



Doc. 14669

04 December 2018

Media freedom as a condition for democratic elections

Report¹

Committee on Culture, Science, Education and Media

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Summary

Media freedom is an essential condition for democratic elections. The media must be able to inform the public independently, without political or economic pressure, as voters cannot be said to have genuine freedom of choice if that choice is not a well-informed one. In particular, member States must guarantee the editorial independence of public service media and put an end to any attempt to influence or transform them into government media.

Given their particular role, broadcast media have specific responsibilities during elections and national laws should require them to cover election campaigns in a fair and impartial manner. A free, independent and pluralistic media environment is an essential condition for countering misinformation and propaganda.

Given the expansion of online media and the growing role of social media, the electoral process needs to be better protected from the manipulation of information through these media and clearly establish their legal responsibility in the event of the publication of illegal content prejudicial to candidates. Internet intermediaries should co-operate with content verification organisations to ensure that any information is confirmed by an authoritative third-party source.

1. Reference to committee: [Doc. 14210](#), Reference 4268 of 23 January 2017.



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A. Draft resolution²

1. The Parliamentary Assembly emphasises once again that free elections are a pillar of every democratic society. The electorate cannot be said to have genuine freedom of choice if that choice is not a well-informed one; consequently, the right to freedom of information and media freedom are essential preconditions of the right to free elections, in accordance with Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9). The media must be free to inform the public, without being subject to any political, economic or other pressure, and with due regard for professional ethics.
2. The professional media are subject to various obligations designed to ensure balanced and impartial coverage of elections and fair participation in the election process of all candidates and political parties.
3. Alongside the professional media, new media players have arrived on the scene: social media. These are having an increasing impact on the public, including during election campaigns: they enable political parties and candidates to pass on their messages “directly” to the electorate, and are a means for their supporters to disseminate those messages.
4. In many countries, social media are not subject to the general regulations governing the media or to the specific rules that apply at election times. Moreover, the particular nature of online communication makes it difficult to apply to social media the principles which the professional media must respect. Most attempts at regulation have failed to yield convincing results of compliance; other attempts have been heavy-handed and have amounted to censorship. Furthermore, sites which have been closed down can respond by creating “mirror sites” beyond national borders, which makes the sanctions adopted by the domestic authorities less effective. There is also a lack of self-regulation by social media, which often disregard the conventions that have been widely accepted by the professional media.
5. Given the existing legal gaps, the various forms of malevolent online communication endanger the smooth and fair conduct of the electoral process and, ultimately, of democracy itself. Today, there is sufficient proof that autocratic regimes and anonymous stakeholders or interest groups use social media to manipulate public opinion with false news, co-ordinated disinformation campaigns, and trolls or bots, to attack not only candidates in the opposing camp, but also human rights defenders, civil society groups and journalists. Furthermore, even though recent research seems to show that social media users are exposed to more diverse information sources than those not using online sources, “filter bubbles” and “echo chambers” may hamper the potential benefits of such positive exposure, compartmentalise information flows, and undermine internet users’ ability to think critically, thus reinforcing prejudices.
6. In order to respond effectively to these problems, member States should guarantee the right to information through independent media; in addition, they should implement effective strategies to protect the electoral process and democracy from the threat of information manipulation and propaganda through social media.
7. In this context, the Assembly reiterates the obligations deriving from Article 10 of the European Convention on Human Rights (ETS No. 5), and the standards and practical guidelines contained in numerous Council of Europe texts, including the following recommendations of the Committee of Ministers: [Recommendation CM/Rec\(2007\)15](#) on measures concerning media coverage of election campaigns, [Recommendation CM/Rec\(2007\)3](#) on the remit of public service media in the information society, [Recommendation Rec\(2004\)16](#) on the right of reply in the new media environment, [Recommendation CM/Rec\(2007\)2](#) on media pluralism and diversity of media content, and most recently [Recommendation CM/Rec\(2018\)1](#) on media pluralism and transparency of media ownership, as well as [Recommendation Rec\(2000\) 23](#) on the independence and functions of regulatory authorities for the broadcasting sector, and [Recommendation No. R \(97\) 20](#) on “hate speech”, along with [General Policy Recommendation No. 15](#) on combating hate speech, issued by the European Commission against Racism and Intolerance (ECRI), the [Code of Good Practice in Electoral Matters](#) of the European Commission for Democracy through Law (Venice Commission) and the [Guidelines on Media Analysis during Election Observation Missions](#), issued jointly by the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR).

2. Draft resolution adopted unanimously by the committee on 25 September 2018.

8. Accordingly, the Assembly recommends that member States review, where necessary, their regulatory frameworks governing media coverage of election campaigns, in order to bring them into line with Council of Europe standards, ensuring in particular that they:

- 8.1. promote a free, independent and pluralist media environment as an essential precondition for combating disinformation and propaganda;
- 8.2. avoid media concentration, also paying attention to the problem of cross ownership;
- 8.3. impose, where this has not already been done, on public and private broadcast media an obligation 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, alongside this obligation, appropriate penalties, by setting up the necessary monitoring and rectification mechanisms to ensure that this is applied 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 they 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 a rapid correction of that information and the right to seek redress in court;
- 8.6. 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;
- 8.7. 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;
- 8.8. ensure total transparency vis-à-vis the public when media are owned by political parties or politicians;
- 8.9. 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;
- 8.10. enhance the operational capacities of media regulators which must be independent of the political and economic powers; in this regard:
 - 8.10.1. ensure that the composition of these bodies is politically neutral and based on media expertise and competence;
 - 8.10.2. 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.

9. Concerning more specifically the risks posed by disinformation and propaganda on internet and social media for the smooth conduct of the electoral process, the Assembly recommends that member States:

- 9.1. refrain from disseminating or encouraging the dissemination on internet of statements, communications or news which they know or reasonably should know to be disinformation or propaganda;
- 9.2. develop specific regulatory frameworks for internet content at election times and include in those 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 the 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 propaganda on internet, and to seek together appropriate responses to these phenomena.
10. The Assembly calls on professionals and organisations in the media sector to:
- 10.1. develop self-regulation frameworks which should contain professional and ethical standards relating to their coverage of election campaigns, including respect for human dignity and the principle of non-discrimination;
- 10.2. ensure comprehensive and analytical coverage of the election campaign, candidates and their platforms, to enable the electorate to make a more informed choice at the ballot box;
- 10.3. make a clear separation between the activities of the powers in office and the activities of representatives of political parties running for election, ensuring that no preferential treatment is given to the powers in office;
- 10.4. adopt strict internal rules and sanctions against journalists and editors to prevent them from accepting money and other benefits in return for positive coverage of a candidate;
- 10.5. avoid disseminating messages based on unverified information or rumours designed to cause a scandal or for propaganda purposes; if such messages are deemed to be important or urgent, their dissemination should be accompanied by a warning that the information has not been verified;
- 10.6. expose any attempt to manipulate information during the election campaign in the professional media or on social media platforms and, in this context, establish strong and close co-operation within the profession in order to combat disinformation and propaganda.
11. The Assembly calls on internet intermediaries to:
- 11.1. develop initiatives offering users fact-checking services and tools to flag up misleading information, and review their advertising models to ensure that they do not adversely impact diversity of opinions and ideas;
- 11.2. co-operate with civil society and organisations specialising in the verification of content to ensure that all information is confirmed by an authoritative third-party source;
- 11.3. support the research and development of appropriate technological solutions to disinformation and propaganda which users may apply as they wish to detect disinformation and propaganda.
12. The Assembly calls on the European Federation of Journalists (EFJ) to promote among its members awareness of the issues addressed in this resolution and to facilitate the pooling of experience and good practices relating to the coverage of election campaigns. In this connection, the Assembly calls on the EFJ to promote among its members effective collaboration regarding fact-checking and myth-busting, particularly at election time.
13. The Assembly calls on the European Broadcasting Union (EBU) to continue to promote its guidelines and editorial principles and to encourage European public service media to fully apply them, keeping in mind their particular role during election campaigns as an independent source of impartial, accurate and relevant information and of a diverse range of political opinions. In this context, the EBU should support active co-operation between its members to combat disinformation and propaganda in general and in particular during election campaigns.

B. Explanatory memorandum by Ms Gülsün Bilgehan, rapporteur

1. Introduction

1. Freedom of expression and freedom of the media are essential to any democratic process. The role of the media is vital to the integrity of the electoral process as today most voters gain essential information about politics through the media.³ The latter provide a platform for debates among parties and candidates, report on campaign developments, inform voters on how to exercise their rights and on the results of elections; but the media can (and should) also help monitor the electoral process, including election day proceedings.⁴

2. Thus, under Article 10 of the European Convention on Human Rights (ETS No. 5), media freedom is a necessary condition in order to ensure the fundamental right to free elections affirmed by Article 3 of the Protocol to the Convention (ETS No. 9). Free and fair elections are only possible where the electorate is well informed by independent media, in a pluralistic environment.

3. However, in many countries the incumbent governments benefit from disproportionate and excessively positive media coverage, in particular due to its control over the media, public and private, or because of its close relationship with the media. Moreover, during elections, the freedom of the media and the safety of journalists are even more exposed than usual to serious threats, including intimidations, physical attacks and application of laws restricting freedom of expression, as well as denigration of the opposition media.

4. Events over the last few years have also shown that we live in a world where disinformation and propaganda are becoming frequent and omnipresent. This undermines public trust and confidence in journalism as a public watchdog, and may mislead the public by blurring the lines between disinformation and media products containing independently verifiable facts.⁵

5. Moreover, the media landscape in the Council of Europe member States has changed dramatically in the last few years, particularly given the expanding internet media and rapidly growing role of social media. This technological and social shift is changing the impact of media on the whole democratic decision-making process, notably in the election period, and raises specific challenges that the current regulations do not fully address. In particular, the restrictions to print and broadcast media now seem outdated considering the significant developments in online media services over the last decade and given the increasing convergence of online services of traditional print and of traditional broadcast media.

6. In this report, I propose to analyse how we can effectively address these challenges, and more generally, consolidate the role of the media as pillars of a truly democratic electoral process. My analysis of these issues is essentially based on the expert report by Mr Rašo Kužel,⁶ whom I thank for his work.⁷ I also rely on various Council of Europe standard-setting instruments, including Committee of Ministers [Recommendation CM/Rec\(2007\)15](#) on measures concerning media coverage of election campaigns; and practical guidelines like the [Code of Good Practice in Electoral Matters](#) drawn up by the European Commission for Democracy through Law (Venice Commission) or the [Guidelines on Media Analysis During Election Observation Missions](#) issued jointly by the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR).

2. Differentiated status according to the types of media

2.1. Division lines: broadcasters and print media; public service media and private media; traditional and new media

7. The regulation of the media coverage of elections must aim to reconcile, on the one hand, respect for the editorial independence of the media and, on the other, the need to guarantee the fairness of the media coverage during the electoral period. Thus, certain restrictions on the freedom of expression may be

3. www.ndi.org/sites/default/files/1420_elect_media_02_1-31_0.pdf.

4. www.osce.org/odihr/92057?download=true.

5. www.osce.org/fom/302796.

6. MEMO 98, Bratislava.

7. In the light of the hearing held by the committee on Culture, Science, Education and Media on 22 March 2018, I have incorporated in the text information relating to the role of the media in elections presented by Ms Giovanna Maiola, Senior Media researcher and Training Co-ordinator at Election Observation and Democracy Support (Brussels), and Mr Marco Pancini, Director of Public Policy, Google, as well as by several members of the committee who participated in the debate.

necessary, although they would not normally be allowed, in order to guarantee the free expression of the opinion of the people on the choice of the legislature.⁸ However, these restrictions are not the same for all media.

8. Thus, print media (private) may be more “partisan” than broadcasters which are subject to a wide array of rules regarding their activities during elections, including the obligation to cover elections in a “fair, balanced and impartial manner”. Fair access concerns in particular the airtime allocated to candidates.

9. Public service media funded by the taxpayers have a legal and moral responsibility to serve the interests of the general public, not those of the government, political parties or private interest groups. Using public media to promote a certain political party or candidate is an unjustified misappropriation of public funds. Members of the public are entitled to insist on fairness, balance, and impartiality of public service media and make sure that the government’s attitude towards the media will ensure their access to information to which they are entitled.

10. It is important that public service media inform the electorate about the role of elections in a democracy, how to exercise one’s right to vote, the key electoral issues, and the programmes and arguments of the various parties and candidates contesting the election. In this context, programmes that allow questions to be put to party leaders and leading candidates, as well as debates between candidates, are particularly important.

11. Strict rules of impartiality and balance should be applied to public service media when reporting on the governing party and on government decisions and actions during an election period. They should ensure to all parties and candidates equitable access to airtime to communicate their messages directly to the public, either for free or at subsidised rates. Equitable access means non-discriminatory access allocated according to objective criteria for measuring overall levels of support, and includes factors such as timing of access and any fees.⁹

12. In several member States, the principles applicable to broadcast services of the public service media should be applicable to their non-linear audiovisual services. In most instances, both types of service will complement each other and users will expect similar obligations regarding impartiality, fairness and balance.

13. Although the status of private media is different from that of the public one, they are also expected to provide objective and balanced coverage of current affairs, especially during the election period.

14. “New media” is a broad term that describes a range of media that are utilised for many different purposes, consisting of the internet, mobile phones, social media such as blogs and micro-blogs, video-sharing sites, and others. Unlike traditional media, new media are usually interactive; they use digital, online and mobile technology and are often audience-created and user-driven. In addition, they function in real time and are usually borderless and thus more difficult to regulate.

15. The line between professional media and social media is often blurred. For instance, in many member States, the most popular online news websites may be run by historically print media companies, such as in Germany, where www.spiegel.de is the most popular online news site, or www.lemonde.fr in France.

16. In addition, most journalists use the internet as a key source of information for reporting, and many traditional media create online editions or transform into fully multi-media outlets. Moreover, professional media also utilise “citizen journalism” pieces and rely on personal mobile phone images and video to cover certain stories where they do not have their own reporters.¹⁰ Indeed, the rise of new media provides further avenues and possibilities for participatory citizenry, information and knowledge sharing, inclusion and empowerment. At the same time, however, online media can pose serious challenges to the integrity of election process mainly due to the emergence of disinformation and fake news.¹¹

8. <https://rm.coe.int/la-couverture-mediaticque-des-elections-le-cadre-legal-en-europe/1680789459>.

9. www.osce.org/fom/37188?download=true.

10. <https://aceproject.org/ace-en/topics/me/meb/mab02e>.

11. Rast'o Kužel, Media reporting and conduct during the electoral process, OSCE mission in Kosovo, 2017.

2.2. In particular: audiovisual media services

2.2.1. News and current affairs programmes

17. News programmes should reflect a variety of news, which is relevant, fresh, accurate, balanced and factual and, in principle, they should refrain from stating opinions. It is important that a fair and equitable mechanism is established to determine the proportion of election news coverage to be allocated to election candidates. They should receive news coverage commensurate with their importance in the election and the extent of their electoral support. Thus, there is no need to overexpose small parties – in particular, if this is done at the expense of bigger parties. However, even minor parties should also receive sufficient coverage during the campaign, for example at the time of their manifesto launch.

18. The law usually provides general provisions on equal treatment of candidates, but it is important that it is within the editorial decision of each media outlet to determine the specific election formats and models based on which they will distribute airtime to candidates.¹² For example, the amount of news coverage devoted to the competing parties is strictly controlled in the United Kingdom as the BBC takes measures to ensure parity among the competing parties.¹³ In some member States, broadcast media are criticised for not providing comprehensive and analytical coverage of the campaign, the candidates and their platforms; this can skew the choice voters will make on polling day.

19. Although televised debates provide the best forum for exchanges of views, non-participation by one of the front-running candidates or parties always reduces their value in the eyes of the electorate. An opportunity for the public debate of different viewpoints provides voters with a better understanding of the choices available to them on election day. As a supplement to news, these programmes offer commentary, debate, or an opportunity for competing interests to present their opinions directly to viewers and listeners. However, the decision on how such fairness should be achieved (for instance, deciding the format, the number of participants, the length, etc.) should be left to the initiative of the broadcasting organisation itself.

20. Talk show formats are attractive for viewers because they offer diverse ideas and provide a good opportunity for voters to receive more information about candidates. It is however important to establish some rules for talk shows too, because if left totally uncontrolled, they can mislead and misinform many viewers. It is important that candidates are treated fairly when it comes to designing formats of talk shows during electoral periods.

2.2.2. Free airtime on public broadcast media

21. Public service media often offer, at no cost, free airtime for political candidates or parties to communicate their messages to the electorate. It is considered to be a direct form of communication between politicians and voters, without any intermediary role by the media. One of the main advantages of giving free airtime is to allow smaller parties or minor candidates to have an opportunity to deliver their electoral messages, as they otherwise do not get significant coverage by the media.¹⁴

22. The amount of time allotted has to be sufficient to allow candidates to effectively communicate and illustrate their platforms to the public. The allocation of time can be offered on an equal basis or a proportional basis according to the specific context in which the elections are taking place. When the number of contesting parties is limited, strict equality may be applicable. For presidential elections, referenda and first democratic elections, the criteria of strict equality better fits the need to provide all candidates with a level playing field.¹⁵ In some member States, this provision is used to demonstrate that candidates have equitable access to State or public service media while at the same time there is a huge disproportion in the amount of coverage the candidates receive in the news and current affairs programmes.

12. Ibid.

13. <http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/2016ElectionGuidelines.pdf>.

14. www.osce.org/odihr/92057?download=true.

15. [www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)006-e).

2.2.3. Paid political advertising

23. In addition to the allocation of free time and space, paid political advertising constitutes another opportunity for all political parties or candidates to disseminate their messages through the media. While voters undoubtedly need as much information about candidates as possible to make a reasoned choice, paid advertising may give an unfair advantage to those parties or candidates who can afford to purchase more airtime. Therefore, not all countries accept this practice.

24. Given the growing impact of social media during elections, it is reasonable to apply to them similar rules regarding paid political advertisements as those that already exist vis-à-vis the traditional media. The main question, however, concerns the ability to implement these rules on internet and to determine which body would be responsible for overseeing and enforcing the implementation.

25. In late October 2017, the United States senators announced a new bill that would regulate online political advertising. The new bill, called the Honest Ads Act, would require companies like Facebook and Google to keep copies of political ads and make them publicly available. Under the act, the companies would also be required to release information about those targeted by those advertisements, as well as information about the buyer and the tariffs charged for the ads. The new rules would bring disclosure rules more into line with how political ads are regulated in mediums like print and television, and would apply to any platform with more than 50 million monthly viewers. The companies would be required to keep and release data on anyone spending more than US\$500 on political ads per year.¹⁶

2.3. Impact on the electorate of various types of media

26. While the broadcast media is still a main source of news during electoral periods, the impact of social media continues to grow, particularly among younger groups. On the other hand, a research conducted by Reuters in 2016 found that “television news still remains most important for older groups but overall usage has continued to decline, particularly amongst younger groups”. In particular, 28% of 18 to 24 year-olds said that social media was their main source of news, which was “for the first time” more than television (24%). Looking at Germany and France, the study suggests that “television, particularly the widely watched evening bulletins from PSBs ARD and ZDF, remains the most important news source in Germany”, and television news remains the most important source of news also in France.¹⁷

27. Although reading the written press remains more widespread than the use of online social networks, the gap is closing. In general terms, if we equate influence with trust, radio is the medium in which Europeans express the most trust, followed by television. Trust in the written press has also gained ground; trust in the internet represents a minority view, and distrust has risen. However, given the increased impact of social media, there are a growing number of voices calling for some kind of regulation of online media, particularly during electoral periods. Social media are private companies with a level of “public interest” tenet as they play a role in the information ecosystem and users’ media preferences. They act as co-publishers and not merely as platforms, using algorithms along with the production of contents.

3. The challenges posed by the new media environment

3.1. Biased and one-sided coverage and emergence of disinformation and propaganda

28. Frequent media bias in favour of incumbents, particularly with regard to public service media, is generally one of the challenges to OSCE election commitments and other international standards. The public service media or State-owned media are in danger of being abused by the governments for the overt promotion of their political agendas. Moreover, evidence suggests that manipulation and propaganda have been used intensively – both by States and non-State actors – on internet, particularly on social media.

29. The Parliamentary Assembly noted its concern about the influence of online media on elections in [Resolution 2143 \(2017\)](#) “Online media and journalism: challenges and accountability”, expressing its concern about many online media campaigns, often in the political context, with the objective of harming democratic political processes.¹⁸

16. www.theverge.com/2017/10/19/16502946/facebook-twitter-russia-honest-ads-act.

17. <http://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/Digital%2520News%2520Report%25202016.pdf>.

18. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23455&lang=en>.

30. According to a report by Freedom House, manipulation and disinformation tactics play an important role in elections, damaging citizens' ability to choose their leaders based on factual news and authentic debate. Over the last few years, the practice has become significantly more widespread and technically sophisticated, with bots, propaganda producers and fake news outlets exploiting social media and search algorithms to ensure high visibility and seamless integration with trusted content. It is not just a problem of using private data for political reasons but also of using counterfeited videos and news and defamation against candidates. In these conditions, any election campaign can be damaged. It is a matter of concern that "the effects of these rapidly spreading techniques on democracy and civic activism are potentially devastating."¹⁹ These actions are destroying trust, polluting the information space and attempting to destroy public discourse and democratic institutions.

31. According to a study conducted by Oxford University, political campaigns, governments, and regular citizens around the world are employing both people and bots in attempts to artificially shape public life. The study considers computational propaganda to be a phenomenon connected with recent digital misinformation and manipulation efforts and defines it as the use of algorithms, automation and human curation to purposefully distribute misleading information over social media networks. One person, or a small group of people, can use an army of political bots on Twitter to give the illusion of large-scale consensus.²⁰

32. Today there is enough evidence to suggest that autocratic regimes use political bots to silence opponents and to push official government discourse. Moreover, political bots have been used during elections to influence the vote or defame opponents. The same Oxford study also warns that anonymous political actors harness key elements of computational propaganda such as false news reports, co-ordinated disinformation campaigns and troll mobs to attack human rights defenders, civil society groups, and journalists. Computational propaganda is one of the most powerful new tools against democracy.

3.2. Inflammatory and hostile language

33. Some forms of disinformation and propaganda may not only harm individual reputations and privacy, but may also incite violence, discrimination or hostility against identifiable groups in society.²¹ International standards and recommendations on hate speech stipulate that media should refuse all open expressions of intolerance and thoughtfully consider whether the publication of such expressions is conducive to defamation and ridicule based on sex, race, colour, language, faith and religion, belonging to a national or ethnic minority or ethnic group, social difference, or political or other opinion.

34. The need to counteract such forms of expression is even more urgent in situations of tension and in times of war or other forms of armed conflict. The governments of the Council of Europe member States, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.

35. However, a clear distinction needs to be made between a media outlet that would transmit racist comments, reflecting its editorial position, and an outlet that would transmit such comments made by others for the sake of reporting. The international standards provide that the media should not be held legally liable for accurately reporting the statements of others – even if those statements themselves are held to be unlawful.

36. In this context, it is important to determine whether such comments were reported in an inflammatory way, whether counterbalancing views were also reported and other elements of context, in order to understand whether these views were being presented in a positive or negative light. The media should in principle be exempted from liability for disseminating unlawful statements directly made by parties or candidates – whether in the context of live broadcasting or advertising – unless the statements have been ruled unlawful by a court, the statements constitute direct incitement to violence and the media outlet had an opportunity to prevent their dissemination.²²

19. <https://freedomhouse.org/report/freedom-net/freedom-net-2017>.

20. <http://comprop.oii.ox.ac.uk/wp-content/uploads/sites/89/2017/06/Casestudies-ExecutiveSummary.pdf>.

21. www.osce.org/fom/302796.

22. In the *Jersild* case, the European Court of Human Rights found in favour of a Danish journalist who had interviewed members of a far-right group expressing racist views, because the purpose of his programme had been to document and expose the opinions of the group, not to promote them.

37. Another aspect to take into consideration is the identity of the individual who is being criticised. The European Court of Human Rights has made it clear that the scope of defamation is far narrower when the individual, whose reputation may be affected, is a public representative or more generally a politician. The assumption is that the needs of political debate and accountability necessary in a democracy mean that vigorous expression of opinions should not be restricted.

3.3. Insufficiency of investigative reporting and analytical coverage and decrease in critical thinking among audiences

38. A number of OSCE/ODIHR final observation reports highlight the overall lack of investigative and analytical coverage in the media reporting of elections. In response to propaganda and disinformation, there is a need for good quality journalism, and it would thus be advisable to support initiatives, training and other activities aimed at enhancing the overall quality of election-related reporting.

39. There is concern that social media are undermining the quality of information and that the bad information people receive has a potential to weaken democracy in the digital age. There is a lack of meaningful debate, with internet users being split into “filter bubbles” of like-minded people who are locked in echo chambers that reinforce their own biases. The combination of the lack of analytical coverage by the traditional media and the negative role played by social media contributes to the decrease in critical thinking among audiences. It is therefore important to consider how to eliminate these negative trends and strengthen the existing democratic institutions.

3.4. Problems related to the regulation of new media

40. The principal question related to the regulation of new media is whether the regulatory practices that exist for traditional media could be used for new media. It is clear that many of the assumptions that are applicable vis-à-vis the regulation of traditional media do not apply in the case of new media. For instance, the assumption behind broadcasting regulation that the frequency spectrum is a finite resource that must therefore be shared does not apply on internet. The convergence of traditional and new media also means that governments face the challenge of where and how to draw the line with regulation. Are opinionated blogs to be regulated as third party campaigning? Can blackout periods be enforced beyond the country's borders or even within country borders?²³

41. It should be mentioned that the most significant threat to news diversity and quality remains the repressive legal restrictions under which journalists operate. Traditional media can be regulated in a way that does not constitute censorship and enhances, rather than restricts, freedom of expression. However, such regulation of new media has proven extremely difficult. New media can be regulated, but the content of the internet, for example, is so diverse and widespread that regulation has been heavy-handed and has amounted to censorship: interception of emails, closure of websites, and pressure or legal action against internet service providers. Further challenges in terms of regulation of internet include the fact that it is difficult to regulate it due to its international nature. Attempts by national regulators to close down websites are met with the creation of mirror sites (replicas) beyond the country's borders. Self-regulation by new media users is also more difficult, and new media has often ignored conventions that have been widely accepted by traditional media (for example not reporting exit polls before voting has ended).²⁴

42. On the other side of the argument is the growing impact of internet and social media during electoral periods. For instance, during the United Kingdom parliamentary elections in 2015, as much as £1.6 million was spent on political advertising through Facebook and Google. This figure was double the amount spent on campaign broadcasts, and five times that spent on newspapers.²⁵

43. The jurisprudence of the European Court of Human Rights on online media has been developing in recent years. But in 2017, the Court ruled for the first time on the online news media's liability for reporting serious allegations against a political candidate. The Court laid down important principles under Article 10 applicable to online media during elections, in particular where online media outlets follow “good-faith” journalism practices. In addition, it has also delivered important judgments concerning the online news media's liability for user-generated content.

23. <https://aceproject.org/ace-en/topics/me/meb/mab02e>.

24. Ibid.

25. www.europarl.europa.eu/RegData/etudes/BRIE/2016/583859/EPRS_BRI%282016%29583859_EN.pdf.

44. It should be noted that in response to the criticism of its role in the US elections, the social media platforms have started to take initiatives to address the negative trends unveiled after the elections. For example, Facebook now allows users to “mark a news story as fake”; news stories reported as “fake” by users may then be reviewed by a fact-checker.

45. Furthermore, in the area of political advertising, a number of social media have introduced self-regulatory policies on election coverage. For instance, LinkedIn’s advertising policy includes a rule that all political advertising must clearly identify the person or entity that paid for the message. Ads not financed by a candidate or campaign must indicate whether the content is authorised by a candidate and, if not, include contact information for the person or entity that paid for the message. Political ads must comply with applicable laws, including with respect to identifying the sponsors of such ads or observing “news blackouts” or “quiet periods” prior to elections. Similarly, Twitter’s advertising policy includes restrictions on “political campaigning” and has country-specific rules. Twitter also provides a purple “promotion” icon indicating tweets that contain links to political campaign ads that have been paid for by candidates or political parties. Google’s “AdWords” policy has rules on “political content,” and when promoting political content, advertisements run by Google must comply with applicable laws, notably those governing “silence periods” during elections.²⁶

4. Good practice and possible solutions to the challenges posed by the new media environment

4.1. Towards new models to finance good quality journalism

46. As good quality journalism is an essential response to the emergence of disinformation and propaganda, it is important to provide more support to the existing functioning models which prove to be successful. This includes but is not limited to the public service media. Secondly, we should not forget that information remains a valuable asset and it appears that the media sector is currently not capable of fully monetising that value. For example, the Dutch newspaper *De Correspondent* has over five ways of generating revenue (membership, technology reselling, speaker management, events, book publishing). One way to better monetise the information is by applying a wide array of formats and channels (books, consultancy, video-games).

47. There are a number of challenges facing traditional journalism, and among the biggest ones is the fact that social media platforms have swallowed much of the advertising revenues that once kept traditional media companies afloat. According to an article in *The Guardian*, “by acting like technology companies, while in fact taking on the role of publishers, Google, Facebook and others, have accidentally designed a system that elevates the cheapest and ‘most engaging’ content at the expense of more expensive but less ‘spreadable’ material. Anyone who wants to reach a million people with a poorly produced conspiracy theory video is in luck. If, however, you want to run a well-resourced newsroom covering a town of 200 000 people, that is not going to be sustainable”.²⁷

48. In the aftermath of the United States elections in 2016, the role of the social media during elections has been the centre of debates. While the debate so far has demonstrated that these social media platforms (Facebook, Google and Twitter) are primarily interested in protecting their business interests, they appear to at least have acknowledged to some extent that they are part of the problem and have started to take some initiatives to deal with the problem. A number of analysts believe that the social media platforms should be a part of the solution.

4.2. Fact-checking and myth busting

49. A number of new projects emerged particularly after the United States elections in 2016. The main aim of these projects is to provide the public with the necessary information to form their own conclusions about the information they receive.

50. For example, *CrossCheck* is an online verification collaboration that began in February 2017 and their first project brought together 37 newsroom partners in France and the United Kingdom to help report false, misleading and confusing claims that circulated online in the ten weeks leading up to the French presidential election in 2017. While it certainly is important to utilise the latest technology to research how fact-checking and identification of online trolls can be automatised, professional journalists and media analysts appear to be

26. <https://rm.coe.int/09000016807834b2>.

27. www.theguardian.com/media/2017/may/06/decent-trusted-journalism-is-worth-fighting-for-we-have-to-find-a-way.

best placed to provide the most competent fact-checking and verification. Media outlets should consider including critical coverage of disinformation and propaganda, particularly during elections and regarding debates on matters of public interest.²⁸

51. Another relevant example is *First Draft*, a project of the Shorenstein Center on Media, Politics and Public Policy at Harvard University's John F. Kennedy School of Government. The project uses research-based methods to fight online disinformation and additionally it provides practical and ethical guidance on how to find, verify and publish content sourced from social media. *First Draft* originated in June 2015 from the collaboration between nine founding organisations to raise awareness, perform research and address challenges relating to trust and truth in media in the digital age. As one of the founding organisations, Google News Lab provided assistance to develop and maintain the project, supported the creation of new content and co-ordinated the community of practice. In September 2016, *First Draft* began co-ordinating with a community of newsrooms, technology companies, human rights organisations and universities across the globe to help inform and scale up its work, and to promote collaboration.²⁹

52. According to the Centre for European Policy Analysis (CEPA), “fact-checking and myth-busting work when they are targeted at key audiences who are receptive to fact-based argument. To be truly effective, this research needs to be targeted towards media and policy makers and made relevant to their agendas. Whether reacting rapidly to disinformation repeated by mainstream media, or contributing to policy debates, myth-busting sites battling Kremlin disinformation need to be strengthened and honed to achieve clear aims”.³⁰

4.3. Strengthening the mandate of public service media

53. The mandate of public service media is to inform, educate and entertain. At the heart of this mandate lies the notion of informed society. Public media should be committed to nurturing and sustaining democracy and providing citizens with the information they need to make informed decisions that enable them to position themselves in relation to their community, their country and the world. To do this, public broadcasters should be engaged in comprehensive and critical coverage of State institutions.

54. We live in a world where disinformation and propaganda are becoming frequent and omnipresent, where people don't know whom to trust. It is incumbent upon public broadcasters to affirm the highest journalistic values by offering the public credible and comprehensive newsworthy reporting, and by focusing more on fact-checking, in-depth reporting and investigative journalism.

55. The public broadcaster will always be poorer than its private competitors owned by oligarchs, and it won't be able to fully compete by reeling in audiences with big-money entertainment shows. However, in a fragmented media landscape, a strong, independent public broadcaster could grow to be the most trusted medium for its reliability, for its capacity to be open to various parts of society, to raise the right questions, and for its effort to provide answers through unbiased investigations and citizen journalism. For example, Hromadske TV, an online television and news portal, is trying this in Ukraine. Established in November 2013, Hromadske TV is an ambitious attempt to build, from scratch, a public broadcaster free of any political and business interests, or government propaganda influences, and only funded by donors and public donations. Employing just 20 full-time journalists, it strove to produce impartial journalism, becoming especially well known for its live reports from demonstrations on the Maidan.

4.4. Strengthening the independence of media regulators

56. The body in charge of overseeing the media coverage of elections should have experience, sufficient resources, knowledge, know-how and a mandate to oversee respect of the rules. It should act promptly upon candidates' complaints, or whenever it records a violation, properly investigate alleged violations and impose effective remedies when violations take place.³¹ It is important that the sanctions imposed by the regulator are commensurate with the gravity of the offence committed by the media outlet.

28. <https://crosscheck.firstdraftnews.com/france-en/>.

29. <https://firstdraftnews.org/about/>.

30. <https://euvsdisinfo.eu/25-ways-of-combatting-propaganda-without-doing-counter-propaganda/>.

31. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e).

57. The authorities in the member States should ensure (both in legislation and in practice) the political and operational independence of the media regulators, in line with Council of Europe standards.³² If media regulators are to be respected as being independent and credible, the system of appointing their members should provide for diverse membership, including experts with media background and experience, selected inter alia from among civil society organisations dealing with the freedom of expression.

58. Following the changes in the media environment, the next step should be establishing of and/or strengthening the already existing media monitoring departments, both in terms of allocation of funds and of *ad hoc* training in quantitative and qualitative media monitoring analysis.

4.5. Regulation of online content; legislation to tackle hate speech and incitement to violence online

59. Some measures taken by internet intermediaries to limit access to or the dissemination of digital content, including through automated processes, such as algorithms or digital recognition-based content removal systems, which are not transparent in nature, which fail to respect minimum due process standards and/or which unduly restrict access to or the dissemination of content, may raise legitimate concerns. State-mandated blocking of entire websites, IP addresses, ports or network protocols, is an extreme measure which can only be justified within the strict framework set by Article 10 of the European Convention on Human Rights. Content filtering systems which are imposed by a government and which are not end-user controlled are not justifiable as a restriction on freedom of expression.³³ Since these questions are being dealt with in other current reports, I limit myself here to recalling them.

4.6. Increased transparency of media ownership and prevention of media concentrations

60. To counter disinformation, manipulation and propaganda, more independence is needed; however, this is closely linked to transparency and pluralism. It is important to further increase the transparency of media ownership in a number of member States so that it does not allow the true owners to remain hidden. Media ownership by politicians and political parties continues to be a problem in some member States. While categorical restrictions of such ownership would raise concerns with regard to Article 10 of the European Convention on Human Rights, it is crucially important that the public is aware of the potential influence of media owners.

61. Transparency helps to reduce undue influence also when applied to political advertising. When the media accept paid political advertising, it is necessary that all paid political advertising in all forms of media is readily recognisable as such, and that the public can request the identification of the party ordering the advertising. There have been instances when media accepted money during election campaigns and in return featured certain politicians more prominently in their news reporting of the campaign. These are corrupt practices which should be dealt with by the relevant regulators and competent judicial authorities in the form of adequate sanctions. In addition, the transparency of political advertising must also be ensured offline.

62. The enduring monopolisation of the media market in a number of Council of Europe member States by powerful groups close to the establishment has deprived audiences of an effective diversity of sources of information, and has thereby weakened the guarantees of pluralism. Such undue concentration of media ownership should be prevented through appropriate measures. Suitable instruments should be applied to improve competition, to motivate old players to loosen information monopolies, and to allow new players to enter the media scene.

4.7. Media monitoring and analysis

63. During elections, media monitoring provides benchmarks to judge the fairness of the election process. Media monitoring assesses the behaviour of the media during various phases of the election process and evaluates their compliance with international standards and local regulations on election coverage. It helps to establish whether the candidates are granted equitable access to media to convey their messages to voters and whether information available through the media is adequate for voters to make a well-informed choice at the ballot box. Statistical data, on the amount of time dedicated to candidates, the manner in which candidates and other key political actors are covered by the media, analyses of bias, the extent and quality of voter education campaigns or relevancy of election-related information, serve as a basis for analyses.

32. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804e0322.

33. www.osce.org/fom/302796.

64. The results of the monitoring demonstrate how the media behave and keep the public and candidates aware of these issues. When shortcomings are identified, corrective action should be taken to improve media coverage or protect media rights and freedoms. As such, media monitoring should become a strong and ongoing process, both in quantitative and qualitative mode, able to provide a feedback to the sector, and to foster professional and ethical standards of the media.

4.8. Media and digital literacy

65. It is important for people to understand the danger of disinformation and propaganda on internet. Member States should take measures to promote media and digital literacy, including by covering these topics as part of the regular school curriculum and by engaging with civil society and other stakeholders to raise awareness about these issues.³⁴

66. In their report on Defending and Ultimately Defeating Russia's Disinformation Techniques, the Center for European Policy Analysis recommends that "to reach the most at risk audiences, media literacy should be included in the structure of mainstream programming rather than as a separate 'news' show or video game".³⁵

4.9. Support for civil society

67. The main aim of propaganda is to sow doubt, distort truths, divide member States, engineer a strategic split between the European Union and its North American partners and paralyse the decision-making process. Moreover, its aim is also to erode the European narrative based on democratic values, human rights and the rule of law. Its goal is also to kill activism, which is why it is incumbent upon civil society to fight back. It is important that civil society identifies and raises awareness about deliberately false news stories, disinformation and propaganda through ongoing fact-checking and media monitoring projects that give an important feedback to people on the essence of the propaganda.

5. Conclusions

68. States have to promote a free, independent and diverse communications environment, which is a key means of addressing disinformation and propaganda and ensuring the effectiveness of the right to free elections.

69. In this context, State authorities should always refrain from any attempt to influence or censor media content or interfere in any other way in activities of the media and journalists, undermining their independence. No interference with the activities of journalists and media personnel should be tolerated and any such allegations should be promptly and seriously investigated. This is even more important during election periods.

70. To promote pluralism, States must be careful to prohibit excessive concentration of media ownership and to impose transparency on media ownership structures. The presence of strong, independent and adequately resourced public service media is at the same time a condition of pluralism and a guarantee that the diversity of society can find a place in an overpopulated media environment where to the risk of misinformation and manipulation is added that of a majority line of thinking that would impose itself as unique.

71. Public service media should be free to criticise activities or inaction by the public authorities. The State is not the boss of the public service media; they belong to the citizens, not to the powers in place. They must not be subjected to any pressure or retaliation for the information they disseminate, as long as they respect their duty of impartiality.

72. All media should avoid broadcasting unverified information or rumours to provoke scandal or for propaganda purposes. If it decides that such a message is nevertheless important, it should be broadcast with a warning saying that the message is not verified. Facts have to be clearly distinguished from comments and opinions.

34. Ibid.

35. <https://euvsdisinfo.eu/25-ways-of-combatting-propaganda-without-doing-counter-propaganda/>.

73. Protection against hate speech and State propaganda must be strengthened. However, repression is insufficient. States should encourage all stakeholders – including the media, internet intermediaries, civil society and academia – in developing participatory and transparent initiatives for creating a better understanding of the impact of disinformation and propaganda on democracy, and for finding appropriate responses to these phenomena.

74. A strong regulator is key to ensuring that the media maintain journalistic standards. To be effective, regulators need clear guidelines about when to sanction the media for violating laws on “hate speech,” “incitement to violence” or other. Authorities should ensure the political, operational and financial independence of media regulators, in line with Council of Europe recommendations. In order to enhance public confidence in its actions, consideration should be given to strengthening the accountability mechanism of media regulators, including an obligation to publish online detailed annual reports on activities and budgets as well as all other decisions and outcomes of media regulators’ deliberations. The establishment of systematic media monitoring during an election campaign would assist the regulators in identifying any inequitable and preferential coverage of candidates and in taking prompt corrective action.

75. Consideration could be given to creating platforms for discussion, training, studies and self-reflection on the media, to enhance the current level of journalistic profession and explain the unhealthy aspects of journalism, such as propaganda. An opportunity to exchange experiences through international media networks and journalistic associations would also help to achieve these aims.

76. It is recommended that member States strengthen regulations to ensure that political advertising is at least as transparent online as it is offline. Moreover, tech companies should play their part in the fight against disinformation and propaganda by re-examining the algorithms behind news curation and disabling bots and fake accounts that are used for antidemocratic ends. It is important that advertisers do not fund websites which promote hate speech, demonise LGBT people and incite violence.

77. Finally, beyond regulatory intervention, the possibility of promoting self-regulation or co-regulation should be taken into account. A regulatory system with strong government control is unlikely to promote pluralism and diversity among the media. On the other hand, a voluntary system with strong legal or constitutional guarantees of media independence can safeguard pluralism in the media and protect it against government or political interference and can help to develop professional skills and standards.