate and privacy-compliant sharing of data about the systems that enable their circulation online;*
- promote media and information literacy to counter disinformation and help users navigate the digital media environment;*
- develop tools for empowering users and journalists to tackle disinformation and foster a positive engagement with fast-evolving information technologies;*
- safeguard the diversity and sustainability of the European news media ecosystem, and*
- promote continued research on the impact of disinformation in Europe to evaluate the measures taken by different actors and constantly adjust the necessary responses<sup>13</sup>.*

An important initiative stemming from this is the EU Code of Practice on Disinformation (the Code) established in 2018<sup>14</sup>. The Code emerged as an initiative at EU level to address concerns about disinformation. The related Action Plan published in December 2018, requested the assistance of the European Regulators Group for Audio-visual Media Services (ERGA) in monitoring the implementation of this Code. The Code includes 5 main pillars of action:

- A.** *Scrutiny of ad placements (aimed at demonetizing online purveyors of disinformation);*
- B.** *Transparency of political advertising and issue-based advertising (aimed at making sure that political adverts are clearly identified by the users);*
- C.** *Integrity of services (aimed at identifying and closing fake accounts and using appropriate mechanisms to signal bot-driven interactions);*

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11 These two paragraphs are an excerpt from: D. Kevin (2018): [Jurisdictional Review of media plurality: policies, guidelines, practices and rules](#).

12 DG Enlargement (2014) [Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020](#).

13 European Commission (2018) [Final report of the High Level Expert Group on Fake News and Online Disinformation](#).

14 [EU Code of Practice on Disinformation](#).

**D.** Empowering consumers (aimed, on the one hand, at reducing the risks of social media ‘echo chambers’ by making it easier for users to discover and access different news sources representing alternative viewpoints and, on the other hand, to plan and execute media literacy campaigns against disinformation);

**E.** Empowering the research community (aimed at granting researchers access to platforms’ data that are necessary to continuously monitor online disinformation).”

Signatories to the Code are required to report on their progress in addressing these five key issues.

Regarding B (transparency of political advertising), “all advertisements should be clearly distinguishable from editorial content whatever their form, and regardless of the medium used. An advertisement should be presented in such a way as to be readily recognizable as a paid-for communication or labelled as such, when it appears in a medium containing news or editorial matter. The Code’s Signatories commit to enable public disclosure of political advertising which could include actual sponsor identity and amounts spent, and to use reasonable efforts towards devising approaches to publicly disclose ‘issue-based advertising’”.

## Protecting free and fair elections

In September 2018, in a State of the Union Address, President Jean-Claude Juncker stated that “We must protect our free and fair elections. This is why the Commission is today proposing new rules to better protect our democratic processes from manipulation by third countries or private interests”. The set of measures included the following<sup>15</sup>:

- Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns. Member states are encouraged to set up a national election cooperation network of relevant authorities – such as electoral, cybersecurity, data protection and law enforcement authorities – and to appoint a contact point to participate in a European-level election cooperation network.
- Recommendation on greater transparency in online political advertisements and targeting<sup>16</sup>. European and national political parties, foundations and campaign organisations should make available information on their expenditure on online advertising campaigns, by disclosing which party or political support group is behind online political advertisements as well as by publishing information on targeting criteria used to disseminate information to citizens. Where these principles are not followed, member states should apply national sanctions.
- Cyber security threats. National authorities, political parties and media should also take measures to protect their network and information systems from cybersecurity threats.
- Guidance on the application of EU data protection law. The guidance will help national authorities and European and national political parties to apply the data protection obligations under EU law in the electoral context. The EU’s General Data Protection Regulation applies since May 2018 and also covers all European and national political parties and other actors in the electoral context like data brokers and social media platforms. In light of the Cambridge Analytica case and more generally the growing impact of micro-targeting of voters based on their personal data, the Commission recalls the data protection obligations for all actors in the European elections.

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15 European Commission (press release 12 September 2018): [State of the Union 2018: European Commission proposes measures for securing free and fair European elections](#).

16 [Recommendation of 12.9.2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament](#).

- *A legislative amendment to tighten the rules on European political party funding. The targeted change of the 2014 Regulation on party funding will make it possible to impose financial sanctions for breaching data protection rules in order to deliberately influence the outcome of the European elections. Sanctions would amount to 5% of the annual budget of the European political party or foundation concerned. The sanction will be enforced by the Authority for European political parties and European political foundations.*
- *A Regulation to pool resources and expertise in cybersecurity technology. To keep up with the ever-evolving cyber threats, the Commission is proposing to create a Network of Cybersecurity Competence Centres to better target and coordinate available funding for cybersecurity cooperation, research and innovation.”*

In 2020 the European Commission established the European Digital Media Observatory (EDMO)<sup>17</sup> with the aim of “creating and supporting the work of an independent multidisciplinary community capable of contributing to a deeper understanding of the disinformation phenomenon and to increase societal resilience to it”<sup>18</sup>.

Finally, the Commission announced its intention to launch a European Democracy Action Plan to help improve the resilience of democracies and address the threats of external interference in European elections. From 15 July to 15 September 2020 the European Commission is running a public consultation to gather the views of citizens on the Action Plan. The consultation focuses on three key aspects: (1) Integrity of elections and political advertising; (2) Strengthening media freedom and media pluralism; (3) tackling disinformation in the EU<sup>19</sup>.

## The new AVMS and derogations from the principle of freedom of reception

An issue raised by the regulators in the region concerned the extent to which media from neighbouring countries often causes interference in the process of national elections.

The revised AVMSD has introduced a system of “provisional derogation” from the principle of freedom of reception of services from other member states. Under Article 3 (2) such a derogation applies to services broadcasting content which contravenes with rules on incitement to violence or hatred (Art 6 1a), and to the protection of minors (Article 6a 1) or prejudices or presents a serious and grave risk of prejudice to public health. Article 3 (3) also allows for a provisional derogation “where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly [...] prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence”.

The procedure is quite detailed and complex. Whether or not interference with, or attempting to influence the outcome of elections, or propagating misinformation, will be issues that fall under the category of a service which “prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence” remains to be seen.

A test case on this concerned the recent judgment (July 2019) of the Court of Justice of the European Union following a request for a preliminary ruling from a Lithuanian court. The case concerned the fact that the Lithuanian Radio and Television Commission (LRTK) had required the Baltic Media Alliance to restrict the retransmission of the Russian-speaking television channel NTV Mir Lithuania by broadcasting it only through pay-to-view packages for a 12-month period. The channel was accused of inciting hatred. Of interest was the Court’s statement on the “freedom of reception” and the applicability of Article 3 of the AVMS Directive<sup>20</sup>:

17 [European Digital Media Observatory \(EDMO\)](#).

18 [European Commission DG CONNECT](#).

19 [EC \(2020\), Public Consultation: Protecting European democracy from interference and manipulation](#).

20 As reported on EPRA website (July 2019): [CJEU: clarification of the scope of Article 3 of the AVMS Directive](#). Case [Law C-622/17 Baltic Media Alliance Ltd vs LRTK](#).

*“Firstly, the nature of the media services and their importance for democracy, education and culture and the use of terms such as ‘freedom of reception’ and ‘restrict’ inspired by Article 4 of the European Convention on Transfrontier Television lead the Court to believe that the EU legislature intended to give a special meaning of the ‘freedom of reception’, narrower than the concept arising from the ‘restrictions on freedom to provide services’ laid down in Article 56 of the Treaty on the Functioning of the European Union.*

*Secondly, a national measure does not constitute a restriction to the ‘freedom of reception’ if it is justified by a general aim of pursuing a public policy objective and does not amount to a second control of the programmes, in addition to the one coming from the broadcasting Member State. In the present case, the Court insists on the fact that this national measure, which pursues, in general, a public policy objective, regulates only the methods of distribution of the programmes without suspending or banning their retransmission, the channel still being legally broadcast via a pay-to-view package. Therefore, the Court concluded that no “second control” is initiated and the receiving Member State’s measure does not fall within the scope of Article 3 of the AVMS Directive.”*

The result is that the Court ruled that imposing a temporary restriction on the broadcast or retransmission of a television channel from another member state on public policy grounds, such as combating incitement to hatred can be justified. This issue is further discussed below (in section 4) and it is proposed that a stronger cooperation between regulatory authorities in the region with regard to promoting mutual respect for rules on media coverage of elections and political advertising rules could be a useful approach going forward.

## 2.2. COUNCIL OF EUROPE

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As Europe’s human rights organisation and defender of values such as democracy, human rights and the rule of law, the Council of Europe plays a key role in standard setting throughout the continent.

There have been several recommendations, resolutions and opinions on media and elections. The vast majority of jurisdictions have rules that reflect these standards with regard to issues of fairness and impartiality, concerning the equitable allocation of free air time or the possibility to purchase airtime in an equal and non-discriminatory manner, as well as with regard to the treatment of opinion polls and the value of having day of reflection (or silence) in the day preceding the election.

In 1999, the Committee of Ministers issued a recommendation on measures concerning media coverage of election campaigns<sup>21</sup>. The main aim of the recommendation was to ensure that member states established frameworks for media coverage of elections that would support the principles of fairness, balance and impartiality, and contribute to free and democratic elections. The Committee recommended *“that the governments of the Member States examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law”*. The Committee also placed an emphasis on the freedom of the media, the importance of editorial independence, and the significant role played by public service broadcasters in informing the electorate.

With regard to the scope, the Committee stated that *“the principles of fairness, balance and impartiality in the coverage of election campaigns by the media should apply to all types of political elections taking place in member states, that is, presidential, legislative, regional and, where practicable, local elections and political referenda”*.

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<sup>21</sup> [Recommendation No. R \(99\) 15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns](#), 9 September 1999.

What is also interesting is that this recommendation addressed the issue of the potential influence of foreign media on a national election, and stressed that these principles of fairness, balance and impartiality *“should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address citizens of the country where the election is taking place”*.

The recommendation reflects the fact that the printed press is generally far less regulated than the broadcast media due to the accepted importance of freedom of the press, and also the fact that traditionally many press outlets have been affiliated with different political ideologies. The recommendation stressed that the regulation of media coverage of elections *“should not interfere with the editorial independence of newspapers or magazines nor with their right to express any political preference”*, and print media outlets owned by public authorities should cover elections in a *“fair, balanced and impartial manner”*.

### Recommendations on broadcasters, election coverage, news and current affairs

As concerns broadcasting, the Committee recommended that *“during electoral campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media. With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters as well as private broadcasters in their relevant transmission areas”*.

The recommendation also noted that rules on fair, balanced, and impartial coverage of electoral campaigns should also apply during pre-electoral time. The regular broadcast of news and current affairs programmes should be under a regulatory or self-regulatory framework that ensures broadcasters are *“fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates”*.

This framework should also ensure that *“no privileged treatment should be given by broadcasters to public authorities during such programmes. As appropriate, member States might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings”*.

In addition, in other programming, *“special care should be taken with programmes other than news or current affairs which are not directly linked to the campaign but which may also have an influence on the attitude of voters”*.

### Paid political advertising

There is no common or harmonised approach in Europe to the regulation of political advertising. In some European countries, paid political advertising is a relatively unrestricted form of political communication, while, in many others, political advertising is either allowed only during the pre-election period (for example Italy – for local broadcasters only – and Germany) or is completely prohibited (for example in Ireland, France, Belgium, Portugal, Switzerland, and the UK).

The 1999 recommendation stated that where paid political advertising is permitted, member states should ensure that all political candidates and parties *“are treated in an equal and non-discriminatory manner”*. For example, in member states where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that *“the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment”*. Also significant is the fact that *“the public should be made aware that the message is a paid political advertisement”*. Thus the recommendation stresses the importance of clear identification of political advertising. The Committee also recommended that *“member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase”*.



## Free air time and party political broadcasts

In many countries (including France, Ireland, the UK, Spain and others), free airtime is allocated to candidates and political parties. On this the recommendation states that member states “*may examine the advisability*” of regulating the provision of such free airtime. The allocation should be carried out in a “*fair and non-discriminatory manner*” and “*on the basis of transparent and objective criteria*”.

## Opinion polls, “day of reflection” and right of reply

The Committee of Ministers also recommended that “*member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting*”. This could also include the publication of opinion polls and exit polls. Regarding opinion polls, the regulatory or self-regulatory frameworks should ensure that their dissemination includes:

- *name the political party or other organisation or person which commissioned and paid for the poll;*
- *identify the organisation conducting the poll and the methodology employed;*
- *indicate the sample and margin of error of the poll;*
- *indicate the date and/or period when the poll was conducted*”.

Any restriction by member states forbidding the publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. In addition, candidates and political parties who are “*entitled to a right of reply under national law or systems should be able to exercise this right during the campaign period*”.

An important aspect of the recommendation was the statement that “*public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections*” and that they should protect them “*against attacks, intimidation or other unlawful pressures on the media*”.

## Applying the principles to non-linear services

The updated version of the recommendation on measures concerning media coverage of election campaigns was published in 2007, and reiterated the standards from the 1999 recommendation<sup>22</sup>. Recognising the changes in the media landscape, the Committee recommended that “*member states should apply the principles concerning the broadcast media and rules on “fairness, balance and impartiality” to “non-linear audiovisual media services of public service media*”. In addition, it was recommended that “*public service media may make available free airtime on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period*”.

## Quality journalism

The recommendation also encouraged media outlets to “*develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, inter alia, respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes*”.

The issue of protecting the media and that public authorities should refrain from interfering with their activities was strengthened with the recommendation that member states should ensure that “*there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence*”.

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<sup>22</sup> Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns.

## Good practice in elections and guidelines on political party regulation

The European Commission for Democracy through Law – the Venice Commission – is the Council of Europe’s advisory body on constitutional matters. The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

In 2002, the Venice Commission published a Code of Good Practice in Electoral Matters<sup>23</sup>. With regard to equality of opportunity, the code under 2.3 states that:

*“aa Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:*

- i. the election campaign;*
- ii. coverage by the media, in particular by the publicly owned media;*
- iii. public funding of parties and campaigns.*

*bb. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.*

*cc. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.*

*dd. Political party, candidates and election campaign funding must be transparent.*

*ee. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising”.*

In 2010, the Venice Commission also published Guidelines on Political Party Regulation<sup>24</sup>. It stressed the need for elections to be “fair, clean and clear” and stated under Guideline 8 that:

*“money in elections is regulated in order to ensure campaigns are:*

***Fair:*** *to prevent improper influence (and ensure the independence of parties) on political decisions through financial donations.*

***Clean:*** *to ensure all political parties have an opportunity to compete in line with the principle of equal opportunity, and*

***Clear:*** *to provide for transparency in expenditure of political parties. The main ways campaign communication has been regulated has been through electoral law including:*

- a. Spending limits and campaign finance controls.*
- b. Subsidies for campaigning communications.*
- c. Pre-poll black outs.*
- d. Media regulation, in particular broadcast licensing.*
- e. Rules on political advertising including impartiality, subsidies and free air time.*
- f. Self-regulation and journalism ethics”.*

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23 European Commission for Democracy through Law (Venice Commission) (2018): [Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report](#).

24 European Commission for Democracy through Law (Venice Commission) (2010): [Guidelines on Political Party Regulation, by the OSCE/ODIHR and Venice Commission](#).

## Tackling Information Disorder

In January 2017, the Parliamentary Assembly of the Council of Europe voted on a resolution concerning Online media and journalism: the challenges and accountability<sup>25</sup>. The Resolution called on member states to:

- *initiate discussions on norms and mechanisms required for preventing the risk of information distortion and manipulation of public opinion;*
- *recognise in their law and internal practice a right of reply or any other equivalent remedy which allows a rapid correction of incorrect information in online and offline media;*
- *ensure the traceability by law-enforcement authorities of users of online media when they violate the law;*
- *include media literacy in their school curricula and support awareness-raising projects and targeted training programmes aimed at promoting the critical use of online media;*
- *co-operate with online media and internet service providers in order to set up guidelines which are inspired by the code of conduct countering illegal hate speech online agreed upon by the European Commission and major internet companies on 31 May 2016;*
- *develop clearer rules on liability of internet site owners for content posted by third parties;*
- *professional news media uphold their editorial standards in their internet presence, including their own media content, advertising, third-party content, as well as user-generated content such as feedback or comments by users;*
- *users of online media are informed about the possibilities to address complaints to online journalists, their media outlet or their professional association;*
- *social media, search engines and news aggregators should develop ethical quality standards regarding their own transparency and the due diligence of their media services and empower their users to report false information to service providers and thus make it known publicly and voluntarily correct false content or publish a reply in accordance with the right of reply or remove such false content; they are legally obliged to co-operate in combating illegal content; set up alert mechanisms against people who regularly post insulting or inflammatory text (“trolls”), which empower users to complain about these trolls, with a view to excluding them from their forums;*
- *advertisers and public relations companies should identify their own internet presence and their contributions to the internet presence of others; they should in particular disclose to the public the person, organisation or company by whom they are commissioned and ensure that disguised advertising and lobbying are barred by professional media on the internet as well as by providers of social media, under their terms of service.”*

Later that year, the Council of Europe published an extensive report on information disorder<sup>26</sup>. It presented a wide range of recommendations addressed to technology companies, national governments, media organisations, civil society, education ministries and grant/making foundations. For national governments, it highlighted the following (summarised):

- ▶ commission research to map information disorder;
- ▶ regulate ad networks;
- ▶ require transparency around Facebook ads;
- ▶ support public service media organisations and local news outlets;
- ▶ roll out advanced cyber-security training;
- ▶ enforce minimum levels of public service news on to the platforms.

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25 Parliamentary Assembly of the Council of Europe, Resolution 2143 (2017) *Online media and journalism: challenges and accountability*, 25 January 2017.

26 Council of Europe DGI (2017): *Information Disorder: Toward an interdisciplinary framework for research and policy making*.

## Media freedom and democratic elections

The Parliamentary Assembly agreed on a Resolution on Media freedom as a condition for democratic elections in 2019.<sup>27</sup>

The resolution called on Member States to (among others):

- “8.1. promote a free, independent and pluralist media environment as an essential precondition for combating disinformation and undue propaganda;*
- 8.2. avoid media concentration, also paying attention to the problem of cross ownership;*
- 8.3. oblige, where this is not already the case, public and private broadcast media to cover election campaigns fairly and impartially, making sure that opposition parties benefit from balanced media coverage in current affairs and information programmes, and introduce, along with this obligation, appropriate penalties by setting up the necessary monitoring and rectification mechanisms to ensure implementation in practice;*
- 8.4. limit to a strict minimum the use made of measures restricting freedom of expression, which must not only be provided for by law and have a legitimate aim, but also be necessary in a democratic society; this means that such measures should not be arbitrary or politically motivated;*
- 8.5. guarantee for any party or candidate having been the victim of false information broadcast by the media, including on the internet, the right to rapid correction of that information and the right to seek redress in court;*
- 8.6. clearly distinguish between the campaign activities and information activities of public and private media to ensure equity among political competitors, as well as a conscious and free choice for voters;*
- 8.7. adopt strict rules on media coverage of government activities to avoid media coverage of ceremonies attended or organised by the government resulting in preferential treatment and undue advantages for the parties in power and their candidates during elections;*
- 8.8. guarantee, where political parties and candidates have the right to purchase advertising space for election purposes, equal treatment in terms of conditions and rates charged; in this context, there should be a requirement for paid political advertising to be readily recognisable as such;*
- 8.9. ensure total transparency with regard to the public when media are owned by political parties or politicians;*
- 8.10. guarantee the editorial independence of public service media, putting an end to any attempts to influence them or transform them into governmental media: the use of public service media to promote a specific political party or candidate must be classified as illegal misuse of public funds;*
- 8.11. enhance the operational capacities of media regulators which must be independent of the political and economic powers; in this regard:*
  - 8.11.1. ensure that the composition of these bodies is politically neutral and based on media expertise and competence;*
  - 8.11.2. seek to reinforce their role so that they can contribute more effectively to addressing the challenges posed by the use of social media as a vehicle of political communication and to counter information disorder.*

With regard to the risks posed by disinformation and undue propaganda on the internet and social media in the context of elections the Assembly also called on member States to:

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<sup>27</sup> PACE (2019) [Resolution 2254 \(2019\) Media freedom as a condition for democratic elections](#).

- 9.1.** *refrain from disseminating or encouraging the dissemination on the internet of statements, communications or news which they know or can reasonably be expected to know to be disinformation or undue propaganda;*
- 9.2.** *develop specific regulatory frameworks for internet content at election times and include in these frameworks provisions on transparency in relation to sponsored content published on social media, so that the public can be aware of the source that funds electoral advertising or any other information or opinion;*
- 9.3.** *establish clear legal liability for social media companies which publish illegal content harmful to candidates or violate essential rules of media communication during election times;*
- 9.4.** *ensure that sanctions provided for in relation to unlawful content are not diverted to force self-censorship of opponents' opinions and critical views, and limit the application of extreme measures such as the blocking of entire websites, IP addresses, ports or network protocols to the most serious cases, in full compliance with the strict conditions set out in Article 10 of the European Convention on Human Rights;*
- 9.5.** *provide specific training for electoral management bodies and media regulators, so that their members can gain a better understanding of the new media environment, with a view to enhancing implementation of regulations on political communication via social media;*
- 9.6.** *encourage all stakeholders – including internet intermediaries, media outlets, civil society and academia – to develop participatory initiatives to enable the general public to have a better understanding of the danger of disinformation and undue propaganda on the internet, and to seek together appropriate responses to these phenomena.”*

Most recently, the Committee of Experts on Media Environment and Reform (MSI-REF) have been tasked with the preparation of a draft recommendation by the Committee of Ministers to member States on election communication and media coverage of electoral campaigns<sup>28</sup>.

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28 For more detail, see the web page of the [Committee and the terms of reference](#).

## 3. State of play in a selection of EU countries

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### 3.1. FRANCE

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#### Overview of legal and regulatory framework

The applicable laws include the Electoral Code, the Law of 6 November 1962 on the presidential election, the Law of 7 July 1977 on European elections or referenda, the Law of 19 July 1977 on pre-election opinion polls and the Law of 20 September 1986 on Freedom of Communication<sup>29</sup>.

The required respect for the pluralist expressions rule enacted by the national regulatory authority Conseil supérieur de l'audiovisuel (CSA), in addition to ad hoc rules which CSA issues prior to different elections, apply<sup>30</sup>. The rules require balance, impartiality and equality. Apart from presidential elections, for which candidates are offered equal air time, equity is to be determined based on the candidates' or parties' previous election results and the campaigns' own efforts to gain public attention and support. CSA defines 'equity' in relation to the airtime dedicated to the direct speech of an electoral contestant or editorial content dedicated to him/her in the broadcast media. Whether a presumed candidate should be granted equitable coverage as compared to other contestants is established on the basis of several factors, including demonstrated ability of this person to mount a campaign, as well past electoral performance and current position in the polls. Equality is defined in terms of time allocated for the direct speech of an electoral contestant in the broadcasts. As is the case in many European countries, stricter rules and more obligations apply to public service broadcasters (France Télévisions, Radio France and France Médias Monde).

#### Prohibition of paid political advertising

Pursuant to Article 14 of the Law on Freedom of Communication, paid political advertising is prohibited at all times. Election silence is 24 hours prior to elections and broadcast of opinion polls are prohibited during this time. In addition, during the election periods, online political advertising is forbidden, according to Article 52 of the Electoral code, which bans any political advertising through the press or by any audiovisual communication media (including social networks) during the 6 months preceding the first day of the month of the elections.

#### Regulatory approach and role of the CSA

France, which has a far greater degree of regulation in these matters than most advanced democracies, has various formal restrictions that are aimed at affecting the quality of the message conveyed. The French content-related regulation aims in particular to reduce the incumbent's advantage. Provided below are some of the examples of different election-related rules enacted by the CSA. All of them are based on the constitutional principle of pluralism, which aims to ensure a representation of the different

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<sup>29</sup> [Law of 20 September 1986 on Freedom of Communication.](#)

<sup>30</sup> [Regulatory framework and practice.](#)

expressions. CSA's role is to ensure the respect for the pluralistic expressions, in particular for political and general news programmes.

CSA is required to provide monthly reports to the presidents of both the National Assembly and the Senate and to the leaders of the political parties represented in Parliament in relation to the speaking time of political representatives. The CSA rules adopted from January 2018, following the 2017 elections, allow for a more coherent and simpler counting of speaking times, allowing for one third of the total counted time to the executive branch, including those of the President of the Republic, collaborators of the President of the Republic and the Members of the Government. The remainder of the total time is divided according to the principle of fairness between political parties and movements that express the broad orientations of national political life. The criteria on which the CSA relies include the results of election consultations, the number and categories of elected representatives, the size of parliamentary groups, or indications of opinion polls. The contribution of political parties to the political debate is also taken into account.

Also, the CSA's assessment takes into account the entire programme of each radio or television service, as in an election period, and reports are delivered quarterly. The CSA takes into account, if necessary, possible exceptional situations related to current events and will examine respect for political pluralism over sufficiently long periods.

The monitoring is also carried out quarterly across all programs taking into account the programming cycles. All radio and television stations<sup>31</sup>, with the exception of the franco-german Arte and the parliamentary channels, are required to comply with the rules set out by the CSA and submit their reports, which are checked by the CSA team.

On 4 January 2011, the CSA set out a framework for the treatment of election news on radio and television regarding access to the airwaves of political figures via the adoption of relevant sub-legislation. These general provisions are clarified during each election campaign by a supplementary recommendation from the CSA. The supplementary recommendation also lists media services who are required to submit their reports to the CSA each week.

The rules set by the CSA during election periods generally apply during the 6 weeks prior to the election. However, this duration may be increased or reduced depending on the particularities of the election.

The rules include the principle of fairness, which implies that television services allocate speaking or airtime to candidates (or political parties) and their supporters, taking into account their representativeness and effective involvement in the campaign.

The assessment of the concept of fairness is based on the representativeness of the candidates, in particular, the results of the candidate or the political party in the most recent elections and the ability to demonstrate concrete involvement in the campaign (organizing public meetings, participating in debates, appointing a financial agent, and more generally any initiative to bring to the public's attention the elements of its programme). Further, the principle of equality applies to presidential campaign and implies that the speaking and airtime of candidates and their supporters are equal.

As part of their public service mission, France Télévision and Radio France broadcast the programme "Direct Expression". This programme offers a free space for political parties and trade unions. Through it, they can make their proposals known and reach a larger audience than they can meet in the field. This program, which is not produced by the beneficiary organisations but produced by means provided by public service media under the supervision of the CSA, is open to parties present in the National Assembly and the Senate as well as to nationally representative trade unions and professional organisations. The CSA defines the annual airtime devoted to this program, its production conditions and its schedule

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31 Among these services, 11 generalist channels (TF1, France 2, France 3, France 5, Canal, M6, C8, TMC, TFX, RMC Story, RMC Discovery), 9 radio stations (France Inter, France Info, France Culture, Europe 1, RTL, BFM, RMC, Radio Classique, Sud Radio) and 4 news channels (BFM TV, CNews, Franceinfo, LCI) report the speaking times of political figures they broadcast each month.

of broadcast on France 2, France 3 and France 5 (TV), and on France Inter and France Bleu (radio). No changes can take place without the prior approval of the CSA.

Each political group has a defined broadcast time in proportion to its number of elected representatives. Trade union organisations each have the same broadcast time. A draw determines the order of broadcasts of trade union and professional organisations.

For political parties, the order of appearance corresponds to the order of electronic receipt of requests to the CSA. Each year, the CSA sets the overall volume of the broadcast time and distributes it among the subjects. This time is allocated pro rata to the number of parliamentary groups with regard to political formations and equally with regard to trade union and professional organisations. The CSA also determines the format of the programs. In each time slot selected, only one subject is exposed. On television, these shows last from 2 to 4 minutes; on radio, they last 5 minutes.

The broadcast of direct expression programmes is suspended during election campaigns. For each election, the CSA adopts the relevant sub-legislative acts, monitors the compliance and report on the outcomes of abidance by the rules.

### Online regulation, elections and information disorder

Most recently, France adopted the Law of 22 December 2018 on the fight against information disorder<sup>32</sup>, which creates a new range of duties for online platforms, both during and outside election periods, including the obligation to cooperate with the regulator, to develop an easily accessible and visible reporting system as well as to implement complementary measures such as the transparency of algorithms and media literacy. The Law has entrusted the CSA with monitoring the compliance with the above-mentioned obligations.

Candidates and political parties can appeal to a judge to help stop “false information” during the three months before an election. New proceedings for interim relief before the civil judge are introduced in the Electoral Code Court. Action could be initiated at the request of the public prosecutor or any person having an interest in bringing proceedings, only during the electoral period. In this context, the judge could order, as a matter of urgency (within 48 hours), any proportionate and necessary measures to stop the dissemination of any allegation or charge of an inaccurate or misleading fact likely to alter the fairness of the forthcoming vote, which are deliberately, artificially or in an automated and massive manner, disseminated through an online public communication service.

During the same election period, online platforms have to provide the user with fair, clear and transparent information on the identity of the natural or legal person which pays for the promotion of information content relating to a debate of general interest; to provide the user with fair, clear and transparent information on the use of his personal data within the framework of the promotion of information content related to a debate of general interest; and to make public the amount of remuneration received in return for the promotion of such information content when their amount exceeds a determined threshold.

According to that same law, the Law on Freedom of Communication is modified in order to give the CSA, during the three months preceding the election of the President of the Republic, the general election of the deputies, the election of the senators, the election of the representatives to the European Parliament and the referendums, if it notes that a service which has been the subject of a convention concluded with a legal person controlled by a foreign State or placed under the influence of that State “*deliberately disseminates false information likely to alter the fairness of the vote*”, the CSA has the power to order the suspension of its distribution by any means of electronic communication until the end of the voting operations. Such a decision of the CSA is imposed on the service itself as well on the operators that distribute that service, such as cable or satellite operators, which means that it can also be applicable to foreign channels distributed via electronic communications by issuing an order to the distributor.

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32 [Law of 20 September 1986 on Freedom of Communication.](#)



Outside election periods, online platforms are obliged to take measures aimed at preventing the dissemination of “fake news”, such as accessible system for reporting by users, transparency in usage of algorithms, take down of accounts spreading fake news, promotion of information from press agencies and media service providers, etc. They are to report on these measures to the CSA. Besides, the CSA has the power to monitor the platforms’ implementation of these measures and report on it and its effectiveness. While doing this, CSA may address recommendations to platforms to enhance their activities in relation to this.

Further, the CSA may refuse to conclude a convention<sup>33</sup> with a radio and television service where it carries a serious risk of violating certain principles (human dignity, pluralism, protection of minors, of public order, of national defence, fundamental interests of the Nation). In the specific case of services “controlled by or under the influence of a foreign State”, the CSA may assess the request for a convention by taking into account content published on other communication services/platforms by the applicant or its subsidiaries or the legal entity that controls it.

The CSA may, after formal notice, unilaterally terminate the convention already concluded with a service:

- ▶ controlled by or under the influence of a foreign State;
- ▶ which undermines the fundamental interests of society, in particular through the spreading of fake news.

Finally, the law places a strong emphasis on reinforced media literacy activities.

CSA has developed an approach to its new obligations by creating a Project Team, comprised of 9 CSA staff members who lead the monitoring work, exchanges with the Expert Committee and act as a contact point with the platforms. Further, it created an Expert Committee, composed of 18 professionals with scientific, legal, economic, technological and ethics background. Consulted by the Project Team on a regular basis, the Committee is entitled to develop proposals and issue opinions.

The CSA issued the Recommendation in May 2019 directed to the platforms on the measures to prevent the dissemination of false information, as well as a questionnaire to the platforms, the aim of which is to facilitate the collection of the required data. The platforms have to report on the measures and methods that they implemented to fight against information disorder on a yearly basis, which is to be publicly available on the CSA website. Critics argued that the law could jeopardise democracy and censor the press<sup>34</sup>.

The presented case of French legislation has recently being followed up by the first report on its implementation by the CSA. The results of online platforms’ declarations attest to significant and increasing efforts provided on combating the spread of false information. The CSA welcomed the high level of cooperation and the availability shown by the great majority of platforms, as well as the richness of the dialogue established with them. While it is recognized that these requirements are complex issue, the CSA assessed that the measures implemented need to be further improved. The reporting system, present on all platforms, does not always allow the user to easily identify and report false information. In addition, all the platforms should be able to set up a follow-up tool for those who report false information, as well as an appeal procedure against decisions taken at the end of review of these reports. The CSA invites them to develop tools for this purpose.

The CSA also calls for greater transparency in this regard. In particular, reliable and exhaustive figures relating to the presence of content likely to propagate false information, their reporting by users and their processing by operators would be very valuable for better understanding the phenomenon and its challenges. In addition, the CSA strongly encourages the development of partnerships between platforms and trusted fact-checkers, such as highlighting their content<sup>35</sup>.

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33 A “Convention” is a legal agreement between the CSA and the licensee, negotiated individually when each licence is issued. These legal agreements define the licensee’s specific obligations.

34 [Euronews \(22.11.2018\): France passes controversial ‘fake news’ law.](#)

35 CSA website news (30 July 2020): [Lutte contre les infox: le CSA publie son premier bilan.](#)

## Key Findings

- ▶ The key principles underlying rules for election coverage in France are balance, impartiality and equality.
- ▶ Paid political advertising is prohibited at all times on broadcast services. The electoral code also bans political advertising through the press or by any audiovisual communication media (including social networks) during the 6 months preceding the first day of the month of the elections.
- ▶ The national regulatory Authority – the CSA, plays a significant role in regulating election coverage in the broadcast media.
- ▶ The regulator carries out extensive monitoring of airtime received by political representatives, and television channels are required to provide reports to the CSA with regard to the time allocated to different individuals, parties and groups. Each political group has a defined broadcast time in proportion to its number of elected representatives.
- ▶ Air time is also allocated to trade unions and professional organisations.
- ▶ The rules set by the CSA during election periods generally apply during the 6 weeks prior to the election.
- ▶ In 2018, France adopted a law to address information disorder creating obligations for online platforms, both during and outside election periods, requiring easily accessible and visible reporting systems, transparency of algorithms and promotion of media literacy.
- ▶ This law also introduces a system whereby candidates and political parties can appeal to a judge to help stop “false information” during the three months before an election.
- ▶ Online platforms are required during election periods to provide transparency with regard to political advertising, identifying the natural or legal person which pays for the promotion, providing the user with transparent information on the use of his personal data, and publishing the amount spent on the promotion.
- ▶ Outside of election periods, online platforms are required to introduce measures to deal with fake news and to report to the CSA on those measures.
- ▶ The CSA has also been given the power to refuse to conclude a convention with broadcaster where it carries a serious risk of violating certain principles (human dignity, pluralism, protection of minors, of public order, of national defence, fundamental interests of the Nation).
- ▶ With regard to services “controlled by or under the influence of a foreign State”, the CSA may also terminate a convention where such a service undermines the fundamental interests of society, in particular through the spreading of fake news.

## 3.2. IRELAND

### Overview of legislative and regulatory system

The regulation of political communication in Ireland is covered in a range of legislative and statutory documents and codes. The main aims of the legislative and regulatory approaches are to ensure objectivity, impartiality, fairness and accuracy in the coverage of political issues. In the Broadcasting Act of 2009 (under section 39(1)), broadcasters “shall ensure that all news is reported in an objective and impartial manner without any expression of the broadcaster’s own views”<sup>36</sup>.

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36 Broadcasting Act 2009 (section 39: Duties of Broadcasters).

The Irish regulator – the Broadcasting Authority of Ireland (BAI) – develops a *“Code of Fairness, Objectivity and Impartiality in News and Current Affairs”* in order to provide guidance in this area. The most recent was published in 2013 and is discussed below.

The law also requires that every broadcaster *“shall ensure that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of public debate, is fair to all interests concerned”* and, with regard to the role of the media professionals in the process, *“that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views”*<sup>37</sup>.

Concerning the procedures of elections, the Irish Electoral Acts do not regulate the content of political advertising nor the content of electoral material, including election posters, during or outside of electoral or referendum campaigns and there are no specific requirements in relation to online advertising. There is however a requirement for identification in that (under section 140 of the Electoral Act 1992) *“it is required that every notice, bill, poster or similar document having reference to a national election or distributed for the purpose of furthering a particular result at a national election is required to bear upon its face the name and address of the printer and of the publisher thereof”*<sup>38</sup>. There are similar provisions in the Acts legislating referenda, Presidential elections, European Parliament elections, and local elections.

There is currently no Electoral Commission in Ireland. Proposals to establish a Commission form part of a set of recommendations from an intergovernmental committee established in 2017 to focus on the security of Ireland’s electoral process and on the issue of disinformation (see more detail below).

### Prohibition on paid political advertising in broadcasting

Paid political advertising is prohibited in broadcasting in Ireland. This is outlined under section 41(3) of the Broadcasting Act of 2009, and refers to advertising *“directed towards a political end”*. It applies to advertising contained in coverage of both referenda and elections. This is reiterated in the BAI’s General Commercial Communications Code (GCCC) which outlines the commercial communications that are prohibited<sup>39</sup>.

### Identification of political advertising

There is no clear statutory definition of political advertising in Ireland – but the law refers to advertising *“directed towards a political end”*. Hence, the understanding of political advertising is very broad. It is not confined to election periods, and also not confined to the promotion of political parties or candidates but also to the promotion of political ideas and political goals.

As the broadcasters need to ensure that they do not broadcast political advertising, the BAI provides guidance on the definition/ or identification of whether an advertisement is political and include three factors:

- *the content of the advertisement;*
- *the context in which the ad is broadcast;*
- *and the aims or objectives of the advertiser and of the advertising campaign*<sup>40</sup>.

### Regulatory documents and actions of the regulator

The Irish regulator is required under the Broadcasting Act of 2009 to prepare a code which should ensure that:

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37 Ibid.

38 [Electoral Act](#) (1992, as in 2017).

39 [Broadcasting Authority of Ireland General Commercial Communications Code](#).

40 [BAI Rule 27 Guidelines for Coverage of General, Presidential, Seanad, Local & European Elections](#).

- a) that all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,*
- b) that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views,*
- c) that a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party".*

The BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs<sup>41</sup> has the following as its objectives:

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast of news and current affairs content;*
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content;*
- To promote independent and impartial journalism in the provision of news and current affairs content;*
- To inform and generate awareness among citizens with regard to standards they may expect in relation to news and current affairs content;*
- To protect the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content".*

The code requires among others, that each broadcaster has *"appropriate policies and procedures to address any conflicts of interests that may exist or arise in respect of anyone with an editorial involvement in any news or current affairs content, whether such person works on-air or off-air"*. This requirement is of particular importance in the context of coverage of elections.

Regarding the coverage of elections and referenda, Rule 47 of the code requires broadcasters to comply with Guidelines and codes prepared by the BAI<sup>42</sup>. According to the BAI's Guidelines on General Election Coverage<sup>43</sup>, *"broadcasters shall ensure that advertising is free of material that promotes candidates, political parties or election interests"*.

With regard to the impartiality of their presenters, *"broadcasters should note that comments made by programme presenters in non-broadcast media, for example via social media, in respect of election interests, including candidates, may have the potential to undermine the perceived impartiality of their coverage. This is particularly the case where the comments are made by presenters of news and current affairs programming"*.

Broadcasters are required to have in place appropriate policies and procedures for handling on-air contributions via social media, for example by developing and applying social media guidelines. *"These policies and practices must be applied where social media is referenced on-air in the context of election coverage, where broadcasters should ensure that on-air references to social media are accurate, fair, objective and impartial."*

Regarding opinion polls are where they are being used as part of the coverage of elections, *"coverage must be accompanied by information to assist viewers/listeners to understand the significance of the opinion poll. Information on the details of the date of the poll, by whom it was commissioned and/or paid for, the company/organisation who conducted it, the number of people polled and their location must be provided on-air"*. Radio and television broadcasters are required to observe a moratorium on coverage of an election from 2pm on the day before the poll takes place and throughout the day of the poll itself until polling stations close.

41 BAI (2013): *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

42 The Guidelines do not apply to print, social media or online print/audiovisual content.

43 BAI: *Rule 27 Guidelines for Coverage of General, Presidential, Seanad, Local & European Elections*.

Viewers and listeners who believe programme material has not complied with the Guidelines or with the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* are entitled to make a complaint to the regulator.

## Party political broadcasts

A system of allocation of free air time is used during the campaign periods for elections and referenda and these free air time slots are termed “*party political broadcasts*”. The Broadcast Act 2009 (Section 39(2)) states that a broadcaster “*shall not be prevented from transmitting party political broadcasts, provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party*”.

According to the BAI Guidelines, while there is no obligation on broadcasters to transmit party political broadcasts, those that do so shall ensure that they are allocated in an equitable manner and ensure that party political broadcasts are transmitted at times that are aimed at achieving a similar audience for all such broadcasts: “*Similar broadcast treatment shall be provided for all party political broadcasts, both at their introduction and at their conclusion. Such broadcasts may only be availed of by political parties included on the Register of Political Parties as provided for under Irish law. Determinations in respect of the allocation of party political broadcasts are a matter for broadcasters.*”

The public service broadcaster RTÉ includes rules in its Journalism Guidelines regarding election coverage<sup>44</sup>. The broadcaster establishes an Election Steering Group that coordinates RTÉ’s coverage of the campaign and ensures that RTÉ’s overall coverage is fair to all parties. The PSB tends to weigh coverage basing upon the number of seats that each party has in the parliament prior to the election. In addition, “*balance and fairness must be maintained both within individual programme strands and across all output. Formal monitoring of output is put in place in the run-up to elections to provide accurate information about election coverage on all RTÉ channels and to ensure that balance is achieved*”.

## Audiovisual services from other jurisdictions

The Guidelines for coverage of elections (outlined above) only apply to broadcasters within the jurisdiction of the Republic of Ireland and not to other services received in Ireland but licensed in Great Britain and Northern Ireland or in other jurisdictions.

However, the BAI noted in the guidelines that they “*encourage broadcasters outside of the jurisdiction, whose services are available in the Republic of Ireland and who cover Irish news and current affairs, to be mindful of the Guidelines, where appropriate, when deciding on their approach to coverage of elections in the Republic of Ireland*”.

## Other issues

Regarding the use of children or minors in political advertising (in this case the free allocated airtime for party political broadcasts), this is not addressed in Electoral Laws or in the Codes on electoral media coverage. In the BAI Children’s Commercial Communications Code<sup>45</sup>, regarding the *Special Protection for Children*, it is stated that the use of children to comment on or endorse products or services in children’s commercial communications is only permitted for products and services that they could reasonably be expected to use and would usually be interested in themselves. Under the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, rule 6 requires that “*Care shall always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs content. In all cases, the over-riding principle must be to avoid the broadcast of material that may*

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44 RTÉ (2012): [RTÉ’s Journalism Guidelines](#).

45 Broadcasting Authority of Ireland (2013): [Children’s Commercial Communications Code](#).

*be unfair or detrimental to their interest. The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast of any interview with a child less than 16 years of age or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast an interview in the absence of such consent must be justified in the public interest*<sup>46</sup>.

In addition, any viewer who believes that the coverage of the elections, or that the political broadcasts, have broken rules concerning privacy, offence, harm, or taste and decency (covered in other codes and regulations) can complain to the regulator. Of course, it can be presumed that the broadcaster may also decide not to broadcast content, or to intervene with the creators of content, if it believes that the content may contravene rules concerning privacy, offence, harm, or taste and decency.

## The printed press and political advertising

There are no restrictions on political advertising in the press. However, the Press Council of Ireland has a code of practice, which includes the agreement that in relation to reporting news and information, *“the press shall strive at all times for truth and accuracy”*. The Code also states that *“the press is entitled to advocate strongly its own views on topics and that comment, conjecture, rumour and unconfirmed reports shall not be reported as if they are fact”*<sup>47</sup>.

## Online political advertising

Online political advertising is not yet regulated in Ireland, however there are plans to regulate on this issue in the future (see below). A previous attempt was the Online Advertising and Social Media (Transparency) Bill of 2017, which did not go through the national parliament before the change of government in 2020. The Data Protection Commissioner has played an increasing role in the regulation of online campaigning with regard to data protection, and issues guidance<sup>48</sup> to all political parties regarding online marketing and canvassing during elections. The key issue was that campaign communication cannot involve sending messages or emails to people who have not consented to receive such messaging, and that third party contact data cannot be used in this process.

The BAI is strongly involved in the work being carried out by the ERGA (European Regulators Group for Audiovisual Media Services) in assessing the implementation of the *EU Code of Practice on Disinformation* (see section 2.1. above). An important element of the code, agreed to by the major platforms, is that political advertising and issue-based advertising is appropriately distinguished from other content (aimed at making sure that political adverts are clearly identified by the users). In addition, several of the major platforms (Google and Youtube, Apple, Facebook, and Twitter) have their European headquarters in Ireland implying a need for the national regulator to engage with these companies on a broad range of regulatory concerns.

As part of the ERGA work in assessing implementation of the code, the regulator co-operated with the Future of Journalism Institute at Dublin City University to check the political advertisements on the main platforms – Facebook, Twitter and Google – during the European Parliament elections of 2019. In the resulting publication *Elect Check 2019*<sup>49</sup> the researchers concluded that: *“clear definitions of what constitutes political and issues-based advertising online and the availability of comprehensive and fully accessible databases are required to ensure the transparency of digital political advertising and campaigning. The research also faced difficulties as it was not possible to arrive at a clear, fully comprehensive picture of the nature and scale of political advertising on the three platforms due to inconsistencies in the datasets”*.

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46 BAI (2013): *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

47 Press Council of Ireland *Code of Practice*.

48 Irish Data Protection Commissioner (2018): *Elections and Canvassing: Data Protection and Electronic Marketing*.

49 BAI/DCU/FUJO (2019): *Elect Check 2019: A Report on Political Advertising Online during the 2019 European Elections*.

## Irish Government Group on Security of Ireland's Electoral Process and Disinformation

Since December 2017, the Irish Government has had an interdepartmental group to focus on the security of elections and to prevent disinformation. This group brings together a range of government departments concerned with election issues and information.

The latest report of the group in 2019<sup>50</sup> concluded with several recommendations (briefly summarised): the establishment of an Electoral Commission as outlined in the Programme for Partnership Government; the modernisation of the voter registration process; regulation of the transparency of online political advertising; reform of legislative provisions concerning the funding of election and referendum campaigns; support of the EU Commission's work in tackling online disinformation; advancing national level media literacy initiatives; and enhancing cyber security measures around the electoral process.

Regarding the recommendation to regulate the transparency of online political advertising, this aims to:

- *protect the integrity of elections, ensure they are free and fair, and not captured by a narrow range of interests;*
- *respect the fundamental right to freedom of expression and the value of political advertising and its importance to democratic and electoral processes while ensuring that regulation of expression meets the requirements of lawfulness, necessity and proportionality;*
- *respect the role of the internet in the public sphere of political discourse and ensure that the public have access to legitimate information required in order to make autonomous voting decisions."*

### Proposal for the regulation of online political advertising

It is proposed that legislation would apply to online platforms, as sellers or intermediaries of political advertising, and buyers of political adverts. The obligation would be placed on the seller to determine that an advert falls under the scope of the regulation. The online platform, or the seller (if not the online platform) should ascertain:

- *the content of the advertisement i.e. whether the advertisement relates to an election campaign, a referendum proposal or is promoting an electoral candidate or political party;*
- *if the content is political: whether a micro-targeting algorithm has been used;*
- *the address of the advertiser (postal address, web or/and email address)."*

In addition, *"online paid-for political advertisement should be labelled as such and clearly display certain information, or a link to the information, in a clear and conspicuous manner. Similar to imprint requirements for election posters under Electoral Act:*

- *name and address (postal address, web or email address, i.e. reliable contact information) of person or entity who paid for the online political advertising;*
- *confirm if targeting was applied, and description of target audience/criteria applied and if the target audience contains 'Look alike' target lists;*
- *cost of the advertising – requirement should apply to both content creation and distribution;*
- *engagement metrics (e.g. no of impressions that the advert would desirably reach);*
- *time period for the running of the advert;*
- *information should be disclosed in real time."*

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50 Government of Ireland (November 2019): *Interdepartmental Group on Security of Ireland's Electoral Process and Disinformation – Progress Report*.

The recommendation to establish an Electoral Commission includes the intention that it will have a role in the oversight of the Regulation of Transparency of Online Political Advertising.

## Key Findings

- ▶ The main aims behind regulation of the broadcast coverage of news, current affairs, and elections are to ensure objectivity, impartiality, fairness and accuracy.
- ▶ Paid political advertising is prohibited on broadcast services in Ireland.
- ▶ To avoid the broadcast of such advertising, the BAI has provided guidelines for broadcasters to identify paid political advertising, i.e. when an advertisement may be directed towards a political end.
- ▶ Although there is no specific legal definition of political advertising, the term “*towards a political end*” allows for a broad understanding – potentially covering advertisement from any entity or organisation addressing a political issue.
- ▶ Political advertising is not prohibited in other media (press, online, outdoor etc). The press applies a code of ethics claiming to “*strive at all times for truth and accuracy*”.
- ▶ Other media (such as outdoor) is required under the current Electoral Acts to provide identification on all posters, documentation etc., that promotes a political party or candidate or position during elections and referenda.
- ▶ During election periods, broadcasters can allocate free time for party political broadcasts, as long as a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.
- ▶ Regarding party political broadcasts, there are no particular content rules. Care should be taken not to contravene rules concerning privacy, offence, harm, or taste and decency. There is a general rule with regard to the use of children in news and current affairs. Complaints regarding election coverage can be made to the broadcaster and/or regulator.
- ▶ BAI rules do not apply to the many broadcasters licensed in other jurisdictions who target, or are available in, Ireland. However, the BAI does communicate with these services and asks them to note the guidelines on election coverage and to respect them.
- ▶ The BAI has been playing an important role in assessing the implementation of the EU Code on Disinformation – by carrying out research on online political advertising.
- ▶ It is planned to introduce regulation for online political advertising which would require – labelling, identification of advertiser, information on costs, and on targeting.

## 3.3. UNITED KINGDOM

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### Overview of legislative and regulatory system

The regulation of political communication in the UK stems from the Communications Act 2003 (sections 319(2)(c) and (d), 319(8) and section 320)<sup>51</sup>, and the BBC Charter and Agreement<sup>52</sup>. The national regulatory authority – Ofcom – is responsible for developing standards in programming in general, and also with regard to ensuring that news included in television and radio services is presented with due impartiality and is reported with due accuracy.

Regarding the process of elections, the Electoral Commission oversees the delivery of elections and is the regulator of political finance in the UK. The Commission investigates any offences and also makes

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51 [Communications Act 2003](#).

52 [BBC Charter and Agreement](#).



recommendations about how to improve the fairness and transparency of the democratic process. The Electoral Commission has made recommendations about the regulation of online political advertising (see more details below).

## Prohibition on paid political advertising

Paid political advertising is prohibited in broadcast media.

As regards definitions of political advertising, the Communications Act (section 321) provides a detailed outline of what constitutes political advertising (and “*political nature*” and by “*political ends*”). An advertisement contravenes the prohibition on political advertising if it is:

*“(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;*

*(b) an advertisement which is directed towards a political end; or*

*(c) an advertisement which has a connection with an industrial dispute.*

**(3)** *For the purposes of this section objects of a political nature and political ends include each of the following:*

*(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;*

*(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;*

*(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;*

*(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;*

*(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;*

*(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;*

*(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends”.*

The broad nature of the UK definition of political advertising includes the prohibition of the purchase of air time for a wide range of organisations covering all potential political issues. The UK law has been subject to hearings before the European Court of Human Rights (ECtHR), most notably the case of *Animal Defenders International v. the United Kingdom*<sup>53</sup> (animal rights NGO’s commercial against cruelty to primates). The Court moved from its previous findings in similar cases and accepted that the UK ban was justified and recognised the general UK concern to prevent political discussion from being distorted by the power of certain groups with unlimited financial resources (see also the discussion under chapter 4).

## Regulatory codes and the Ofcom

The Ofcom is required under the Communications Act 2003 to draw up a code for television and radio, covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy<sup>54</sup>. This includes rules on due impartiality and due accuracy and undue prominence of views

<sup>53</sup> Case of *Animal Defenders International v. the United Kingdom*.

<sup>54</sup> Ofcom (2019): *The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules)*.

and opinions and also rules on elections and referenda. The main principles which underpin these rules are to “ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality; and to ensure that the special impartiality requirements of the Act are complied with”.

The Ofcom Guidance<sup>55</sup> notes provide a deeper explanation of the concept of “due impartiality”: “Due impartiality can be achieved over a period, for instance a General Election period in ‘clearly linked and timely programmes’. Furthermore, due impartiality during election campaigns does not mean that balance is required in any simple mathematical sense. In their coverage of elections, broadcasters – in fulfilling their obligations to preserve due impartiality – should take a consistent approach to the assessment of the level of coverage given to all the candidates. Broadcasters may have regard to any measurable and objective evidence of the likely level of electoral support for particular candidates, and the relevant political context, in deciding relative levels of coverage for different candidates in the same election”. In addition, candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period.

The Ofcom Broadcasting Code includes a moratorium in that discussion and analysis of election and referendum issues must finish when the poll opens. However, such programming may still be available online as, for example, the BBC on-demand programme services (ODPS) are not required to remove archive content for the period when the polls are open. Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes.

## Party political broadcasts

As paid political advertising is prohibited on broadcasting, the political parties and candidates can avail of free air time in the format of party political broadcasts.

Ofcom provides very detailed rules on party political broadcasts<sup>56</sup>. In contrast to the Irish regulation where broadcast services are not obliged to provide free air time (but where they do they must not favour any political party or candidate over another), in the UK a broad range of licensed services are required to offer free time for Party Political Broadcasts (“PPBs”), for Party Election Broadcasts (“PEBs”) and for Referendum Campaign Broadcasts (“RCBs”)<sup>57</sup>.

The Rules also outline the minimum requirements, which these broadcast services are required to follow in determining the length, frequency, allocation and/or scheduling of party political or referendum campaign broadcasts. PEBs and PPBs may only be allocated to political parties registered by the Electoral Commission. RCBs may only be allocated to organisations as designated by the Electoral Commission.

Regarding the duration of coverage, “parties and designated organisations may choose a length of 2’40”, 3’40” or 4’40” on TV. For radio, parties and designated organisations may choose any length up to 2’30””. Regarding Scheduling of broadcasts “PEBs, PPBs and RCBs on television must be carried between 5.30pm and 11.30pm. PEBs and RCBs on radio must be carried between 6.00am and 10.00pm”. For the allocation of times, broadcasters “use their own judgement, based on the criteria of past electoral support and/or current support”. The Ofcom Board delegates an Election Committee to deal with disputes between broadcasters and political parties regarding the allocation/scheduling of party election broadcasts and referendum campaign broadcasts. The Committee deals with complaints regarding impartiality in programmes covering election/ referendum campaigns.

There are no particular content rules regarding these political broadcasts, except that they must not contravene rules in the Broadcast Code concerning harm and offence. No mention is made regarding

<sup>55</sup> Ofcom (2016) *Guidance Notes, Section 6: Elections and Referendums*.

<sup>56</sup> *Ofcom rules on Party Political and Referendum Broadcasts*, March 2017.

<sup>57</sup> These include most of the BBC services, the other national channels with public service obligations (regional Channel 3 services, Channel 4, Channel 5), every local digital television programme service, and every national (i.e. UK-wide, commercial) analogue radio service, and their digital simulcast services (Classic FM, Talksport and Absolute Radio AM).

the use of children or minors in such political broadcasts, or political coverage. There are general rules in the Ofcom Broadcast Code which state (among others) that the code “requires broadcasters to provide due care, and to avoid unnecessary distress or anxiety, for participants who are under 18. This is supported by detailed guidance on the measures broadcasters should take to protect minors before, during and after production”<sup>58</sup>.

## UK services targeting or available in other jurisdictions

The definition of political advertising as outlined (in the Communications Act) above implies that political advertising is not allowed on any services licensed in the UK including those targeting other countries, as the definition of political advertising frequently includes the statement “whether in the United Kingdom or elsewhere”.

## The printed press and political advertising

The press is not covered by any rules limiting advertising or requiring impartiality. The British press is traditionally partisan and each paper tends to announce endorsements or support for political parties before elections. Hence, they are not required to provide balance in reporting election or referenda. The Independent Press Standards Organisation (IPSO) has an Editor’s Code of Practice<sup>59</sup>, which contains commitments related to accuracy, privacy and public interest.

## Online political advertising

Online political advertising is not regulated in the United Kingdom. However, the Electoral Commission who regulates political finance has stated that spending limits apply to advertising of any kind including, for example, street banners, websites or YouTube videos<sup>60</sup>.

In 2018 the Electoral Commission published the report *Digital campaigning: Increasing transparency for voters*<sup>61</sup>. The Commission has expressed concern that “while funding of online campaigning falls under the laws on election spending and donations, more clarity is needed about who is spending what, and where and how”.

The main aims of the recommendations are to: help to ensure that UK voters are confident that digital campaigns are following the UK’s electoral rules; increase the transparency of digital campaigns; help prevent foreign funding of elections and referendum campaigns; allow the Election Commission to impose higher fines on campaigners who break the rules. Briefly the recommendations state (among others) that (in summary):

- ▶ Laws should be changed to require that digital material must have an imprint saying who is behind the campaign and who created it.
- ▶ Laws should be amended regarding the rules for reporting spending, including sub-divisions of different types of spending and particularly that on digital campaigns.
- ▶ UK election and referendum adverts on social media platforms should be labelled to make the source clear.
- ▶ Electoral laws should clarify that spending on election or referendum campaigns by foreign organisations or individuals is not allowed.

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58 Ofcom (2019): *The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules)*.

59 Independent Press Standards Organisation (IPSO) has an [Editor’s Code of Practice](#).

60 For more detail, see the UK chapter in Cappello M. (ed.), *Media coverage of elections: the legal framework in Europe*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2017.

61 Electoral Commission (June 2018) *Digital campaigning: Increasing transparency for voters*.

The British government announced, in August 2020, an open consultation on proposals for making on-line political campaigning more transparent<sup>62</sup>. These proposals will mean that political parties, campaigners and others must explicitly show who they are when promoting campaign content online. The consultation runs from 12 August to 11 November 2020. It stressed the following:

*“Currently, the requirements to provide identification of who has placed advertising only applies to printed campaign documentation and posters, under the Representation of the People Act 1983 (“RPA”) and the Political Parties, Elections and Referendums Act 2000 (“PPERA”). It is required that on this documentation the imprint must include:*

- a) the name and address of the printer of the document;*
- b) the name and address of the promoter of the material;*
- c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).”*

The consultation puts forward several proposals (summarised here):

- ▶ The “imprints regime” (outlined above) should extend to digital election material. This includes but is not limited to: written text; videos; digital posters or banners; animated or moving images; static images; and audio recordings. The types of digital platforms that would contain such material are likely to be: social media platforms; video sharing platforms; content of websites or equivalent apps; website advertising; search engines; some forms of email; digital streaming services; and podcasts.
- ▶ There is a proposal for a test approach to establish whether the digital material should fall under this regime.
- ▶ A further proposal outlines the information that should be provided: the name and address of the promoter of the material; and the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

Other proposals deal with the location of the imprint, the appearance of the imprint, and the re-publishing of election material.

Of significance is the fact that the proposals also intend that digital election material will be subject to the regime regardless of the country it is being promoted from. However, the overall requirements of information are less detailed than those introduced in France, or than those being proposed in Ireland, or the recommendations in the EU Code on Disinformation. Essentially, this proposal lacks the requirement to include details of costs of the advertisement, or information on targeting.

## Key Findings

- ▶ In the UK, at all times there are rules which apply to broadcasters concerning “due impartiality” and “due accuracy” and “undue prominence of views and opinions on matters of political or industrial controversy and matters relating to current public policy”.
- ▶ Paid political advertising is prohibited on broadcast services in the UK.
- ▶ The law provides significant detail regarding the definition of political advertising, including advertisements related to political organisations, those that attempt to influence the outcome of elections or referendums, or to bring about changes of the law, or to influence policies or decisions, or legislative processes, or are connected with an industrial dispute. Hence, it is very broad and includes political issue advertising.

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<sup>62</sup> Government of UK (August 2020): [Open consultation– Transparency in digital campaigning: technical consultation on digital imprints](#).

- ▶ Political advertising is not prohibited in other media (press, online, outdoor etc). The press applies a self-regulatory code. Other outdoor advertising and printed matter is required under election laws to include information regarding the publishers and promoters of such material and the identity any person on whose behalf the material is published.
- ▶ The Ofcom produces several regulatory documents that are relevant to media coverage of elections. These include the Broadcast Code with rules on due impartiality and due accuracy and undue prominence of views and opinions, and also the rules on elections and referenda.
- ▶ As paid political advertising is prohibited, political messages are managed on the free air time allocation for party political broadcasts. The Ofcom rules on Party Political and Referendum Broadcasts provide detailed rules on where, when, how and by whom the free allocation of airtime for political broadcasts can be used.
- ▶ The Electoral Commission plays an important role in the regulation of the process of elections and has stated that spending on digital media campaigns must be included in the declaration of campaign finance spending.
- ▶ The Electoral Commission has also called for the regulation of digital media campaigns. The UK government launched a consultation on this issue in August 2020, in particular regarding a requirement that all political advertising online be labelled.

### 3.4. ITALY

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The legal bases for the supervisory activity in the field of political communication are the Law No. 515 of 10 December 1993, the Law No. 28 of 22 February 2000 (so-called “Par Condicio Law”) and the Decree of the Minister of Communications of 8 April 2004, which issues the Code of self-regulation for local radio and television broadcasting.<sup>63</sup>

Law No. 28/2000 governs news programmes and political communication, distinguishing between two different periods: non-election and election period.

As in other countries, the basic principles of this law relate to ensuring equality, impartiality and balance in election coverage. The implementing provisions (secondary legislation) are adopted by two separate bodies: the Parliamentary Supervisory Commission (the “PSB Commission”) for RAI, and AGCOM for private television and radio stations.

These two bodies adopt two different sets of regulations, one valid for the non-election period (for AGCOM, it is the Resolution No. 200/00/CSP, supplemented by Resolution No. 22/06/CSP), and one adopted before each elections. AGCOM has the task of monitoring the compliance with both its own regulations and those adopted by the PSB Commission, but only for national radio and television broadcasters. The supervision of local broadcasters is entrusted to the competent Regional Communications Committees (CORECOM).

News programmes fall under regular regulatory mechanisms of impartiality and accuracy. As for election-related programmes, RAI, unlike private stations, has more responsibilities and duties in covering elections, but private broadcasters can also engage in election programmes, such as debates or round table, with the duty to inform AGCOM of this intention, with the same rules applying.

#### Political messages – paid and unpaid and their limitations

The broadcasting of political programmes and party political broadcasts is free and does not count in the daily advertising limits. Provisions of Law No. 28/2000 which might be of interest stipulate the following:

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<sup>63</sup> Considered as a co-regulatory code, adopted after the opinion of AGCOM and adopted by a ministerial decree, since the AGCOM is charged with ensuring the correct application of the Code.

### **“Article 3.**

#### **Self-produced<sup>64</sup> political messages**

- 1.** *Radio and television stations offering free political communication spaces under Article 2, paragraph 3, may broadcast self-produced, free or paid political messages, referred to below as ‘messages<sup>65</sup>’.*
- 2.** *The transmission of messages is optional for private broadcasters and mandatory for the public service broadcasters, which provides available to applicants the technical resources necessary for the production of these messages.*
- 3.** *The messages shall clearly convey the political programme or opinion and shall last between one and three minutes for television broadcasters and from thirty to ninety seconds for radio stations, at the requester’s choice. The messages cannot interrupt other programmes, have an independent place in the programming and are transmitted in special slots, of which each issuer communicates to the Commission or the Authority<sup>66</sup>, at least a fortnight in advance, the placement in the schedule. The messages are not counted in the calculation of the advertising quota provided by law.*
- 4.** *For each national radio and television broadcaster, message spaces may not exceed 25% of the actual total duration of political communication programmes broadcast under Article 2, paragraph 3, by the same broadcaster or on the same network in the same week and in the same time slots. Up to two slots can be provided for each programming day.*
- 6.** *Message spaces are offered in equal treatment to political actors represented in bodies whose election is referred to Article 1, paragraph 2. The allocation of spaces in each slot is done by draw. The spaces of a political and unused subject cannot be offered to another political entity. Each message can only be transmitted once in each slot. No one can spread more than one message in the same slot. Each message bears the name “free self-produced message” or “paid self-produced message” and the indication of the client.*
- 8.** *The Authority and the Commission, each within their respective powers, set the rotation criteria for the use, during each monthly period, of the spaces for self-produced messages referred to in previous committees and adopt any additional provisions necessary for the application of the rules provided by this article.*

### **Article 4.**

#### **Radio and television political communication and self-produced radio and television messages in the election campaign**

- 1.** *From the date of the convening of the election rallies<sup>67</sup>, radio-television political communication takes place in the following forms: political tribunes, debates, round tables, adversarial presentation of candidates and political programmes, interviews and any other form that allows comparisons between political positions and competing candidates.*
- 2.** *The Commission and the Authority, after consultation with each other, and each within its competence, regulate the allocation of space between political actors according to the following criteria:*
  - (a)** *for the time between the date of the convening of the electoral committees and the date of the nominations, the spaces are divided among the political actors present in the assemblies to be*

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64 Political advertising messages produced by political parties.

65 Messages are produced and edited by political parties, using the broadcaster’s technical resources. The broadcasters are responsible for the content of these messages, and can be denied in cases of hate speech, or in other cases of non-compliance with legal principles.

66 More precisely, to the PBS Commission and AGCOM.

67 In Italy, there are two different electoral periods. The first starts from the date of convocation of the electoral rallies that is the moment in which the news of the elections is given and anyone (having the prerequisites) can present their own candidacy. The second starts from the date of presentation of the candidacies and ends with the elections themselves.

*renewed, as well as those not represented in them as long as they are present in the European Parliament or in one of the two branches of Parliament;*

- (b) for the time between the date of nominations and the closing date of the election campaign, the spaces are divided according to the principle of equal opportunity between coalitions and among the competing lists that have submitted candidates in constituencies or constituencies that interest at least a quarter of the voters called to the consultation, except for the possible presence of political actors representing recognised linguistic minorities, taking into account the electoral system to be applied and the area of reference;*
- (c) for the time between the first and second ballots in the event of a run-off, the spaces are divided equally between the two candidates allowed;*
- (d) for the referendum, the spaces are divided equally between those in favour and against the referendum question.*

**3.** *From the date of nominations for the elections referred to in Article 1, paragraph 2, national radio and television stations can transmit self-produced messages<sup>68</sup> for the non-contradictory presentation of lists and programmes, in accordance with the manner set by the Commission and the Authority, on the basis of the following criteria:*

- (a) message spaces are divided among different political actors, on the same terms, including with regard to the transmission time slots;*
- (b) messages are organised in a self-managed manner, are broadcast free of charge and must be sufficiently long for the motivated exposure of a programme or political opinion, including, at the requester's choice, between one and three minutes for TV broadcasters and between thirty and ninety seconds for radio stations;*
- (c) Messages cannot interrupt other programmes, or be interrupted, have a stand-alone placement in the schedule and are transmitted in special slots, with up to four slots per day of programming;*
- (d) messages are not counted in the calculation of the advertising quotas required by law;*
- (e) each message can only be transmitted once in each slot;*
- (f) no political subject can spread more than two messages on each programming day;*
- (g) each message is "self-produced message" and the customer's subject is indicated.*

**4.** *The transmission of the self-produced messages referred to in paragraph 3 is mandatory for the public service broadcaster which provides for the technical structures necessary for the realization of the above messages.*

**5.** *Local radio and television stations which agree to transmit self-produced messages free of charge, in the terms and manner of paragraph 3, are entitled to a refund by the State<sup>69</sup> to the extent defined by 31 January each year by decree of the Minister of Communications in consultation with the Minister of Treasury, Budget and Economic Planning. Radio stations are allocated at least one third of the total amount allocated annually. When first implemented, reimbursement for each self-produced message is determined for radio stations in 12,000 and for 40,000 l.a. The annual sum allocated is divided between the regions and the autonomous provinces of Trento and Bolzano in proportion to the number of citizens registered on the electoral lists of each autonomous region and province. The reimbursement is provided, within ninety days after the conclusion of the electoral operations, for the spaces actually used and jointly attested by the issuer and the political entity, within the limits of the available resources, by the region that uses, for the investigation and the management of the spaces*

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<sup>68</sup> Messages, as stipulated above.

<sup>69</sup> This means that once the electoral competition has ended, the law provides for a refund to local television and radio broadcasters which is paid by the following 31 January by means of a specific decree. There is no reimbursement for national broadcasters and for Rai. This refund is only valid for those radio and TV broadcasters who have decided to join.

offered by the broadcasters, of the regional communications committee or, where that body is not yet constituted, of the Regional Committee for Broadcasting Services. In the Trentino-Alto Adige region, the reimbursement is provided by the autonomous provinces, which use the provincial committees for broadcasting services for investigation until the new bodies are established under Section 13 of Article 1 of The Act 31 July 1997, 249.

**10.** For referendums, the rules on the dissemination of political communication and self-produced messages referred to in previous committees apply from the date of referendums.

**11.** The Commission and the Authority, after consultation with each other, and each within its competence, establish the territorial scope of dissemination referred to in previous committees, also taking into account the importance of the consultation on the national territory.”

### **Article 9.**

#### **Institutional communication and information obligations**

**1.** From the date of convocation of the electoral rallies until closing of voting operations, it is forbidden for all public administrations to carry out activity of communication except for those made in an impersonal form<sup>70</sup> and which are indispensable for the effective performance of their functions.

**2.** Public and private radio and television broadcasters, upon request of the competent institutions, inform citizens of the modalities of voting times and the opening and closing times of the electoral polling stations.”

As for parliamentary elections, from the official announcement of an election until the end of voting, the participation of election candidates, members of political parties and members of the government, regional councils and regional governments in informational programmes are to be limited, to the extent necessary, in order to meet the requirements of impartiality and completeness of information. AGCOM issues specific rules for all elections taking place in Italy. Also prohibited is the coverage of such parties and their participation in any other programmes. Besides the rules which stipulate the election silence 24 hours prior to elections, opinion polls are prohibited 15 days before the date of the elections.

AGCOM carries out weekly monitoring of the balanced presence of political subjects, as well as receives reports from political subjects and intervenes with rebalancing orders addressed to television broadcasters. AGCOM can issue sanctions, from an order to suspend programmes in violation of the law, remedy measures, including making available a specific slot in the broadcasting schedule to the relevant parties. Unlike other areas of AGCOM's competence, the objective of the legislator is not to sanction with a pecuniary administrative sanction but to restore the rules of the game, i.e. equity and balance in participation of political subjects. Financial fines are used in case of repeated non-compliance with the orders issued by AGCOM.

## **Election campaigns and online media**

In relation to online media, in 2018<sup>71</sup>, 2019<sup>72</sup>, and 2020<sup>73</sup> AGCOM adopted “Guidelines for equal access to online platforms during the election campaign”, a self-regulatory Google and Facebook initiative. The Guidelines deal with issues such as:

70 In particular, this means that, when the reporting includes the activities of elected officials, for example a certain Minister, the wording used refers to ministries or other public institutions, and not to the Minister her/himself.

71 AGCOM “Guidelines for equal access to online platforms during the 2018 election campaign”.

72 Commitments undertaken by the companies operating the online platforms to guarantee the equal access of political actors to digital platforms during the election campaign for elections for members of the European Parliament due to Italy – 2019.

73 Commitments undertaken by the companies operating the online platforms to ensure equal access of political subjects to digital platforms during the campaigns for the popular referendum for 20 and 21 September 2020.



1. **Equal treatment:** guarantee to all political subjects, with impartiality and fairness under the same conditions, access to information and political communication tools, with transparent and non-discriminatory methods, as signed by them in the European Code of Conduct;
2. **Transparency of online political advertising:** need to inform users of digital platforms about the nature of the “election message” and the identity of the client political entity. This information must be entered directly on the advertisement;
3. **Reporting mechanisms for illegal content:** The platforms undertake to examine the reports as a matter of priority and in a timely manner sent by AGCOM, according to a specific procedure previously defined, for the purpose of removing specific contents that violate the electoral level playing field. Digital platforms will also put a provision of users and political subjects mechanisms for reporting infringing content in terms of use of digital platforms or that are otherwise illegal.
4. **Fact-checking services and tools in the electoral period:** adoption of transparent and rigorous criteria in the choice of partner organizations for all fact-checking services and tools. AGCOM recommends that platforms provide periodic reports on the implementation of these tools and services and on the related operating modes.
5. **Integrity of services:** The platforms undertake to put in place and communicate to AGCOM the tools aimed at preventive verification of the accounts of the advertisers of electoral messages in order to counter the fake accounts phenomenon, as well as their efforts against abusing their platform via bots and fake news.
6. **Institutional communication:** The prohibition of institutional communication during the electoral period, except in cases of communication impersonal and indispensable and cannot be postponed, it also concerns the use of institutional social media accounts for the dissemination of messages and institutional communication. Therefore, digital platforms are invited to report to AGCOM the detection of any infringements of this prohibition. AGCOM also reserves the right to communicate to digital platforms about sanctioning measures adopted in case of ascertained violation of the prohibition. Furthermore, the insertion of advertising messages is prohibited on the pages of institutional accounts.
7. **Prohibition of dissemination of polls:** In the 15 days preceding the vote, up to and including the date of the voting, in compliance with art. 8 of the law No. 28/2000, it is forbidden to broadcast political electoral polls.
8. **Electoral silence:** On the previous day and on those established for the elections, all online platforms are prohibited from spreading electoral propaganda.

## Key Findings

- ▶ The Italian law on equal access to media during elections and referenda and political communication supports the principles of equality, impartiality and balance.
- ▶ Paid political advertising is allowed to a limited extent during the election period on local broadcasters only, and at 50% of the normal rate for advertising.
- ▶ Radio and television stations offer free political communication spaces, which is optional for the private sector and mandatory for the public.
- ▶ Political messages are regulated in detail in the Italian law. They must be identified, can last between one and three minutes for TV broadcasters and from thirty to ninety seconds for radio stations. They cannot interrupt other programmes, but have designated time slots. Messages are not counted in the normal calculation of the advertising limits.

- ▶ Local broadcasters wishing to broadcast self-produced political messages for a fee must also offer free political communication spaces.
- ▶ The rules stipulate the election silence 24 hours prior to elections, opinion polls are prohibited 15 days before the date of the elections.
- ▶ The media regulator media – AGCOM – from 2017, adopted self-regulatory guidelines on equal access to online platforms during each election campaign.

### 3.5. SLOVENIA

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The Electoral laws are the main source of regulation of political advertising in Slovenia. This issue is not addressed in the media laws, with the exception of the law related to the public service broadcaster<sup>74</sup>. In fact, while the PSB is heavily regulated in this area, there is little regulation regarding private broadcasters.

#### Election law

An important player in the regulation of elections is the [State Election Commission](#) who oversees the procedure of elections, although not in relation to media coverage. [The Law on election and Referendum](#) campaigns defines campaigns in relation to political advertising as follows:

*“Article 1*

*(2) An election campaign under this Act is all political advertising content and other forms of political propaganda, the purpose of which is to influence the decision-making of voters (hereinafter: voters) when voting in elections.*

*(3) Referendum campaigns are advertising contents and other forms of propaganda, the purpose of which is to influence the decision-making of voters when voting in a referendum”.*

The law also sets out the period for the election campaigns (under Article 2 (1) whereby the election campaign may begin no earlier than 30 days before the day of voting, and must end no later than 24 hours before the day of voting.

With regard to media coverage, chapter II outlines the legislation with regard to media coverage of election campaigns and referenda in articles 5, 6 and 7. Article 5 deals with opinion polls:

*“(1) When publishing public opinion polls and surveys on candidates, lists of candidates, political parties and on the referendum question during the election or referendum campaign, the media publisher must state the name or surname and registered office or address of the contracting authority who placed the order for the poll, who conducted the poll, the time in which the public opinion poll or survey was conducted, the manner of their implementation, the sample and response of the respondents, the questionnaire or questions and measurement errors, in order to ensure transparency and objective information to the public.*

*(2) The publication of public opinion polls and surveys on candidates, lists of candidates, political parties and on the referendum question is not permitted 24 hours before the day of voting and until the closing of polling stations on the day of voting”.*

According to Article 6 of the law, media outlets themselves should determine and publish the rules regarding media coverage of the elections. Only the public broadcaster RTV Slovenia is obliged to provide programme time for candidates and political parties. All broadcasters can provide space for candidates and parties that are not yet represented in elected bodies:

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<sup>74</sup> All translations are unofficial.

*“(1) Media publishers must determine and publish rules (scope, conditions and manner) for the use of program time or newspaper space for the presentation of candidates, political parties and their programs no later than 45 days before the day of voting in elections or 25 days before the day of voting in a referendum*

*“(2) During the election campaign, Radiotelevizija Slovenija shall provide program time for the presentation of candidates or opinions on the referendum issue in accordance with those provisions of the law governing Radiotelevizija Slovenije that regulate political propaganda in the programs of Radiotelevizija Slovenija.*

*“(3) Publishers of other print and electronic media in direct or indirect majority public ownership must ensure equal conditions for all organizers to publish election propaganda messages, and with the rules referred to in the first paragraph of this Article must ensure equality of election campaign organizers in presenting candidates and their programs. Special time-slots or space may be provided for political parties already represented in the National Assembly or for political parties and candidate lists already represented in local community representative bodies, and a special time-slot or space for political parties and candidate lists not yet represented in the National Assembly or in the representative bodies of local communities”.*

Article 7 of the law details the rules regarding identification and transparency of political advertising and messages:

*“(1) Media publishers (as defined by the media regulations) must publish the identity of who placed the advertisement when publishing.*

*“(2) Bulletins, catalogues or other media, posters, brochures and banners and video pages without live images and telecommunication messages containing advertising content for the election campaign must indicate the identity of who placed the advertisement for such content. Posters must also state their serial number”.*

Hence, private broadcasters are obliged to publish their plans and rules for election coverage. They are obliged to treat parties in an equitable fashion and they are obliged to ensure that political advertising and political messages are labelled according to who published them.

The Election and Referendum Campaign law (Article 40) refers to four bodies in charge of enforcing the law. Oversight over the enforcement of Articles 5–7 is within the purview of the [Culture and Media Inspectorate of the Ministry of Culture](#). However, this inspectorate seems to be a very small organisation and does not publish any details regarding its action in this area.

In addition, under Article 40 (3):

*“The Inspectorate responsible for internal affairs, the Inspectorate responsible for culture and media, the competent local community inspection or the local community police service may impose fines for misdemeanours under this Act within the range prescribed by this Act. they shall also impose fines in an expedited procedure in an amount higher than the minimum prescribed fine”.*

The law also requires that political parties and candidates include in their spending reports the amount of money spent on advertising in the media (article 15 (2)).

## The Public Service Broadcaster

The regulation of media coverage of election and referendum campaigns is elaborated further under the [Law on RTV Slovenia](#). Article 4 refers to the duties of the broadcaster regarding programming and those of relevance to election coverage and political news:

**“(1) In the programs referred to in the first paragraph of the previous article of RTV Slovenia, in particular:**

- *provides credible and impartial informative broadcasts, with which it comprehensively informs about political events at home and abroad, about important events in other European countries, especially EU member states, and about important world topics, so that the submitted contents enable objective public information of Slovenian citizens, Slovenes around the world, members of Slovene national minorities in Italy, Austria and Hungary, autochthonous Italian and Hungarian national communities in the Republic of Slovenia and the Roma community living in Slovenia;*
- *provides quality information on all important cultural, political, historical, sporting, social and economic events;*
- *broadens the understanding of all key issues in the functioning of a democratic society;*
- *promotes a culture of public dialogue and provides a wide space for public debate on problems in society.”*

The law also, under Article 5, outlines journalism ethics including that:

*“Journalists (hereinafter: journalists), editors (hereinafter: editors) of RTV Slovenia and others who are directly involved in the creation or preparation of RTV programs must, in their work, in particular:*

- *respect the principle of truthfulness, impartiality and integrity of information;*
- *respect for human personality and dignity;*
- *respect the principle of political balance and worldview pluralism;*
- *respect the principles of constitutionality and legality in the design of programs, including the prohibition of the promotion of cultural, religious, sexual, racial, national or other forms of intolerance;*
- *to ensure impartial and comprehensive information so that citizens have the opportunity to express their views freely;*
- *respect the principle of political independence and autonomy of journalists;*
- *to enforce the professional ethics of reporters, consistent differentiation of information and comments in journalistic articles;*
- *to protect children and young people from content that could adversely affect their mental and physical development, and to respect universal human values”.*

Article 10 of the law focuses on political propaganda/ political messages:

**“(1) Political propaganda is not permitted in the programs of RTV Slovenia.**

**(2) Notwithstanding the provision of the preceding paragraph, political propaganda is permitted during the election campaign in accordance with the provisions of laws governing election campaign.**

**(3) Political propaganda under this Act are political propaganda messages (spots) and other forms of political propaganda, the purpose of which is to influence the definition of voters when voting in elections.**

**(4) RTV Slovenia may publish political propaganda messages only with an indication of the identity of who placed the advertisement. The person/ organisation placing the advertisement is responsible for the content of such a message”.**

Article 12 covers the requirement of the RTV Slovenia to provide free air time to all political candidates and parties on an equal basis:

*“(1) During the election campaign, RTV Slovenia must make available part of the programming time free of charge for the presentation of candidates (hereinafter: candidates), political parties and their programs. RTV Slovenia is obliged to take into account the principles from Article 4 of this Act when determining this time and formulating the content of these broadcasts.*

*“(2) The time allotted for the presentation of candidates and political parties represented in the National Assembly or the European Parliament shall be the same for all, and the conditions for their presentation within pre-election broadcasts shall be the same.*

*“(3) Political parties and independent candidates who are not represented in the National Assembly or in the European Parliament must have at their disposal one third of the total time determined by RTV Slovenia for all political parties and candidates participating in elections. RTV Slovenia enables these parties or candidates to present themselves within the framework of special pre-election presentations intended for them in terms separate from the broadcasts referred to in the previous paragraph, so that each of these parties or each of the independent candidates is given a mutually equal presentation.*

*“(4) RTV Slovenia must provide the candidates for the President of the Republic (hereinafter: the President of the Republic) with the same time and conditions for presentation.*

*“(5) No later than 15 days after the call for elections for the President of the Republic or elections to the National Assembly, the European Parliament or local elections, RTV Slovenia must publish the manner, forms, scope and conditions for presenting candidates, political parties and their programs from the first paragraph of the article - in shows, daily press or in any other way available to the public.”*

Chapter V of the law concerns sanctions (specifically fines) whereby the public broadcaster can be fined for a range of infractions such as: publishing a political propaganda message without specifying the contracting authority referred to in Article 10 of this Act; failing to publish the manner, forms, scope and conditions of presentation of candidates, political parties and their programs no later than 15 days before the start of the election campaign (fifth paragraph of Article 12).

## Public Service Broadcaster Code of Ethics

The PSB also has a [code on professional and journalistic ethics](#), which covers in detail the principles of accuracy, impartiality, credibility, liability, scope of opinions, communication balance and balance of communication in an individual show. Part 3 focuses on election campaigns:

### *“3.1 Attitudes towards parliament and politicians*

*This chapter does not concern daily informative reporting on events at the time defined by Article 8 of the RTV Slovenia Act as an exception (“political propaganda is allowed during the election campaign”), as well as numerous professional and technical (service) broadcasts on electoral legislation and its implementation.*

*Regular news and other broadcasts of RTV Slovenia are also prohibited from political propaganda during the election campaign. For them, the criteria of informative importance and artistic quality of the event remain, taking into account the provisions of Article 4 of the RTV Slovenia Act.*

*During the mentioned period, RTV Slovenia provides equal free presentation of the programs of parties and independent candidates running for the National Assembly. The order of the presentations is determined by a public draw.*

*Radio and television programs of RTV Slovenia provide the same opportunities for all presentations: a microphone in the recording studio or a TV camera in the studio, the same image cut-out. The use of pictorial and audio material from the archives of RTV Slovenia for promotional presentations of clients is not permitted.*

*Parties wishing to take advantage of the possibility of a free presentation must confirm this in writing to the editors-in-chief of the relevant programs of RTV Slovenia by a deadline to be determined in accordance with the legal deadlines for each election.*

*In accordance with the program needs and technical capabilities of RTV Slovenia, it will inform the political party and candidates in writing about the schedule of radio and television recordings.*

*In the absence of the announced recording date, the client loses the possibility of free presentation.*

*Teletext RTV Slovenia does not publish free presentations.*

### **3.2 Confronting political parties and candidates**

*In shows in which political parties and candidates face off, the following principles apply:*

- The discussion is led and directed by journalists, who are in the role of an impartial facilitator of the discussion between party representatives or candidates, whether they are answers to an individual question or rounded content units.*
- Journalists who host pre-election broadcasts must allow each participant to perform within the agreed time limits; If participants do not respect these restrictions the journalist can revoke their right to speak (stop them from speaking).*
- In such broadcasts, the cumulative principle is that parliamentary and non-parliamentary parties are allowed to perform in a ratio of 2/3: 1/3 of the programming time in favour of parliamentary parties (especially for Television Slovenia, especially for Radio Slovenia and especially for radio and TV programs of regional centers).*
- In the programs of RTV Slovenia, the participation of political parties in particular time slots are proposed by the editorial teams; ranking of particular parties in individual broadcasts is determined by drawing lots. This will provide an opportunity for both candidates from non-parliamentary parties and candidates from parties represented in the National Assembly to be represented in the confrontation. If there are doubts as to which parties are parliamentary and which are not – RTV Slovenia must obtain an official explanation from the President of the National Assembly and data from the central register of the Ministry of the Interior. Only a candidate from the list of an individual party or the list of a group of parties can appear in the show.*
- Pre-election broadcasts are usually live, with limited time for responses and replies; parties who do not use the time for the agreed appearance in the pre-election confrontation are not entitled to an alternative term.*
- For broadcasts in which the presence of an audience is envisaged, each party receives the same number of tickets, which it may distribute among its supporters and members, but not among senior officials and its electoral candidates.*

### **3.3 Balancing reporting during the election campaign in other broadcasts**

- During the election campaign, representatives of parties and candidates for the National Assembly may not appear in RTV Slovenia broadcasts other than those shown in item 3.1. When reporting on the activities of those representatives of parties and candidates who perform state and public functions, RTV Slovenia consistently distinguishes between their state activities and their electoral activity. The provisions of these rules apply to the latter.*
- Journalists and associates of RTV Slovenia who decide to run in the elections or participate in the election campaign in any way may not host and edit broadcasts or prepare authorial contributions during the election campaign. Any deviation of an employee of RTV Slovenia from the stated restrictions shall result in his immediate suspension”.*

## Key Findings

- ▶ Regulation of political advertising and political communication during elections and referenda is mainly based on electoral law. An exception is the law relating to the public service broadcaster.
- ▶ It is not clear whether political advertising is confined only to the election period, except in the case of the public service broadcaster where it is prohibited outside of election periods.
- ▶ All media outlets are required to publish plans and rules regarding their election coverage.
- ▶ In addition, all media outlets are required to treat parties and candidates equally with regard to publishing their messages. They may also allocate free time to political parties and representatives. The PSB is obliged to allocate free time.
- ▶ All political messages and advertising must be labelled indicating who placed the advertisement/ message.
- ▶ The public service broadcaster has much more detailed regulation on this issue, including in its own codes and standards.

# 4. Conclusions, guidelines and recommendations

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## 4.1. INTRODUCTION

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Media play an essential role in the conduct of democratic elections. Media outlets provide parties and candidates a platform to voice their political opinions, but they also provide diverse and pluralist information to voters and can serve as a watchdog for government actions and all political actors at large.

The Council of Europe plays a key role in standard-setting throughout the continent. Several recommendations, resolutions and opinions have been published by the Council of Europe on media and elections. The vast majority of jurisdictions have rules that reflect these standards: with regard to issues of fairness and impartiality; concerning the equitable allocation of free air time; or the possibility to purchase airtime in an equal and non-discriminatory manner; with regard to the treatment of opinion polls; and the value of having a day of reflection (or silence) on the day preceding the election.

The previous sections dealing with country examples outline the way in which this is achieved, often in great detail via regulations, codes and guidelines.

Of significance is the fact that Council of Europe standards require that member states establish frameworks for media coverage of elections that would support the principles of fairness, balance and impartiality, and contribute to free and democratic elections. This was emphasised by the Committee of Ministers in 1999 when it recommended that *“the governments of the Member States examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law”*<sup>75</sup>.

At the level of the European Union, in September 2018, President Jean-Claude Juncker stated the need to protect our free and fair elections. The measures that he outlined included a recommendation on greater transparency in online political advertisements and targeting<sup>76</sup>. The work at EU level is very much focused on issues regarding online political advertising, online campaigning and issues of disinformation. An important initiative is the Media Pluralism Monitor developed by the Centre for Media Pluralism and Media Freedom as a tool for the measurement of risks to media pluralism in the EU member states. It is worth noting that the Media Pluralism Monitor now includes candidate countries Albania and Turkey and could be of value to the other countries in the region to also join this research exercise.

## 4.2. RECOMMENDATIONS

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Each of the issues identified by the beneficiaries in relation to political advertising and media-related election rules are discussed in the following paragraphs and recommendations are provided.

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75 [Recommendation No. R \(99\) 15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns](#), 9 September 1999.

76 [Recommendation of 12.9.2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament](#).



### 4.2.1. Paid political advertising outside of the election period

The issue about paid political advertising in the region seems not to be whether to continue to allow it or not, but how best further enhance the legal framework and practice around it. This is not the case in a number of European countries, including those outlined here, where paid political advertising is banned (France, Ireland, the UK), or at least restricted to the election period only (Italy for local broadcasters). Much is there to debate on this question, especially considering the current and sometimes massive shift of political ads to online and social network platforms, which will be discussed further in the text, although it is not yet an issue that is strongly emphasized in this region.

In determination of whether to opt for paid political advertising or ban it, the case-law of the European Court of Human Rights is important to consider. For example, violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights was established in a case where a fine was imposed on a television channel for broadcasting paid advertisement for a small pensioners' political party, in breach of the blanket prohibition provided for in the national legislation ([TV Vest AS and Rogaland Pensjonistparti v. Norway](#)). Similarly, a decision in relation to Swiss blanket ban on political advertising in [VgT Verein Gegen Tierfabriken v. Switzerland](#) where an animal rights organisation attempted to have its commercial against animal farming broadcast on the national television has been reached. Not excluding that such a ban could be compatible with the right to freedom of expression in certain situations, the Court did not accept general justifications that (a) the ban prevented financially powerful groups from distorting public debate and that (b) broadcast media must be subject to greater restrictions due to their influence.

On the other hand, in the famous case of [Animal Defenders International v. the United Kingdom](#) (animal rights NGO's commercial against cruelty to primates), the Court ruled in favour of the blanket ban. Adopting a new doctrine of "general measures", the Court widened substantially the States' margin of appreciation, relying much more on the domestic authorities' assessment of the necessity of the measure. The Court's reasoning was based, among other, on the lack of a European consensus on how to regulate paid political advertising in broadcasting, on possible abuse of less restrictive rules, and on the applicant's access to other powerful communication tools such as print media, the internet and demonstrations. As for online matters, the Court in general follows the logic of "*what applies offline, also applies online*"<sup>77</sup>, but also regards the special features of the Internet. The Court also recognised the general UK concern to prevent political discussion from being distorted by the power of certain groups with unlimited financial resources.

Broadcasting regulation which relates to advertising restrictions and impartiality obligations help ensure a level playing field for political debate. However, it is important to note that since political advertising bans (for now) apply only to broadcasters but not online media and online platforms, effectiveness of these regimes severely declines. Rules vary by country and according to local market conditions, but it is clear that campaign spending limits will probably require serious considerations, taking the current shifts to online spending. In this context, there is a growing trend in regulation of online political advertising requiring at least transparency in terms of identification of such advertising, of the identity of those placing and paying for the advertising, and of the money spent on such advertising. This is already covered by legislation in France, while the Irish and UK governments have both indicated plans to legislate this issue.

It is the lack of clear legal provisions banning the paid political advertisement outside of the electoral process that has been identified as one of the problematic issues in the region, except in Albania, Serbia (found in the relevant media law) and Kosovo\* (where it is determined by the IMC's sub-legislation). Lack of a clear ban of such practice in relevant legislation is perhaps best described by the responses to the questionnaire from Bosnia and Herzegovina, which can, judging by the responses from other beneficiaries' countries, easily be applied throughout the region: "*Non-existence of rules governing paid political advertising outside the pre-election period can be problematic from the point of view of impartiality and equal*

77 Deriving from the United Nations Human Rights Council: [The promotion, protection and enjoyment of human rights on the Internet](#).

*opportunities, especially having in mind that, in Bosnia and Herzegovina, it is often observed that the “real” election campaign is finished even before it has officially started. The rules of the pre-election period are usually meticulously observed, and most political subjects are believed to have already done their work by that time”.*

In some cases, including Bosnia and Herzegovina and North Macedonia (related to private broadcasters), the lack of legal clarity on this has been “bridged” by the fact that paid political advertising is considered allowed outside the election period, but falls under the regular advertising regulation regime.

At least part of the resources for political advertising comes from state budgets in terms of financial allocations for campaigning, which becomes available after the proclamation of elections. Surely, big political subjects have ample financial resources at their disposal and should not necessarily rely on budgetary allocations for it. However, there are spending caps and disclosure obligations in place for political subjects or actors related to them, as well.

In any case, this brings to the front the possibility of inequality, as some political parties have more funds than others with which to pay more advertising time in audiovisual media, so the election race is unequal from the beginning, at least when advertising in those media is concerned. This issue, *inter alia*, was a crucial element in the decisions in the European countries (presented here) to ban paid political advertising. For example, in Italy, the political advertising is free, save for local broadcasters in Italy, who charge a 50% discount on the rates normally in place for advertising in the same time slots and who are entitled to a refund by the State, in accordance with the rules (the similar practice being reported also in North Macedonia and considered problematic). In Germany, political advertising is allowed only during election campaigns and the price for this is only the reimbursement of costs to the broadcasters<sup>78</sup> (hence also at a lower price than normal advertising).

The alternative approach to paid political advertising is the allocation of free air time on an equitable basis during election periods. This can be optional for broadcasters (Ireland), or obligatory for designated broadcasters (in the UK and France this includes public channels, free to air generalist channels and in the case of France the news channels), or in some cases the obligations may be stronger for public service broadcasters.

The consideration of the blanket ban of paid political advertising, as it has been seen in European countries presented here, may not be the appropriate way to deal with the identified issues in the region, in particular as this may further jeopardize an already difficult balance regarding the situation of media in the region including the economic situation<sup>79</sup>.

Instead, it is suggested to amend the relevant legislation or sub-legislative acts in the manner so as to clearly prescribe that paid political advertising is prohibited any time except during the actual pre-election campaigns which, in the region, is approximately 30 days prior to elections. In Montenegro, this time period may vary, as it begins for a political party/ candidate from the date that their nomination is confirmed by the Election Commission.

In addition, such sub-legislative acts should take note of the Council of Europe’s recommendations in this area. Where paid political advertising is permitted, member states should ensure that all political candidates and parties *“are treated in an equal and non-discriminatory manner”*. For example, in member states where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that *“the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment”*. The Committee also recommended that *“Member States may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase”*.

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<sup>78</sup> See the Germany chapter in Cappello M. (ed.), *Media coverage of elections: the legal framework in Europe*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2017.

<sup>79</sup> This includes the considerations of banning paid political advertising for public broadcasting services (PBS) and allowing it for commercial media services, due to dual financing models of PBSs and election-related obligations of provisions of series of types of political programmes, following the principles of impartiality, accuracy and balance. Decision in relation to this is part of public policy matter, having in mind market specificities of each country, with a vast number of references related to this debate, which is not within the scope of this Study.

Also, the European Commission for Democracy through Law – the Venice Commission – in its 2018 *Code of Good Practice in Electoral Matters*<sup>80</sup>, emphasised the importance of equality of opportunity, including with regard to coverage by the media – such equality being either strict or proportional (according to results achieved in previous elections). In addition, they noted that political party, candidates and election campaign funding must be transparent. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

#### 4.2.2. Definitions, identification and origin of political advertising

Lack of legal definition of political advertising leads to the ambiguity of its understanding, and can generate legal uncertainties. In the region, this issue has been highlighted as problematic, due to the instances of too broad of definitions, references to any other type of advertising, as well as lack of provisions related to the identification and origin of political advertising.

The actual choice of definitions, identification and origin is up to national administrations to decide on, but some suggestions in that sense are provided for. One of the most encompassing definitions of political advertising is perhaps the one from [US Washington State Codes](#), amended in 2020 to include that: *“Political advertising includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, digital or social media advertising, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign”*.

In addition to providing the means by which political advertising is disseminated, it is equally important to define the scope and purpose of such advertising. The definition of political advertising in the law of the United Kingdom provides a broad and comprehensive outline of what the scope and purposes of such advertising are relevant for that jurisdiction: advertisements related to political organisations, those that attempt to influence the outcome of elections or referendums, or to bring about changes of the law, or to influence policies or decisions, or legislative processes, or are connected with an industrial dispute. It is interesting to note that the definition of political advertising in Albania is also quite broad and covers that which: supports the interests of political parties, political groups or leaders seeking political objectives; affects a legal change; impacts a political or administrative decision; affects the development of public opinion regarding disputable political issues.

In this context, the practice which is present in the region (as in many other countries), related to elected public officials, who utilize their positions which provide them with ample free air-time to campaign outside of election periods in their own, in national media but also in media of neighbouring countries, is sometimes much more effective than any paid political campaign, but falls outside of its scope. Even when opposition or non-parliamentarian political subjects are presented, the time allocated to them cannot be compared to that devoted to elected officials. The air-time allocated to them is understandable from the perspective of following the daily politics for which the public interest is high.

These matters are dealt with legal framework which relates to impartiality, balance, accuracy and unbiased reporting, legal norms and principles present in the region, as well. However, when it comes to the practice of abiding by these principles, and in particular public service media, numerous reports indicate that the situation is far from satisfactory in some countries of the region and includes strong bias and political influence over media, most notably regarding public service media<sup>81</sup>. However difficult, media service providers can try to minimize the effects of these “outside of election periods campaigning” practices by highlighting these issues to the audience, who in turn, are able

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80 European Commission for Democracy through Law (Venice Commission) (2018): *Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report*.

81 For further details, please refer to [European Parliament Election Observation Delegation to the General Elections in Bosnia and Herzegovina](#) (5–8 October 2018, Final Report).  
See also this [European Parliament Briefing on Serbia](#).

to form their own judgements. While stricter requirements for equality, impartiality and balance can somewhat help the matters, they do not deal with the problem in its entirety, as the poor financial situation in the region, complex political issues and agenda, high political influence and control of media outlets, etc. present rather stubborn obstacles to fulfilling full independence of media outlets and unbiased and objective reporting, especially in relation to elections. Self and co-regulatory schemes related to journalistic ethical norms, mechanisms and support programmes for enhancing media and media regulator's independence are avenues strongly underpinned. For example, the extensive self-regulatory codes of the public service broadcaster in Slovenia are interesting in this regard.

The identification of political advertising is equally important, as political ads should always be identified as such and should not be disguised as news or editorial coverage, applying the same principles and same restrictions as per any other type of advertising. It should be remembered that the 1999 Recommendation of the Council of Europe also addressed this issue and emphasised the importance of clear identification of political advertising: the public should be made aware that the message is a paid political advertisement.

The question arises as to whether such advertising falling outside the election period and which is not properly labelled, should then be dealt with by the regulator as though it were surreptitious advertising under the regular advertising rules.

In this regard, and also related to the issue some beneficiaries raised in terms of lack of full differentiation between rules for political and other advertising, it should be noted that some principles are indeed the same, but it is advisable to consider adopting more detailed regulation for political ads alone (such as prohibition of use of children, further addressed below). A good example is noted in e.g. North Macedonia, where the identification of paid political advertising is clearly stipulated in the Electoral Code, as it includes the requirements to clearly separate them from the other programming, to label them as paid political advertising, and to mention the party/coalition that has ordered it. There is a similar requirement of separation in Montenegro.

As to the origin of political advertising, it is suggested to clearly state that the origin of paid political advertising is obligatory, and provide as broad a provisions as possible, so as to include any actor, besides political subjects and their campaign supporters, that places ads which are political in nature. The enforceability of this is as easy or complex as is identification and control of spending caps, with "follow the money" principle. The need for clear legal provisions related to both the identification and the origin of paid political advertising derive their justification from similar principles for any advertising, as the lack of these principles lead to potential negative effects on voters, can be misleading in nature, etc.

The aim of these rules is to maintain the integrity, fairness and legitimacy of the election process and its outcome, and guard against the possibility that private interests and powerful minorities can control outcomes through collusion between media and politicians, or the buying of influence over public opinion. The overriding principles to be obeyed in such deliberations should come from the international human rights standards that require that rules are necessary and proportionate.

#### **4.2.3. The influence on election-related matters from neighbouring countries**

It is interesting to note that the issue of the potential influence of foreign media on a national election, was addressed in the 1999 recommendation of the Committee of Ministers of the Council of Europe. The Committee emphasised that the principles of fairness, balance and impartiality *"should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address citizens of the country where the election is taking place"*.

This is where the significant specificities of this region can be best seen. The proximity and historic and linguistic ties in the region, coupled with the fact that the audiovisual media offer includes the cable/IPTV distribution of neighbouring channels, are elements which lead to reported situations of influence on elections coming from foreign media. This is in addition to occurrences of news audiovisual media service providers who are not under the jurisdiction of any of the beneficiaries countries, but have programmes dedicated to some of them, with, for example, N1 media group, under the jurisdiction of Luxembourg, targeting Serbia, Bosnia and Herzegovina and Croatia. Paid political advertising but also other election-related programmes do occur on these channels, although not under the jurisdiction of any of the administrations in the region. As regards Albania, the regulator reports that political entities in neighbouring countries in the region (Kosovo\* and Northern Macedonia) commission advertising, during their own local and national elections, in the main TV outlets in Albania that are available in their countries.

The aforementioned issues are typically not found in other European countries. Political subjects do not have a practice of campaigning outside their countries and there are few examples of politicians of one country appearing on media of neighbouring countries. This issue does arise in other situations where countries are the recipients of channels targeting them from other jurisdictions. This is addressed in the Irish regulator's Guidelines for coverage of elections. The BAI noted in the guidelines that they encourage broadcasters outside of the jurisdiction, whose services are available in the Republic of Ireland and who cover Irish news and current affairs, to be mindful of the Guidelines, where appropriate, when deciding on their approach to coverage of elections in the Republic of Ireland.

In the Communications Act (2003) in the United Kingdom, the provisions prohibiting political advertising take note of the potential impact of political advertising in other jurisdictions. For example, under (section 321): *"An advertisement contravenes the prohibition on political advertising if it is: (a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere; (b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory"*.

There are, additionally, occurrences of, for example, Belgian and Swiss media reporting on French opinion polls or election results in the periods when it is forbidden to do so in France. Currently, the main issues related to elections in most EU Member-States relate to online and social network media, an issue further elaborated below.

The aforementioned practices in the region could, partially, be addressed with tighter co-operation among the media regulators, and not only those from the region, but also those with the jurisdiction of media services in question (if and when needed). This is also important from the perspective of avoiding situations in which distribution operators are called on to prevent broadcasts of neighbouring channels, as these actions are questionable from the perspective of the right to freedom of expression and free transnational flow of audiovisual services. In that respect, and having in mind excellent co-operation of beneficiaries under the auspices of the Council of Europe projects, but also bi and multilaterally, it is suggested to consider the support to the establishment of an informal "task-force", that would regularly exchange on these matters, follow the practices elsewhere and provide for a quality exchange of ideas, practices and legislative and regulatory measures.

As the inspiration stemming from the revised Audiovisual Media Service Directive (AVMSD) in relation to introduction of derogation mechanisms from the country of origin principle obligations as regards promotion of European works from (Article 13.2)<sup>82</sup>, this could be questionable from the perspective of

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82 The AVMSD provides for the possibility of derogating from the country of origin principle and impose obligations to media service providers not under the jurisdiction of a particular member state to contribute financially to the production of European works. This is indeed being transposed in a number of EU member state and, for example, an interesting development is observed in the French speaking community of Belgium in this regard. In particular, the draft legislation proposes differentiation between internal and external media services, the latter being defined as the media services which comes under the jurisdiction of a Member State of the European Union or party to the Agreement on the European Economic Area or party to the Council of Europe Convention on transfrontier television and which targets the public in the French-speaking region or the French-speaking public in the bilingual region of Brussels-Capital in order to derive commercial communications revenues or revenues from users from this market. These services are to be obliged to financially contribute to funding of local audiovisual production.

its abidance by the international standards related to the right to freedom of expression. Instead, it is advisable to address this issue not from the angle of media law but rather from the angle of electoral law, and for example consider amending election laws restricting or banning the spending for paid political advertising on any non-domestic media services. It is worth noticing that some countries such as Tunisia even go further and forbid candidates to use any foreign media during the campaign. Important to stress here is that paid political advertising, at least in part, comes from tax-payers, hence placing this restriction on political subjects and their supporters can be seen as proportionate and justifiable. This would exclude the matters of dual citizenships and rights to vote in neighbouring countries, a unique occurrence which cannot be addressed by domestic legislative measures, as they pertain to elections from a different country. The reported practice of the CRA (Bosnia and Herzegovina) seems to be a viable approach to these matters, where paid political advertising from political subjects of neighbouring countries are regarded as advertisement and fall under the general advertising rules. It will also be useful to see what develops at the EU level on this question in the context of a recommendation on transparency of political advertising, given its stated strategy to, among other issues, better protect democratic processes from manipulation by third countries or private interests.

As discussed in section 2, the revised AVMSD has introduced a system of “provisional derogation” from the principle of freedom of reception of services from other Member States, which under Article 3 (3) also allows for a provisional derogation “*where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly [...] prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence*”.

As noted earlier, the Court of Justice of the European Union (July 2019) following a request for a preliminary ruling from a Lithuanian court concerning the restriction of distribution of a foreign channel, stated that: “*A national measure does not constitute a restriction to the ‘freedom of reception’ if it is justified by a general aim of pursuing a public policy objective and does not amount to a second control of the programmes, in addition to the one coming from the broadcasting Member State. In the present case, the Court insists on the fact that this national measure, which pursues, in general, a public policy objective, regulates only the methods of distribution of the programmes without suspending or banning their retransmission, the channel still being legally broadcast via a pay-to-view package. Therefore, the Court concluded that no “second control” is initiated and the receiving Member State’s measure does not fall within the scope of Article 3 of the AVMS Directive*”.

It is not yet clear as to whether interference in the democratic process of another country via the media would qualify as a threat to national security. As outlined above, it is recommended that cooperation between regulatory authorities in the region is strengthened with regard to promoting mutual respect for rules on media coverage of elections and political advertising rules could be a useful approach going forward. It is important to note that the appearance of political subjects in the programmes of neighbouring media service providers, thus circumventing the rules, falls under the umbrella of ethics and would not be solved by any legislative measure that is considered legitimate and abiding by the principle of freedom of expression and free flow of audiovisual media services. It is understood that a certain level of political maturity and democratization is what is required in order to avoid such practices.

#### 4.2.4. Other matters

Some of the beneficiaries’ countries raised the issue of use of minors in political advertising. It is, in principle, forbidden to use minors for the political purposes in the region, just as it is the case in other countries. As the inclusion of minors in political campaigns, including in political advertising is seen by some as children being used as props<sup>83</sup>, the ban on the manipulation with children for these purposes, as seen throughout the region, is in line with the established European practice. From the case studies examined, this issue was not directly addressed in codes or regulations related to the coverage of elections or “political messages” or “party political broadcasts”.

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83 <https://dukespace.lib.duke.edu/dspace/handle/10161/16069>

However, there exist a range of regulations and codes that provide guidance in a general sense on the use of children in programming or advertising. One example comes from the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in Ireland, where it is required that *“care shall always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs content. In all cases, the over-riding principle must be to avoid the broadcast of material that may be unfair or detrimental to their interest. The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast of any interview with a child less than 16 years of age or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast an interview in the absence of such consent must be justified in the public interest.”*<sup>84</sup>

One issue not highly articulated by the beneficiaries, but which is indeed observed in many reports pertaining to or coming from the region, relates to the influence of online and social network media on the election processes<sup>85</sup>.

Other questions concerned who, and which organisations, are allowed to have political advertising. Regarding non-paid advertising, the majority of countries confine the right to free air time to those parties with representation in the elected body (Parliaments, European Parliaments etc). In France, air time is also allocated to trade unions and professional organisations. In Slovenia, airtime can also be allocated to parties and candidates that do not yet have elected representatives.

Issues in relation to online and social media election-related matters relate to fairness, transparency, voter autonomy and ultimately legitimacy of elections, due to data-driven campaigning, message targeting, as well as audience segmentation. The Cambridge Analytica scandal which affected the 2016 Brexit referendum, the US Presidential elections 2016, Rodrigo Duterte’s “keyboard army”, various agents throughout the world using Internet for the purpose of propagating different agendas are but an example of issues connected to election processes. The effect of disinformation online and on social network media is hard to measure, yet as been seen during the current global health crisis. Some insight into it can be found in the American Journal of Tropical Medicine and Hygiene’s 2020 study: *“COVID-19–Related Infodemic and Its Impact on Public Health: A Global Social Media Analysis”*<sup>86</sup>, which followed COVID-19–related rumours and conspiracy theories on online platforms, including fact-checking agency websites, Facebook, Twitter, and online newspapers, from 31 December 2019 and 5 April 2020. Some 5,800 people were admitted to hospital as a result of false information on social media, many died from drinking methanol or alcohol-based cleaning products, etc.

It is difficult to effectively measure the impact of election/referenda related disinformation campaigns on the aforementioned elections, but these developments have clearly contributed to disinformation being observed as one of the tactics of “information warfare”, rather than just a media phenomenon, where voters are purposefully getting very confused, their disillusion deliberate and manufactured<sup>87</sup>.

While the initiatives on the level of the European Union and the Council of Europe are presented in section 2 of this Study, and some of the national initiatives in the following section, here we take a look into the practices of social networks themselves show different approaches. As Twitter announced the ban of political ads<sup>88</sup>, that is not the case with other networks. Facebook’s Community rules related to *“Ads About Social Issues, Elections or Politics”* identify them as those *“made by, on behalf of, or about a candidate for public office, a political figure, a political party or advocates for the outcome of an election to public office; or about any election, referendum, or ballot initiative, including “go out and vote” or election campaigns; or about social issues in any place where the ad is being placed; or regulated as political adver-*

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84 Broadcasting Authority of Ireland (2013): *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

85 For more details, please refer to, for example, a report *“Disinformation in the online sphere, The case of Bosnia and Herzegovina”*, done under the auspices of project financed by the EC done in Bosnia and Herzegovina on the occasion of the last General elections 2018 by Raskrinkavanje (raskrinkavanje.ba) is a media fact-checking platform run by U.G. Zašto ne (CA Why Not), a citizens’ association from Sarajevo, Bosnia and Herzegovina.

86 American Journal of Tropical Medicine and Hygiene’s 2020 study: *“COVID-19–Related Infodemic and Its Impact on Public Health: A Global Social Media Analysis”*.

87 Open Democracy (Opinion, 22 December 2019): *Boris Johnson made politics awful, then asked people to vote it away*.

88 BBC News (31 October 2019): *Twitter to ban all political advertising*.

tising.” Advertisers interested in placing these ads should complete the ad authorization process, with requirements varying by country<sup>89</sup>.

The decision of a large number of advertisers to pull out of placing ads on social networks, affecting Facebook considerably, due to expressed unease with how it handles misinformation and hate speech, including its permissive approach to misinformative posts by the US President Trump, can be understood from the perspective of numerous challenges present on the online world. Seen from the perspective of the next US 2020 presidential elections, it is hard to judge whether these moves will in fact have any viable effect. In any case, as policy issues raised by social media are becoming more and more emphasized globally, especially in the domain of election-related matters and dis/mis/malinformation, it is advisable to further explore this matter. In particular, the issue with social networks and elections is a highly contested one, as has been highlighted at the aforementioned regional round table organised under the auspices of JUFREX project and needs not be further elaborated here. What should be highlighted is that the trend in the European states is increasingly being translated into legislative acts, examples of which is provided in the presented European cases above. The policies used and implemented (albeit predominantly by automated systems) by social networks open many questions, from their legitimacy (bearing in mind that public policy matters are being decided on by private foreign business enterprises), to their transparency and that the networks are prone to misuse and manipulation. It is yet to be seen how and to what extent these policies work in favour or against democratic processes, the elections being the prime example and principle of democratic functioning.

As it is obvious that media related election legislation and regulatory frameworks in the region is rather analogue, it is suggested to further amend it and address the present challenges in the online sphere. While some suggested approaches have been provided above, what should be emphasized is that a democratic election is not possible where the legal framework for elections inhibits or creates obstacles for campaign speeches and free expression. Limited or restricted mandates of media regulators in the online world should not prevent them from adopting strategies and getting involved in tackling the issues in this field, based on their mandate to promote pluralism and the fairness of information, but also more generally to their moral commitment to media ethics. As seen throughout Europe, self and co-regulation initiatives (for now) are common (see for example the Italian initiative). However, legislation is expected in the near future in Ireland and the UK.

### 4.3. SUMMARY OF KEY RECOMMENDATIONS AND GUIDELINES

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- ▶ The key principles underlying rules for election coverage in the majority of countries (and according to European standards) are balance, impartiality and equality.
- ▶ As noted in the analysis above, there is no harmonised approach to the regulation of political advertising in Europe. Where a complete prohibition is not possible or unlikely in the near future, then it is vital to use secondary laws to regulate political advertising.
- ▶ Paid political advertising is prohibited outside of election campaign periods in Serbia (also in Italy and Germany). Ideally either the media law or the electoral laws should be updated to limit political advertising outside of election periods. Where this is not possible, a set of rules via statutory or co-regulatory codes are necessary to limit political advertising to election campaign periods.
- ▶ Any regulation of political advertising should take note of Council of Europe’s recommendations to ensure that all political candidates and parties “are treated in an equal and non-discriminatory manner”, including that “the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment”.
- ▶ Regulation should include clear definitions of political advertising to define the scope of the rules. It is possible (and probably rational) to include all areas of media (as per the US definition). It is also possible to have broad approach to advertising covering a range of political

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89 Facebook Business Help Centre.



issues (and organisations) beyond the influence of elections (as per the UK definition). Many countries limit the definition to advertising that promotes a political party or political candidate.

- ▶ Council of Europe standards recommend that member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase. The regulation of non-paid political messages in many countries (France, Italy, the UK) introduce and define limits on the amount of free access to broadcast time during elections.
- ▶ Of vital importance is the need to have a proper identification of political advertising and political messages. This is emphasised in Council of Europe standards: *“the public should be made aware that the message is a paid political advertisement”*. In practice this should also include details of who placed the advertisement.
- ▶ An issue of deep concern in the region is the potential influence of foreign media on national elections. As outlined in section 2, the European Commission launched a strategy and proposed new rules to better protect democratic processes from manipulation by third countries or private interests. As noted above, a key approach for regulators in the region is probably one of co-operation, and discussion. Hence, the recommendation to consider the establishment of an informal “task-force”, that would regularly exchange on these matters, follow the practices elsewhere and provide for a quality exchange of ideas, practices and legislative and regulatory measures is an excellent starting point.
- ▶ Such a task-force could also work on a common code (statutory or co-regulatory) in relation to political advertising that can be applied to their licensed services. Achieving a harmonisation of standards in this area across the region would contribute to the co-operation between regulators and also help to combat problems of interference.
- ▶ For many European countries, the concern regarding political advertising has now moved its focus towards online political advertising. At the European level, this has been discussed in detail. In the case studies presented here, this issue is also being addressed. Some jurisdictions are taking a self-regulatory approach (Italy), while others are looking at regulation of the issue (already in France, under consideration in Ireland and the UK). It is important that the regulators in the region, possibly via a regional task-force, also take these issues into account and work together on this.
- ▶ Given the extent of initiatives at the European level, it is also vital that the regional regulators ensure that they are engaged in these discussions and that they endeavour to ensure that their countries become part of the various research networks that exist – such as the Media Pluralism Monitor or the work of the European Digital Observatory.

## 5. Annex – responses to the questionnaire

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A questionnaire has been circulated to the beneficiaries in order to get a better view on the issues which have been identified by the beneficiaries in relation to this topic. The responses have been provided for the purpose of providing references to legislative framework and practices in the region<sup>90</sup>.

### 5.1. LEGAL FRAMEWORK AND PRACTICE IN RELATION TO PROHIBITION OF POLITICAL CAMPAIGNING OUTSIDE OF THE PRE-ELECTION

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#### Albania

Law No. 97/2013 “On Audio Visual Media in the Republic of Albania”, as amended, defines and addresses the case of political and institutional advertising. Pursuant to the provisions of the law, in non-election situations, the broadcasting of advertising for political purposes is prohibited (article 41, paragraph 2). In addition, direct stimulation or confusion in institutional advertising related to identifying institutions based on political party features, is also forbidden.

As regards broadcasting of this content during election campaigns, articles 39 and 40 of this law provide the following: “During election campaigns, political advertising broadcasting shall be done pursuant to the provisions of Law No. 10 019, dated 29.12.2008, “The Election Code of the Republic of Albania”, as amended, and law No. 8580, dated 17.2.2000, “On Political Parties” as amended<sup>91</sup>”. The same provision is also valid for institutional advertising broadcasting.

The Election Code currently in effect, dedicates a separate chapter to the election campaign and the media. This Code provides the rules on reporting the election campaign on the public television and radio outlets and the private television channels. (Articles 81, 82, 83, 84). We also inform that the Election Code has been amended in July 2020, and that the amendments affect media entities as well.

In the last three years no cases of political advertisement broadcasting have been identified. This is a reflection of the audio visual media subjects to comply with legal requirements. In the meantime, prior to 2017, cases of violation of the law have been identified, and AMA has issued warnings or imposed fines in these cases.

#### Bosnia and Herzegovina

Election Law of Bosnia and Herzegovina allows for paid political advertising during the election campaign, the official start of which is 30 days prior to the Election Day. According to the Rules on Media Representation of Political Subjects in the Period between the Day of Announcement of Elections and the Election Day (adopted by the Central Election Commission), in the period from the announcement of elections (at least 150 days prior to the election day) to the official beginning of campaign (30 days

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90 It should be noted that the questions and responses have been adjusted for the purpose of uniformity. Also, please note that the experts provided only the country responses they received.

91 Amended with Law No. 91/2017 “On a change to Law No. 97/2013 “On Audio Visual Media in the Republic of Albania”.

before the election day), any paid political advertising in broadcast media or any other form of paid advertising of political subjects is prohibited. The only exception to this rule is the information notifying the members of political subjects' bodies and statutory bodies of the schedule of internal meetings of political subjects' bodies and statutory bodies.

In contrast with paid political advertising during this pre-election period, which is clearly regulated, there are no specific provisions neither in election legislation nor in CRA regulations that would specifically deal with paid political advertising outside the pre-election period. Paid political advertising outside this period is therefore considered as allowed, but it is subject to the same rules any other form of advertising, including duration limits. The provisions regarding electronic media reporting of the election campaign are enforced by the CRA. Non-existence of rules governing paid political advertising outside the pre-election period can be problematic from the point of view of impartiality and equal opportunities, especially having in mind that, in Bosnia and Herzegovina, it is often observed that the "real" election campaign is finished even before it has officially started. The rules of the pre-election period are usually meticulously observed, and most political subjects are believed to have already done their work by that time.

### Kosovo\*

There is no prohibition of political campaigning outside of the pre-election period. However, based on IMC Regulation on Audiovisual Commercial Communications, respectively Article 2.2 and 14.6 political advertisement is prohibited outside of the pre-elections period. Article 2.2: Political audiovisual commercial communications are allowed only during electoral campaign, in accordance with relevant laws and regulations. Article 14.6: Advertisement of political parties, coalitions and independent members of representative bodies is prohibited except during the period of electoral campaigns in accordance with a specific act. Issues related to regulation/prohibition of pre-electoral political campaigning, should be included also in the Law on Elections.

### Montenegro

Political advertising is defined as advertising, during an election campaign, of subjects that participate in elections (only those registered with the Election Commission as election contestants).

### North Macedonia

The regulation forbids political advertising specifically during the pre-election period. Namely, the Electoral Code stipulates that airing political advertising is forbidden from the moment the elections are called until the beginning of the election campaign (except calls for support of independent candidates under strict regulations). There are set of rules for the political advertising during the campaign (stipulated in the Code), but there is almost nothing about political advertising outside the election process. The Law on Audio and Audiovisual Media Services (LAAVMS) only forbids political advertising on the Public Service Broadcasting, but says nothing about the private broadcasters. This is translated into understanding that it is allowed, since the definition of advertising in LAAVMS also refers to popularization of an idea. However, when it is aired the rules for commercial advertising must be obeyed.

### Serbia

With regard to the Serbian legislation, Article 47 paragraph 1 item 5) of the Law on Electronic Media says that a media service provider, in relation to its programme content, in accordance with its programme concept, shall respect the ban on political advertising outside of political campaigns and during such campaign enable registered political parties, coalitions and candidates representation without discrimination.

As regards bylaws, the Regulator has adopted a Rulebook on the method of fulfilment of public service media obligations in election campaigns, in which political advertising during an election campaign is defined as follows:

*“Public service media are required to broadcast political advertisements of all interested submitters of election lists and all candidates under the same programming, technical and financial terms. If multiple submitters of election lists or candidates are interested in the broadcasting of their political advertisements in the programme, but technical terms for fully satisfying their interests do not exist, the public service media are required to divide the time allocated for political advertising among the submitters of election lists or candidates in proportion with their expressed interest. The regulation governing the field of television and radio advertising regulates the way in which a political advertisement will be broadcast. The advertiser is responsible for the truthfulness and accuracy of political advertising, while the public service media are responsible for its harmonization with the provisions of the law governing the method of advertisement broadcasting”.*

Therefore, as we can see from the above-mentioned provision, the Republic of Serbia allows political advertising only during the election campaign, and forbids it outside the election campaign. In connection with this, it would be desirable if a comparative overview were made of the ways in which neighbouring countries and EU member states regulate the issue of political advertising, i.e. whether they allow political advertising or not, and, if they do, how they regulate it – by a separate law or a bylaw; who supervises political advertising, etc.

In addition to this, the above-mentioned article of the Law imposes the prohibition only on political advertising, and not on any other type of political campaigning. The Regulator had a case in its practice where a political advertisement of a political party that had not taken part in the elections had been broadcast during the election campaign. In connection with this, it would be desirable if an overview of this issue were also made – i.e., how it is regulated in comparative law (neighbouring states and EU member states).

In connection with the Serbian Regulator’s relevant practice, there were cases where certain public service media violated the above-mentioned legal provision, thus giving advantage to some political options. There was a case in which a public service media had broadcast political advertisements before the elections were officially called, which was sanctioned by the Regulator.

## 5.2. LEGAL FRAMEWORK AND PRACTICE REGARDING IDENTIFICATION, ORIGIN AND DEFINITION OF POLITICAL ADVERTISEMENTS

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### Albania

According to Law No. 97/2013, as amended: Advertising shall be considered to be political in nature when: it supports the interests of political parties, political groups or leaders seeking political objectives; affects a legal change; impacts a political or administrative decision; affects the development of public opinion regarding disputable political issues.

In addition, the law ties the designation of the advertisement as political with its commissioners. In addition, according to article 39, Advertising shall be considered political when those commissioning it are:

- political parties and institutions;
- organizations with the goal of supporting and undertaking political activities;
- organizations, platforms and collectives supporting a legal or normative change with the purpose of protecting their objectives;
- any other person or group supporting a specific political project or program.

### Bosnia and Herzegovina

Political advertising is defined as *“broadcast of advertisements, public calls, video spots and any other type of political subject’s promotion”*. The Law stipulates that the orders for paid political advertisements shall come directly from political entities or through the legal or private persons authorized by the political entities.

However, there are no rules regarding the identification of the origin of advertisements. The media are required to provide equal conditions for paid political advertisements of political parties such as that the prices of advertising must be the same for all political subjects, equal access to the media etc. However, it is obvious that some political parties have more funds than others with which to pay more advertising time in the media, so the election race is unequal from the beginning, at least when advertising in the media is concerned. This is evident through the reports that the broadcasters are obliged to submit to the CRA, which show that the time allotted for political advertising is mostly used by large political parties, while the others use either very little or no time and only on a few media. The media campaign mostly takes place through this type of promotion, especially bearing in mind that commercial stations base their election program mainly on political advertising. The definition of political advertising as cited above is quite wide and it can include basically anything – debate shows with “leased” participation, paid guest appearances in the most viewed shows and time slots, with the most popular hosts, etc. Since the law does not go into details regarding the allowed duration of individual types of political advertising, but only generally sets the limit to maximum 30 minutes per week for public, and 60 minutes per week for commercial broadcasters, this practically means that one political subject can pay for its appearance in a 60-minute programme and that the others will not have an opportunity to be represented in this manner. All this is where the issue of identification and origin of paid political advertising becomes very important, and there are clearly the areas which should be further elaborated in the election legislation.

### Kosovo\*

Law on General Elections, respectively Chapter VIII, which is applicable also for Local Elections, defines the general rules on political advertisement, including identification, duration of advertisement and types of political advertisements (free and paid), identification of person/organisation that paid the advertisement. Before the Elections, based on the provisions of Law on Elections, the IMC issues the Guideline on Elections by which instructs the licensee how to behave during the elections period. By the Law on Elections, it is only specified that a political advertisement cannot be more than 2 minutes and the time of free space that should be dedicated to the political parties. However, there is a lack of regulation related to the general duration of political advertisement, especially sponsorship of political programs (gatherings, meetings etc). Taking into consideration that there are many political entities that runs during the elections, obligations of media for free advertisement for all political entities, and also request for paid advertisement space by political advertisement, the majority of the time dedicated to the public has to do with the programs of political nature.

It would be recommended that the Law on Elections determines limitation of the time of paid political advertisement, especially sponsorship, during the elections (per hour/day/during the election period).

### Montenegro

There is no ban on advertising (by political subjects) outside the election campaign. With this, provision that prescribes that the election campaign begins on the day of the confirmation of the electoral list – loses its meaning. Outside the pre-election period, political advertising is considered as any other advertising (quota, standards).

### North Macedonia

Only the ads coming from political parties/coalitions (and in this category the Electoral Code stipulates its different forms/types) are labelled as paid political advertising. While the scope of paid political advertising is wider, there were situations when NGO would pay for ads sending the messages that political party was not in a position to air at the moment, but this is not put into the same category. For example, one political party decided not to take part in one electoral process as sign of a protest, thus it was not allowed to have paid political ads. An NGO aired ads with a message aligned to the one from the party but there was no obvious connection whatsoever to the party, so it had to be aired in the time for the commercial ads – not for the political ads (each elections there is additional time for political advertising stipulated in the Electoral Code on top of the regular 12 minutes per hour for commercial ads stipulated in the LAAVMS). The rules for the identification of paid political advertising are clearly

stipulated in the Electoral Code (needs to be clearly separated from the other programming, must be labelled as paid political advertising, the party/coalition that has ordered it must be clearly labelled). Outside the electoral process, these rules are not written in the LAAVMS – but the regulator encourages the broadcasters to identify the party that ordered the political ads.

## Serbia

The issue faced is the issue of identification of the advertiser, i.e. situations in which it is impossible to determine who the advertiser is, and therefore also whether the advertiser is a participant in the election campaign or not, particularly in cases where the AVMS provider broadcasting the advertisement is a foreign provider. Under Article 20 of the Law on Advertising, the broadcaster of an advertisement and the advertiser have shared responsibility, which represents another difficulty that stands in the way of identification of the advertiser.

## 5.3. THE ISSUE OF NON-DIFFERENTIATION BETWEEN “REGULAR” AND POLITICAL ADVERTISEMENTS

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### Albania

The law provides the criteria based on which the determination is made whether the communication is commercial in nature or political advertisement, and whether the latter one the one hand has political objectives in its contents (impact for legal change, etc.) and whether it is commissioned by political organizations or parties, on the other (see under 5.2).

### Bosnia and Herzegovina

Except from the general provision that paid political advertisements must be clearly separated from the rest of the programme, the rules do not specify further differentiation criteria. However, in practice, broadcasters generally identify paid political advertising as such, at least in case of advertising sports, which are typically broadcast in blocks that are separated from other content by break-bumpers and labelled as “political advertising”. Likewise, if political advertising appears in programmes or direct promotion, they are usually labelled as “leased term”, although, as pointed out above, this is not always the case. For instance, during the 2018 election campaign, there was a case of a broadcaster which announced in its plan of political programmes (which electronic media are required to submit to the CRA on a weekly basis during the election campaign period) a programme identified as paid political advertising. However, there was no announcement or identification during the broadcast itself. Due to the lack of specific rules in this respect, this broadcaster was sanctioned for broadcasting false and misleading content.

### Kosovo\*

According to the IMC Regulation on Audiovisual Commercial Communications, the general rules for regular advertisements are also applicable to the political advertisements concerning the content. According to the Law on Elections, and IMC Guideline on Elections, the political advertisement should be identified as such, including details whether they are free of paid, responsible political party, organisation or person who ordered or paid the advertisement.

### North Macedonia

During elections, the regular ads are aired in separate timeframe, and the political ones are aired only in the additionally allocated time and are clearly identified. Outside of the electoral process, the timeframe is the same, the rules are the same.

## Serbia

One of the issues in the Serbian legislation is its failure to differentiate between political and commercial advertising, where the applicable rules are concerned. The Republic of Serbia has its Law on Advertising, which regulates commercial advertising, but which also applies to political advertising. Article 9 of the applicable Rulebook on the method of fulfilment of public service media obligations in election campaigns says that regulations governing the television and radio advertising apply to the method of political advertising. So, for example, the Law on Advertising applies to the duration of political advertisements, rules on the truthfulness of content, use of personal data, images and records, etc. In connection with the above, it would be desirable to conduct a comparative law analysis of the way in which this issue is regulated in the West Balkan states and the EU member states.

## 5.4. THE ISSUE OF INFLUENCE OF MEDIA FROM NEIGHBOURING COUNTRIES DURING ELECTIONS AND CROSS-PLATFORM AND CROSS-BORDER OVERSPILL

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### Albania

When local or parliamentary elections are held in neighbouring countries in the region (Kosovo\* and Northern Macedonia) various political entities commission advertising in the main TV outlets in Albania. This happens because the main Albanian televisions have broadcasting rights and access in these markets and are followed by audiences in these states. But this does not happen with other Albanian neighbours such as Montenegro, Greece and Italy.

### Bosnia and Herzegovina

The situation in Bosnia and Herzegovina in this respect is a particularly complex one. On the one hand, many Bosnia and Herzegovina residents have either Croatian or Serbian citizenship, and are voting in elections held in these countries. As voters, they are targeted by political campaigns from there. The CRA is often asked by broadcasters under its jurisdiction whether they are allowed to broadcast paid political advertising of political subjects from the neighbouring countries. Since this issue, as mentioned above, is not regulated outside the pre-election period, and since the Election Law applies only to elections in Bosnia and Herzegovina and its political subjects, there are no obstacles to broadcasting such advertising, which only needs to follow the same rules as any other advertising.

On the other hand, the media from the neighbouring countries, whose programmes are being watched in Bosnia and Herzegovina, may also cover the election-related matters. It is not uncommon that our high-ranked politicians appear as guests in programmes of their broadcasters during the election campaign in Bosnia and Herzegovina. Again, even though this practice can be contentious from the point of view of influencing the election process, there is little that can be done about it.

One of the possible approaches to addressing this issue is through tight cooperation between the media regulators from the region. So far, NRAs from the region have had a good cooperation on many issues of common interest, including the media coverage of elections in a cross-border context.

### Kosovo\*

There is an influence of media from neighbouring countries, especially during the silence period, where certain political representatives and state representatives call for voting of a specific political party or candidate.

Since these media are distributed mainly through distribution operators (cable, IPTV), the media regulatory authorities can only order the distribution operators not to broadcast these channels (specific program/time or removal from the list) if the content is in violation of applicable laws, related to violation of national interest and general security.

## North Macedonia

There was a situation when electoral silence was breached by media from neighbouring countries being retransmitted in North Macedonia via cable providers. In 2016/2017 representatives of three political parties of the Albanians in North Macedonia negotiated and then signed (in January 2017) a document declaring their mutual positions on several important issues as basis for negotiating their entrance into the government. While negotiating, one of their meetings was held in Tirana where host was the Albanian Prime Minister and it was reported that the platform was signed in Tirana. Afterwards, this led to this document being referred to as the Tirana platform and used during elections in nationalistic context. Also, there are numerous examples when statements given by politicians from Greece, Bulgaria, Serbia, Kosovo\*, concerning their relations with North Macedonia, influenced the political dialog in Macedonia. Of course, the Macedonian public learned about all the information through media, and Macedonian media were (are) referring to them, analysing them, looking into the actions of the Macedonian governments in the past and now through them.

## Serbia

The issue refers to the influence on national elections of foreign AMVSPs, both those from neighbouring countries and those registered in EU member states, whose target country is the Republic of Serbia. In practice, during the latest elections, REM conducted the monitoring of two foreign AVMS providers: N1 and NovaS (licences were issued by the Luxembourg Regulator, while their target country is the Republic of Serbia). The only thing that REM could do was to appeal to all foreign AVMS providers to observe the rules of political campaigning and AVMS provider behaviour during the campaign. In connection with this, it would be desirable to make a comparative law overview, accompanied by other countries' case law regarding this issue, i.e. the way in which they have regulated this issue.

## 5.5. THE EXISTENCE OF INITIATIVES TO DEAL WITH ONLINE POLITICAL ADVERTISING

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### Albania

An initiative has been undertaken to change law No. 97/2013 "On Audiovisual Media in the Republic of Albania" to include online media activities in the audiovisual media regulator field of competencies, and this was not an AMA initiative.

### Bosnia and Herzegovina

The issue in Bosnia and Herzegovina is that its Election Law is rather outdated, at least when the rules on media coverage of elections are concerned. These rules apply to broadcast and print media only, meaning that various online platforms and other media are not covered. Political advertising on online media is therefore not regulated at all. Due to a very complex political situation in Bosnia and Herzegovina, making any amendments to the Election Law is a particularly sensitive issue.

### Kosovo\*

Since the IMC jurisdiction does not regulate online platforms, it remains to the respective bodies to deal with this issues, by creation of legal framework. In the Law on Elections there are legal provisions only regarding to electronic (radio and TV) and print media.

## North Macedonia

There are no such actions in North Macedonia but the issue is current. Namely, for the 2020 Parliamentary elections, media that wanted to air political advertising were to enter register held by the State Electoral Commission. There were cases when broadcasters did not apply themselves for the register,



but had their web sites in the online registers, or published political advertisements on their Facebook pages (for which no one is in charge). However, presently, there is a need to look into this issue – there is a register of online media held by the Association of Journalist and the self-regulatory body Council of Media Ethics, but it is relatively new and there are still efforts to establish its proper place in the media landscape, so it cannot be known whether such self-regulatory approach will be effective concerning paid political advertising.

## **5.6. POLITICAL ADVERTISING AND THE INFLUENCE OF POLITICAL PARTIES THROUGH CHANGING THE ADVERTISING RULES FOR EACH CAMPAIGN**

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### **North Macedonia**

For the 2019 Presidential elections, the Electoral Code was changed and it now stipulates that the paid political advertising is being paid directly from the state Budget (namely from the means of the citizens), and the means are distributed through State Electoral Commission. For this purpose, the Agency was obliged to make a full monitoring of the total paid political advertising and to confirm its broadcasting, so that the State Election Commission can pay the costs to the broadcasters. This put the regulatory body in a position to interfere with an aspect of the economic working of the broadcasters, which should not be the case. The Agency finds this to be problematic practice and in its Report on the balance of the electoral reporting has recommended that this should be removed.

Also, each electoral process, the Electoral Code is amended and the length of the additional time for paid political advertising is changed, but also, the manner of its distribution is changed. This has come to the point when most of the time is legally allocated to the parliamentary parties, and the non-parliamentarian parties or independent candidates are given only few minutes (for example, for 2020 elections one small parliamentary party and 10 non-parliamentarian parties were to compete for a total of 2 minutes per hour – all of them, while the two biggest parliamentary parties/coalitions from the government were allocated 6 minutes per hour – 3 minutes each with possibility to use all 6 minutes if the other party agrees). The same applies to the two biggest opposition parties. And changes were being made to the very beginning of the electoral campaign.

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<https://edmo.eu/>

European Commission High-Level Group on Media Freedom and Pluralism.  
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## About the authors

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- ▶ **Jean-François Furnémont** is the Founder and CEO of Wagner-Hatfield, a research and consulting company that works globally with international organisations, Ministries and independent regulatory bodies. Wagner-Hatfield is particularly active in the media sector and the digital economy, with a specific interest for issues related to freedom of expression and media freedom & pluralism. Former freelance journalist and former spokesman of a political party, he is the author of several books of political science and a number of publications on media policy and regulation. He held the position of Director General (2003–2014) of the audiovisual media regulatory authority (CSA) of the French speaking Community in Belgium. He has also been actively involved in the Board of the European Platform of Regulatory Authorities (EPRA) as vice-Chairman (2008-2011) and as Chairman (2011–2014). He holds a BA in Journalism and Communication Studies from the Université Libre de Bruxelles – ULB, a MA in International Relations and European policy from the Université de Liège – ULG and a MA in Public Finances from the Université Catholique de Louvain – UCL.
- ▶ **Deirdre Kevin** is Co-Director of Commsol, a consultancy that provides regulatory and economic analysis of digital media and telecommunications markets for clients in Europe, the Middle East and North Africa. At the European Audiovisual Observatory (2008-2016) she focused on media markets and ownership, and drafted reports for the European Commission on media market and regulatory issues. Between 2004 and 2008 she provided comparative analyses of media regulation for clients including national media regulators and the European Platform of Regulatory Authorities (EPRA). At the European Institute for the Media (1998–2004) she managed a study on media ownership in the EU for the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament. She also worked at the Stirling Media Research Institute in Scotland (1996–1998) on a project examining Political Communication and Democracy in the UK funded by the ESRC. She has a BA in Communication Studies from Dublin City University, an MA in European Economic and Public Affairs from University College Dublin, and an MA in European Law (LLM) from the University of London.



## Regional action

# Freedom of Expression and Freedom of the Media in South-East Europe (JUFREX)

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### What is the goal?

- ▶ To promote freedom of expression and freedom of the media in line with European standards in this domain;
- ▶ To improve the application of those standards by engaging a range of actors in Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia, responsible to apply such standards as part of their daily work, namely: judges, prosecutors, lawyers, police officers, representatives of media regulatory authorities and students;
- ▶ To ensure platform for regional cooperation, discussion and exchange of good practices.

### Who benefits from the project?

- ▶ Training institutions for legal professionals (Judicial Academies and Bar Associations);
- ▶ Ministries of Interior;
- ▶ Regulatory authorities for electronic media;
- ▶ Universities;
- ▶ Judges, prosecutors, police officers, lawyers;
- ▶ Students;
- ▶ Through strengthened freedom of expression and freedom of the media and ensured right to seek, impart and receive information, citizens of action's Beneficiaries will be able to genuinely participate in democratic processes.

### How the project works?

- ▶ The action builds upon a previous EU/CoE Regional Joint Programme Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX), implemented from 2016 to 2019;
- ▶ Activities for the various professional categories adopt inclusive approach and a dynamic methodology for adult learning and peer-to-peer model;
- ▶ The strong interconnection between JUFREX Regional action and JUFREX actions in Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia ensures strengthened co-operation, exchange of good practices and lessons learnt.

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.



## HORIZONTAL FACILITY FOR THE WESTERN BALKANS AND TURKEY 2019-2022

FOR YOUR RIGHTS: TOWARDS EUROPEAN STANDARDS

### What do we expect to achieve?

- ▶ Legal professionals – judges, prosecutors, lawyers and police officers improve application of the European Convention on Human Rights and the European Court of Human Rights case-law on freedom of expression;
- ▶ Professional capacities of the Regulatory Authorities for Electronic Media are further strengthened;
- ▶ Universities contribute to an enabling environment for freedom of expression and freedom of the media.

### How much will it cost?

- ▶ The total budget of the action is 740,000.00 EUR;
- ▶ The budget allocated to the overall Horizontal Facility programme amounts to ca. 41 Million EUR (85% funded by the European Union, 15% by the Council of Europe).

### How do we get more information?

- ▶ Directorate General I: Human Rights and Rule of Law:  
<https://www.coe.int/en/web/freedom-expression/jufrex-2>
- ▶ Maja Stojanović, Senior Project Officer, [Maja.STOJANOVIC@coe.int](mailto:Maja.STOJANOVIC@coe.int); +381 11 71 555 10
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- ▶ Horizontal Facility website: <https://pjp-eu.coe.int/en/web/horizontal-facility/home>
- ▶ Marija Simić, Horizontal Facility Communication Officer, [Marija.SIMIC@coe.int](mailto:Marija.SIMIC@coe.int), +381 63 601 337
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## ABOUT HORIZONTAL FACILITY FOR THE WESTERN BALKANS AND TURKEY

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The “Horizontal Facility for the Western Balkans and Turkey 2019-2022” is a joint initiative of the European Union and the Council of Europe that enables the Beneficiaries to meet their reform agendas in the fields of human rights, rule of law and democracy and to comply with the European standards, including where relevant within the framework of the EU enlargement process. This three-year programme covers actions in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, Turkey, as well as Kosovo\* and it is implemented by the Council of Europe from May 2019.







**M**edia play an essential role in the conduct of democratic elections. Media outlets provide parties and candidates a platform to voice their political opinions, but they also provide diverse and pluralist information to voters and can serve as a watchdog for government actions and all political actors at large.

The Study addresses the issue of political campaigning and advertising from a media regulatory perspective and provides the beneficiaries with valuable and applicable references. It also offers guidelines, in line with European standards and best practices in this field.

*This document was produced with the financial support of the European Union and the Council of Europe. The views expressed herein are responsibility of the authors and can in no way be taken to reflect the official opinion of the either party.*

The Member states of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

**[www.europa.eu](http://www.europa.eu)**

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

**[www.coe.int](http://www.coe.int)**

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