Committee of Experts on Media Pluralism and Transparency of Media Ownership (MSI-MED)

COUNCIL CONSEIL
OF EUROPE DE L'EUROPE

16 November 2016

MSI-MED 2nd meeting
27th – 28th September 2016
(Strasbourg, Agora, Room G05)

Meeting report

Opening, agenda, election

1.   The Committee of Experts on Media Pluralism and Transparency of Media Ownership (MSI-MED) met in Strasbourg on 27th and 28th September 2016. The meeting was chaired by Ms Helena **Mandić.** The Committee first adopted the agenda (see Appendix I) without any changes. The list of participants appears in Appendix II.

2.   The MSI-MED unanimously elected Mr Pierre François Docquir as Vice-Chair.

3.   The meeting was addressed by Mr Jan Kleijssen, Director of the Information Society and Action against Crime Directorate. He provided the MSI-MED with information on points of interests related to media pluralism, including the Council of Europe's participation in the EU's 2016 Annual Colloquium on Fundamental Rights (Brussels, 17 and 18 November 2016) where the Secretary General would deliver a keynote address.

Draft Recommendation on media pluralism and transparency of media ownership

Mr Tarlach McGonagle, the Rapporteur of the Draft recommendation on media pluralism and transparency of media ownership, presented the first draft prepared with the support of the Secretariat (see document MSI-MED (2016)09 in Appendix III). The draft had been discussed in the working group prior to the 2nd meeting.

The draft identifies descriptive elements to be included in the recommendation, and the Committee members were mainly in favour of dividing descriptive and prescriptive elements into separate units; however, the structure will be finally decided upon when all the necessary elements are integrated in the draft.

Content-wise, one of the important focuses is to integrate into the Draft recommendation the role of the new media, to identify to what extent they may contribute to, or impede, media pluralism, and to formulate corresponding recommendations.

Further, the MSI-MED members emphasised the need for clarity of specific recommendations and more detailed setting-out of ownership transparency standards in order to facilitate implementation. The members also discussed issues related to indirect media ownership and how to address the issue in the recommendation, to transnational media ownership, access to content, implementation of rules on network neutrality and the need for specific national frameworks regulating media concentration and their possible modalities.

The Committee members presented certain concrete proposals for specific recommendations to be included in the text.

The feasibility studies

The MSI-MED took note of and welcomed the draft outline of the feasibility study on gender equality in the context of media coverage of elections prepared by Ms Maja **Zarić** and Mr Pierre François Docquir (see document MSI-MED (2016)11 in Appendix IV). Discussions were held on the purpose and the scope of the feasibility study, and possible areas to be further explored. The MSI-MED agreed to continue working on the basis of elements identified by the drafters of the study, as well as to provide to them any relevant research and study that has been conducted at the national level. In this connection, the MSI-MED agreed to collaborate with the Gender Equality Commission of the Council of Europe for possible input/examples on gender equality in the context of media coverage of elections. The MSI-MED also took note of the information provided by Mr Oliver Gerber on the research of how female and male candidates were represented in the Swiss media during the run-up to the federal parliamentary elections 2015 (*Gender und Medien im Vorfeld der eidgenössischen Wahlen 2015*).

The MSI-MED took note of and commended the draft feasibility study on the use of Internet in elections carried out by Mr Damian Tambini (see document MSI-MED (2016)10 in Appendix V). The MSI-MED agreed on the current structure of the document and provided comments with regard to specific issues to be further developed and possible concrete recommendations to be included in the study. The MSI-MED also agreed on the focus of the study on the use of the Internet in political campaigning, and not in e-voting; therefore it decided to change the title of the study to "the use of Internet in electoral campaigns".

Discussions with other international organisations

The representative of the European Commission, Ms Suzanne Vanderzande, informed the MSI-MED members that the issue of transparency of media ownership and how it may be achieved is one of the topics high on the agenda of the European Commission. She also announced that EC would in the near future undertake work in the area of digital transparency and digital intermediaries.

Decisions on timelines and follow-up

The MSI-MED will hold its next meeting in Strasbourg from 29 to 30 March 2017. These dates were decided among the members after the meeting via e-mail.

The MSI-MED decided that the Secretariat would prepare a draft meeting report to be sent to the Chair and the Vice-Chair for consideration. Thereafter the Secretariat will send the draft report to the MSI-MED with a deadline of five full working days allowing for comments. In the absence of comments within the deadline, the report will be deemed adopted by the MSI-MED and will be transmitted to the CDMSI.

Appendix I: ANNOTATED AGENDA

{as contained in document MSI-MED (2016)12rev}

5 September 2016   MSI-MED (2016)12

MSI-MED 2nd MEETING
27-28 September 2016 (9:30-17:30)
Strasbourg, AGORA Building (Room G5)

1.   Opening of the meeting

      by Ms Helena MANDIC, Chair of MSI-MED

2.   Adoption of the agenda

3.   Election of Vice-chair person

      Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies,
      their terms of reference and working methods, with particular reference to Article 12.

4.   Information by the Secretariat

      The MSI-MED will be informed about the 10th meeting of the CDMSI (Steering
      Committee on Media and Information Society), 28 June – 1 July 2016; other
      information of relevance for the work of MSI-MED.

5.   Address by Mr Jan Kleijssen, Director of the Information Society and Action against
      Crime

6.   Discussion on deliverables under the MSI-MED Terms of Reference

      Presentation of the draft recommendation on media pluralism and transparency of
      media ownership by Mr Tarlach McGonagle and related discussion (Doc MSI-
      MED(2016)09)

      Presentation of the draft feasibility study on the use of Internet in elections by Mr
      Damian Tambini, and related discussion (Doc MSI-MED(2016)10)

      Presentation of the draft feasibility study on gender equality in the context of media
      coverage of elections by Ms Maja Zarić and Mr Pierre François Docquir, and related
      discussion (Doc MSI-MED(2016)11)

7.   Cooperation with other organisations (EU, UN, OSCE)

      The representatives of the organisations will be invited to inform the Committee on
      their activities of relevance for the work of MSI-MED.

8.   Dates of next meetings

9.   Other business

Appendix II: List of participants

COMMITTEE MEMBERS	MEMBRES DU COMITE
Ms Elda BROGI - Scientific Coordinator - Centre for Media Pluralism and Media Freedom - Robert Schuman Centre for Advanced Studies - European University Institute	Mme Elda BROGI - Coordinatrice scientifique - Centre pour le pluralisme et la liberté des médias - Centre d'études avancées Robert Schuman - Institut de l'université européenne
Mr Pierre François DOCQUIR - Senior Legal Officer - ARTICLE 19	M. Pierre François DOCQUIR - Juriste principal - ARTICLE 19
Ms Maria DONDE - International Policy Manager, Ofcom (United Kingdom Communications Regulator)	Mme Maria DONDE - Directrice des politiques internationales de l'Ofcom (l'autorité de réglementation des communications du Royaume-Uni)
Ms Natalie FERCHER - Expert on Media and Communication Law - Department of Media Law and Coordination Information Society - Federal Chancellery - Austria	Mme Natalie FERCHER - Experte en droit des médias et de la communication - Service du droit des médias et coordination de la société de l'information - Chancellerie fédérale – Autriche
Mr Gudbrand GUTHUS - Director Licensing and Supervision Department - Norwegian Media Authority – Norway	M. Gudbrand GUTHUS - Directeur du service des licences et de la supervision - Autorité des médias de Norvège
Mr Ivane MAKHARADZE, Head of Broadcasting Regulation Department, National Communications Commission – Georgia	M. Ivane MAKHARADZE, Chef du Service de régulation de l'Audiovisuel, Commission Nationale des Communications – Géorgie
Ms Helena **MANDIĆ** - Director of Broadcasting - Communications Regulatory Agency - Bosnia and Herzegovina	Mme Helena **MANDIĆ** - Directrice de la radiodiffusion - Autorité de régulations des communications - Bosnie-Herzégovine
Mr Tarlach McGONAGLE - Senior Researcher and Lecturer, Institute for Information Law (IViR) - University of Amsterdam	M. Tarlach McGONAGLE - Chercheur principal et conférencier à l'Institut pour le droit de l'information (IViR) - Université d'Amsterdam
Mr Nol REIJNDERS - Senior Adviser - Department for Media, Literature, Libraries - Ministry of Culture, Education and Science - The Netherlands	M. Nol REIJNDERS - Conseiller principal - Service des médias, de la littérature et des bibliothèques - Ministère de la culture, de l'éducation et des sciences - Pays-Bas
Ms Helena SOUSA - Professor of Communication Studies, Dean of the Social Sciences School - University of Minho - Portugal	Mme Helena SOUSA - Professeure en communication – Doyenne de l'Ecole des sciences sociales - Université de Minho - Portugal
Mr Damian TAMBINI - Associate Professor - Director of the Media Policy Project - Programme Director: MSc Media & Communications (Governance) - London School of Economics	M. Damian TAMBINI – Professeur agrégé - Directeur du projet Politiques des médias - Directeur du programme MSc Media & Communications – London School of Economics
Mr Josef TRAPPEL - Professor for media policy and media economics - Head of the Department of Communication Research at the University of Salzburg	M. Josef TRAPPEL - Professeur en politiques des médias et économie des médias - Chef d service de la recherche en communication de l'Université de Salzbourg
Ms Maja ZARIC - Media Advisor - Media Department - Ministry of Culture and Information - Republic of Serbia	Mme Maja ZARIC - Conseillère pour les médias - Service des médias - Ministère de la culture et de l'information - République de Serbie

COUNCIL OF EUROPE MEMBER STATES

IRELAND

Mr Éanna O'CONGHAILE, Department of Communications, Energy and Natural Resources

REPUBLIC OF MOLDOVA

Ms Iulia **GUŢULEAC**, Head of External Relations and European Integration Service, Coordination Council for Audiovisual

POLAND

KRRiT Strategy Department

Ms. Halina ROSTEK, Deputy Director

Ms Maria BORKOWSKA, Expert

RUSSIAN FEDERATION

Prof. Alexander BORISOV, Dean of the Faculty of International Information, Moscow State institute of International Relations

SWITZERLAND

Mr Oliver GERBER, Media lawyer (lic. iur.), Division Media / Section Media Services, Group SRG / international issues, Federal Office for Communication (OFCOM)

TURKEY

Mr **İrfan** D. ERENTÜRK, Media Specialist

Radio & Television Supreme Council of Turkey – RTUK

PARTICIPANTS

EUROPEAN COMMISSION

Ms Suzanne VANDERZANDE, Assistant Policy Officer, Unit G.1 Converging Media & Content

EUROPEAN AUDIOVISUAL OBSERVATORY

Ms. Maja CAPPELLO, Head of the Department for Legal Information

EPRA - European Platform of Regulatory Authorities

Ms. Emmanuelle MACHET, Secretary to the EPRA

ETATS MEMBRES DU CONSEIL DE L'EUROPE

IRLANDE

M. Éanna O'CONGHAILE, Département des communications, de l'énergie et des ressources naturelles

REPUBLIQUE DE MOLDOVA

Mme Iulia **GUŢULEAC**, Chef du service des relations extérieures et de l'intégration européenne, Conseil de Coordination de l'Audiovisuel

POLOGNE

KRRiT - Département de la stratégie

Mme. Halina ROSTEK, Directrice adjointe

Mme. Maria BORKOWSKA, Expert

FEDERATION DE RUSSIE

Prof. Alexander BORISOV, Doyen de la Faculté de l'information internationale, Institut public des relations internationales de Moscou

SUISSE

M. Oliver GERBER, Avocat en droit des médias (lic. Iur), Division des médias / Section des services de médias, Groupe SRG / questions internationales, Office Fédéral de la Communication (OFCOM)

TURQUIE

M. **İrfan** D. ERENTÜRK, Spécialiste des médias

Conseil supérieur de l'audiovisuel turc– RTUK

PARTICIPANTS

COMMISSION EUROPEENNE

Mme Suzanne VANDERZANDE, Responsable adjointe, Unité G.1 Convergence des medias et des contenus

OBSERVATOIRE EUROPEEN DE L'AUDIOVISUEL

Mme. Maja CAPPELLO, responsable du département informations juridiques

EPRA - Plateforme européenne des instances de régulation

Mme Emmanuelle MACHET, Secrétaire de l'EPRA

UNESCO

Ms Xianhong HU, Division for Freedom of Expression and Media Development, Communication and Information Sector *(Apologised)*

Civil society and representatives of business, technical, professional and academic communities

Community Medias Forum Europe (CMFE)

Ms Lyacout HAICHEUR, CMFE Board member

EuroISPA – European association of European

Internet Services Providers Associations

Prof. Michael ROTERT, Honorary Spokesman (27/09)

OBSERVERS

EBU – European Broadcasting Union

Mr Michael WAGNER

Head of Media and Communications Law

MEXICO

Mr Diego SANDOVAL PIMENTEL, Deputy to the Permanent Observer of Mexico to the Council of Europe

MOROCCO

High Authority for Audio-visual Communication of Morocco (HACA)

Mr El Mahdi AROUSSI IDRISSI, Director of Legal Department

Mr Abdeljalil EL HAMMOUMI, Deputy Director General for audio-visual communication

Ministry of Communication

Ms Chanaz EL AKRICHI, Head of Cooperation Division

Ms Meriem KHATOURI, Director, Media Studies and Development Directorate

COUNCIL OF EUROPE

VENICE COMMISSION

(European Commission for Democracy through

UNESCO

Mme Xianhong HU, Division liberté d'expression and développement des médias, Secteur communication et information (Excusée)

Représentants de la société civile, du milieu universitaire et du secteur privé

Community Medias Forum Europe (CMFE)

Mme Lyacout HAICHEUR, Membre du bureau du CMFE

EuroISPA – Association européenne des associations

des fournisseurs de service internet

Prof. Michael ROTERT, Porte-parole honoraire (27/09)

OBSERVATEURS

UER - Union européenne de radio-télévision

M. Michael WAGNER

Chef du service du droit des médias et de la communication

MEXIQUE

M. Diego SANDOVAL PIMENTEL, Adjoint à l'Observateur Permanent du Mexique auprès du Conseil de l'Europe

MAROC

Haute autorité de la communication audiovisuelle du Maroc (HACA)

M. El Mahdi AROUSSI IDRISSI, Directeur du département juridique

M. Abdeljalil EL HAMMOUMI, Directeur général adjoint de la communication audiovisuelle

Ministère de la Communication

Mme Chanaz EL AKRICHI, Chef de division de la Coopération

Mme Meriem KHATOURI, Directrice, Direction des Etudes et de Développement des Médias

CONSEIL DE L'EUROPE

COMMISSION DE VENISE

(Commission européenne pour la démocratie par

Law)

le droit

Mr Domenico VALLARIO

M. Domenico VALLARIO

DIRECTORATE GENERAL OF DEMOCRACY

DIRECTION GÉNÉRALE DE LA DÉMOCRACIE

Ms Carolina LASÉN DIAZ, Head of the Gender Equality Unit - Equality Division

Carolina LASÉN DIAZ, Chef de l'Unité Egalité de genre, Division pour l'Egalité

Mr François WACH, Advisor, Electoral Assistance and Census Division (27/09)

M. François WACH, Conseiller, Division de l'assistance électorale et du recensement (27/09)

DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW

DIRECTION GENERALE DROITS DE L'HOMME ET ETAT DE DROIT

Mr Jan KLEIJSSEN, Director, Directorate of Information Society and Action against Crime

M. Jan KLEIJSSEN, Directeur, Direction de la Société de l'information et de la lutte contre la criminalité

Mr Patrick PENNINCKX, Head of Information Society Department

M. Patrick PENNINCKX, chef du service de la Société de l'information

Ms Silvia GRUNDMANN, Head of Media and Internet Division, Information Society Department

Mme Silvia GRUNDMANN, chef de la division médias et internet, service de la Société de l'information

Ms Elvana THAÇI, Deputy Secretary CDMSI, Head of Standard Setting Unit, Media and Internet Division

Mme Elvana THAÇI, Secrétaire adjointe au CDMSI, Chef de l'unité normative, division médias et internet

Ms Urška UMEK, Secretary of MSI-MED Committee,

Media and Internet Division, Information Society Department

Mme Urška UMEK, Secrétaire du Comité MSI-MED, division médias et internet, service de la Société de l'information

Ms Christina LAMPROU, Project Officer, Media and Internet Division, Information Society Department

Mme Christina LAMPROU, Chargée de projet, division médias et internet, service de la société de l'information

Ms Elisabeth MAETZ, Assistant, Media and Internet Division Division, Information Society Department

Mme Elisabeth MAETZ, assistante, division médias et internet, service de la Société de l'information

INTERPRETERS / INTERPRETES

Clarissa WORSDALE, Martine KARALY, Katia Di STEFANO

Appendix III:

Draft recommendation on media pluralism and transparency of media ownership

{as contained in document MSI-MED (2016)09}

5 September 2016   MSI-MED (2016)09

MSI-MED 2nd MEETING
27-28 September 2016 (9:30-17:30)
Strasbourg, AGORA Building (Room G5)

Draft recommendation on
media pluralism and transparency of media ownership

Preamble

1. The right to freedom of expression, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), comprises freedom to hold opinions and to receive and impart information and ideas of all kinds without interference by public authority and regardless of frontiers.

2. Media freedom and pluralism and diversity of media content are corollaries of the right to freedom of expression and they are essential for the functioning of a democratic society as they help to ensure the availability and accessibility of information and ideas from diverse sources, on the basis of which individuals can form their own opinions.

3. States have a positive obligation to create a favourable environment in which everyone can participate in public debate and express their opinions and ideas without fear.

4. States also have a positive obligation to guarantee pluralism, especially in the audiovisual media sector, due to the wide dissemination and impact of audiovisual programmes. This entails ensuring that a diversity of voices, including critical ones, can be heard. This is, however, not limited to the audiovisual sector, as other media and information sources can also have immediate and powerful effects.

5. The media, in particular public service media and community media, can make a crucial contribution to fostering public debate, political pluralism and awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.

6. Ongoing technological developments have transformed the traditional media environment, as described *inter alia* in CM/Rec (2011)7 on a new notion of media, leading to new notions of media and new understandings of the evolving media ecosystem. Advances in information

and communication technologies have made it easier for an increasing range of actors to participate in public debate, thereby playing a role similar or equivalent to that traditionally played by the institutionalised media and professional journalists.

7. In the evolving media ecosystem, new intermediaries have emerged, especially online, and through their ability to control or influence the flow, availability, findability and accessibility of information, ideas and other content online, they have acquired important gate-keeping functions and powers. The presence and impact of such intermediaries alongside traditional media point up the need for fresh appraisals of existing approaches to media pluralism. The recalibration and reinvigoration of existing Council of Europe standards in this area, in accordance with the Guidelines set out in the appendix to the present Recommendation, aim to provide member States with inspiration and guidance for developing new, or adapting existing national policies and methodologies.

8. Independent media regulatory authorities can play an important role in upholding media freedom and pluralism and as such, states should safeguard their independence.

9. There must be sufficient independent and autonomous channels and online services and sources capable of presenting a plurality of ideas and opinions to the public, in order to ensure the existence of adequate space for public debate on matters of general interest. By virtue of their remit, public service media are particularly suited to accommodating and catering to the informational needs and interests of all sections of society, as is true of community media in respect of their constituent users.

10. Adequately equipped and financed public service media, in particular public service broadcasting, enjoying genuine editorial independence and institutional and operational autonomy, can contribute to counterbalancing the risk of misuse of the power of the media, in particular, in a situation of strong media concentration.

11. The adoption and effective implementation of media-ownership regulation also plays an important role in respect of media pluralism. Such regulation should ensure transparency in media ownership and prevent concentration of media ownership; it should address issues such as cross-media ownership, indirect media ownership and effective control and influence over the media. It should also ensure that there is effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content.

12. Media concentration can place a single or a few media owners or groups in a position of considerable power to separately or jointly set the agenda of public debate and significantly influence or shape public opinion, and thus also exert influence on the government and other state bodies and agencies.

13. Transparency of media ownership, organization and financing, as well as media literacy, are indispensable tools for individuals to make informed decisions about which media they use and how they use them, to search for, access and impart information and ideas of all kinds. This makes them practical instruments of effective pluralism.

14. Under the terms of Article 15.*b* of the Statute of the Council of Europe (ETS No. 1), the Committee of Ministers recommends that governments of member States:

i. fully implement as a matter of urgency the guidelines set out in the appendix to this recommendation;

ii. remain vigilant to, and address, threats to media pluralism and transparency of media ownership and systematically include such focuses in the ongoing reviews of their national laws and practices as envisaged by CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors;

iii. fully implement, if they have not already done so, previous Committee of Ministers' Recommendations and Declarations dealing with different aspects of media pluralism and transparency of media ownership, in particular those specified in the guidelines appended to the present Recommendation;

iv. promote the goals of this recommendation at the national and international levels and engage and co-operate with all interested parties to achieve those goals.

Appendix to Recommendation

Guidelines

The present Guidelines re-affirm the importance of existing Council of Europe standards dealing with different aspects of media pluralism and transparency of media ownership and the need to fully implement them in democratic societies. The Guidelines also build on those standards, adjusting, supplementing and reinforcing them, as necessary, to ensure their continued relevance in the current multi-media ecosystem.

It is important to place the Recommendation's main focuses – media pluralism and transparency of media ownership – in a broader context. The Guidelines are therefore structured in a way that emphasizes a number of key related themes: a favourable environment for freedom of expression and media freedom; a culture of independence; diversity of media content; structural pluralism; concentration of media ownership and control of modalities of access to content; transparency of media ownership, organization and financing; media literacy/education.

[Editorial note: Concrete recommendations to be boxed to enhance visual impact. Each set of recommendations (per theme) should recall, as relevant, specific Council of Europe standards that are centrally important for that theme: these references are strategic and will allow us to avoid repeating the content of the most relevant standards unnecessarily.]

I. A favourable environment for freedom of expression and media freedom

1.   The European Convention is a living instrument and the right to freedom of expression – like all other rights safeguarded by the Convention – must be interpreted in light of present-day conditions. This right is not merely theoretical or illusory: its exercise must be practical and effective.

2.   This means that the free speech principles developed by the European Court of Human Rights in respect of traditional (mass) media must be viewed in the light of contemporary technological realities where a range of different online intermediaries supplement traditional institutionalized media.

3.   The media continue to play essential roles in democratic society, by widely disseminating of information and ideas, acting as public watchdogs and providing forums for public debate. In the new media ecosystem, those roles are increasingly also being fulfilled in different ways by other media and non-media actors, which vary from multinational corporations to non-governmental organisations and individuals.

4. States have a positive obligation to foster a favourable environment for freedom of expression in which all actors can exercise their right to freedom of expression and participate in democratic society effectively across all platforms and without fear, irrespective of whether or not their views offend the State or others. Pluralistic media can therefore enhance robust, pluralistic public debate in which societal diversity can be articulated and explored. States must therefore safeguard the independence of the media,

especially public service media, so that they can continue to offer inclusive forums for public debate.

5.   The European Court of Human Rights has affirmed that States are the ultimate guarantors of pluralism in the audiovisual sector and that they accordingly have a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism. The underlying concern is to avoid situations whereby a powerful economic or political group could acquire dominance and exert pressure on broadcasters and thereby interfere with their editorial freedom and undermine the role of freedom of expression in democratic society. The same concern exists when such situations arise in respect of online actors.

6.   Media-related pluralism entails a number of inter-related components such as: content (output), source (ownership) and type (outlet). Diversity of media content concerns variety in political and cultural media output, both in terms of ideas and information. It is influenced by the extent to which the media are owned or controlled by a range of different parties and the extent to which the media themselves are diverse in their nature. Strong pluralism in media sources and types can be instrumental in enhancing diversity of media content, but they do not of themselves guarantee it.

RECOMMENDATIONS

II. A culture of independence

1.   In a favourable environment for freedom of expression, a culture of independence must prevail for all relevant actors. Individuals must be able to participate in public debate freely and without fear. Media, media service providers and all other actors must be assured the necessary independence to enable them to contribute to public debate. Such independence precludes interference from, or influence by, governmental, political, religious, commercial and other partisan influences. It also precludes, *a fortiori*, interference of any kind from intolerant, racist, terrorist, extremist, criminal and other illegal factions.

2.   In order to uphold a general culture of independence, specific requirements may arise in different contexts and in respect of different media and other actors.

3.   A culture of independence is, for instance, of particular importance in the context of public debate concerning democratic decision-making and other processes, such as elections, referenda and public consultations. Such activities and processes are at the heart of democratic society and pluralistic debate provides an important safeguard for their integrity.

4.   It is also of particular importance in the context of conflicts and crises, when propaganda and strategic communication often trump truth and factual reporting.

5.   A prerequisite for media regulatory authorities and authorities entrusted with responsibility for regulating or monitoring other (media) service providers to be able to carry out their remit in an effective, transparent and accountable manner is that they themselves enjoy a culture of independence that is guaranteed in law and borne out in practice.

6.   While all media must enjoy independence, various specific measures may be required to protection the editorial independence and operational autonomy of public service media by keeping the influence of the State at arm's length. The supervisory, executive and

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editorial boards of public service media must be able to operate in a fully independent manner and the rules governing their composition and appointment procedures must contain adequate checks and balances to ensure that independence.

7. Laws and policies designed to ensure a culture of independence should be cognizant of the range of indirect financial threats and pressures that can interfere with the editorial and operational autonomy of the media, especially in respect of public service media and community media. Such threats and pressures can be used to exploit financial and funding dependencies, which are exacerbated in times of financial crisis and austerity. Funding and financing schemes and policies of States and independent public bodies, for instance involving the allocation of subsidies, state aid and state advertising, should be designed around equitable, objective and transparent criteria and administered in a non-discriminatory and transparent manner. State schemes and policies making financial provision for media should also include, as appropriate, attention for online media actors, for instance insofar as they contribute to the promotion of the public service value of the Internet.

RECOMMENDATIONS

III. Diversity of media content

1. The diversity of media content should be reflective of the actual diversity of identities, ideas and interests in society. True diversity necessarily includes not only ideas and information that are favourably received, but also ideas and information that offend, shock or disturb the State or any section of the population. The central democratic values of pluralism, tolerance and broadmindedness demand no less.

2. Structural (or external) pluralism, which implies the co-existence of a variety of different types of media, can contribute to creating and maintaining diversity of content. Public service media can play a distinct role in terms of structural pluralism by providing not only a range of content corresponding to the diverse identities, ideas and interests in society, but also a shared, dialogical forum in which such heterogeneous and sometimes frictional content can be exchanged. This, in turn, can help to advance pluralism, tolerance and broadmindedness, as well as social cohesion. Community media can also make a distinct contribution to overall diversity of media content in society by enabling the production and dissemination of content specifically for different communities.

3. Besides different types of media, different types, genres or formats of editorial content or programming can contribute to diversity of content. Although content focusing on news and current affairs is of most direct relevance for fostering an informed public and facilitating participation in public debate, other genres are also very important for society. Examples include cultural, educational, entertainment and commercial content, as well as content targeting specific sections of society.

4. In the spirit of an effective right to freedom of expression and effective pluralism, laws, policies and practices designed to ensure the availability of diverse media content are not enough. In light of the fundamental importance of diverse media content for democratic society, the necessary efforts should be made to promote the visibility and findability of diverse media content in order to ensure its accessibility. Those efforts should ensure that a diverse supply of media content is accessible to all groups in society, particularly those

which – for whatever reason – may face disadvantage or obstacles when accessing media content, i.e., members of (linguistic) minority groups, children, the elderly, persons with cognitive or physical disabilities, etc.

5.   In respect of digital and online media and other types of content, online intermediaries have the ability to influence and/or control the availability, visibility, findability and accessibility of content by the techniques of selection, promotion, ranking, de-indexing, etc., that they employ. Their gate-keeping role therefore has a determinative impact on the relationship between individuals and the diversity of content online.

6.   A right of reply can contribute to diversity by providing individuals with an opportunity to respond to or to rectify media content concerning their person or interests. It is a mechanism for achieving clarification, correction or refutation. Its responsive character means that it does not proactively contribute to diversity, but it plays an important role in facilitating dialogue and debate via the media. In order for individuals to be able to avail of their right of reply, there must be adequate information and transparency about the procedures governing it.

RECOMMENDATIONS

IV. Structural pluralism

1.   Structural pluralism of the media matters because the media differ in terms of their purposes, functions and geographical reach. Accordingly, they are not used in identical ways by all individuals or groups in society. What is important is that there is functional completeness in the media ecosystem, i.e., that there is sufficient variety in the overall range of media types in order to ensure that there is effective pluralism. Functional completeness implies that the existing institutional media offer ensures viable opportunities for individuals and groups to create and access diverse media content.

2.   In the evolving media ecosystem, the functionality of online media and other Internet-based applications and services merit particular consideration in the context of structural pluralism.

3.   The European Court of Human Rights has repeatedly recognised that public service broadcasting can contribute to the quality and balance of programmes in the broader context of structural pluralism. It has also affirmed that where a public service broadcasting system exists, domestic law and practice must guarantee that the system provides a pluralistic service. It is indispensable for the proper functioning of democracy that public service broadcasting systems transmit impartial, independent and balanced news, information and comment and, in addition, provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed.

4.   Community media are independent media run by and for members of a community in a particular geographical area or of a particular community of interest. They give a voice to and train citizens, particularly communities and individuals not represented by the mainstream media. They enable them to become active media-producers and multipliers within their communities and beyond. They take up topics which are relevant for communities, even if they are not present in the mainstream media, and they can hence enable negotiation and public visibility. Community media organizations hold a specifically important role, as they offer and encourage participation at different levels of the structure

of their organizations and instil and nurture a sense of active engagement, transcending the borders of communities.

5.   Commercial media typically cater to mainstream audiences and their output aims to be of wide appeal, which is in itself an important contribution to media pluralism and overall diversity of media content. Commercial media with public service obligations (either by law or as part of their broadcasting licence conditions) can complement the offering of public service media.

6.   Transnational media, which serve communities outside the country where they are established, supplement national media and can help certain groups in society to maintain ties with their countries of origin. This is increasingly important for immigrants and refugees wishing to maintain contact with their native culture and language.

7.   An important feature of structural pluralism is the complementary nature of the different types of media involved. As with the independence of the media, especially public service media and community media, adequate financing and funding are pre-requisites for the sustainability of a pluralistic media ecosystem. Systemic underfunding of public service media is a serious problem in a number of Council of Europe member States, with the effect that public service media are left behind and unable to fulfil their remit and make a significant contribution to media pluralism. In a few countries, public service media organisations are in a financial crisis that threatens their very existence.

RECOMMENDATIONS

V. Concentration of media ownership and control of modalities of access to content

1.   Concentration of media ownership limits the number of media sources that are able to contribute to media pluralism and to create and disseminate diverse media content. Similar threats to media pluralism and diversity of media content can arise from a concentration of control of the modalities of access to online content, including the visibility, findability and accessibility of content.

2.   Concentration of media ownership and control of the modalities of access to online content can also pose a threat to the editorial independence and operational autonomy of the media and, as relevant, online actors.

3.   Media ownership regulation has traditionally tended to focus on direct ownership and consequently paid insufficient attention to indirect ownership and *de facto* control/effective influence. In keeping with a culture of independence in the media ecosystem, the focus of media ownership regulation should be expanded to avoid such blind spots and to address in appropriate ways growing concerns about (direct and indirect) ownership and control/effective influence of online (media) actors.

4.   Media ownership regulation is characterised by its complexity and fragmentation. Besides its relevance for media pluralism, various other public interests such as fair competition, are also implicated.

5.   Dominance of particular actors in specific media markets/sectors (e.g. online searching, micro-blogging, etc.) can determine whether the right to freedom of expression is practical and effective in those markets/sectors. There has to be pluralism in the available media and meaningful choice between them.

6.   Technological developments (and their impact on traditionally distinct media markets), horizontal and vertical integration, etc.; difficulties in measuring market impact of online media and impact of ownership of online media on the concentration in a particular market.

7.   Network neutrality is an essential principle in the media ecosystem, where individuals' freedom of expression and their ability to participate in democratic life depend increasingly on the accessibility and quality of an Internet connection. States should therefore take positive measures to guarantee individuals the greatest possible access to Internet-based content, applications and services of their choice.

RECOMMENDATIONS

VI. Transparency of media ownership, organisation and financing

1.   Given the essential roles played by the media in democratic society, there is a strong public interest in ensuring transparency about the ownership, organisation and operation of the media. High levels of transparency can enhance accountability and facilitate the identification of sources of control and influence over the media and, in turn, responsibility and liability for their output.

2.   Transparency of media ownership provides data that help members of the public to analyse and evaluate the information, ideas and opinions disseminated by the media, and the regulatory authorities with responsibility for media pluralism with data that contribute to informed regulation, decision- and policy-making.

3.   The nature and level of detail of information concerning media ownership may differ, depending on whether the public's needs or the regulatory authorities' needs are at issue. Notwithstanding these differences, maximum transparency should be strived for at all times.

4.   Maximum transparency is not limited to media ownership, which is but one of several inter-related aspects of a broader notion of media-related transparency. A focus on media ownership – even when it differentiates between formal and beneficial ownership – does not necessarily provide a comprehensive or accurate picture of the different sources of potential interference with the editorial and operational independence of the media. Other aspects include organisational, editorial, funding and financing structures. Consideration of all of these aspects is necessary for determining degrees and sources of control and influence over the media.

5.   Another component of maximum transparency is editorial content: media and other actors should adhere to the highest standards of transparency regarding the provenance of their content and always signal clearly when content is provided by partisan political sources or involves advertising or other commercial communications. This also applies to hybrid forms of content, including sponsored content, advertorials and infotainment.

6. Maximum transparency also includes transparency of online media actors, with requirements and approaches tailored to the ways in which they contribute to public debate. For search engine operators, for instance, this would cover transparency concerning how information is accessed and in particular the criteria according to which search results are selected, ranked, promoted or removed. For both search engine operators and providers of social networking services, it includes transparency about how personal data of users of the services are collected and the purposes for which they are processed.

7. Maximum transparency of online media actors should focus not only on ownership, but also include governance structures, revenue, general algorithmic design/biases, etc. Transparency or disclosure policies addressing these kinds of issues can also be developed in the spirit of corporate social responsibility. They should strive to balance the public's right to information and the online media actors' interest in protecting commercially-sensitive information.

8. The regulatory framework which sets out various transparency obligations for the media is complex and often comprises laws and regulations on media (ownership), anti-corruption, money-laundering, e-commerce, company law, competition law, etc.

9. Possible relevance of right to privacy and data protection/shield of anonymity or pseudonymity for individuals, e.g. bloggers, and its relation to transparency objectives.

RECOMMENDATIONS

VII. Media literacy/education

1. Media literacy is a set of skills or competences that enable individuals to access, understand, analyze, evaluate and create content through a range of legacy and digital (including social) media. Those skills are both of a technical and of a civic nature, whereby mastery of technology and adherence to democratic societal norms and human rights standards are central.

2. The accessibility of content and services depends increasingly on having high levels of media literacy. This means that media literacy is crucial for individuals to be able to exercise their right to freedom of expression in an effective way in the new media ecosystem. It is also crucial for enabling individuals to participate in public debate and democratic society, given the central role played by the media in fostering public debate and public affairs.

3. Media literacy can contribute to the civic empowerment of individuals; the reduction/elimination of the digital divide; the facilitation of informed decision-making, especially in respect of political and public affairs, harmful and illegal online content, and commercial content.

4. Media literacy can also contribute to media pluralism and diversity by enabling individuals to find, access, create and share diverse types of content across a broad range of media.

5. It furthermore complements transparency in the media sector by enabling individuals to use information relating to the transparency of media ownership, organisation and financing in order to better understand the different influences on the production and

dissemination of media content. This, in turn, allows them to make an informed evaluation of the information and ideas propagated via the media.

6.   Media literacy has many dimensions and involves many different actors, including European and national law- and policy-makers, the media, education professionals, relevant state authorities, regulatory bodies, civil society, etc.

7.   By reason of the educational objectives included in their remit and their commitment to societal engagement, public service media and community media can make valuable contributions to the promotion of all aspects of media literacy, including the promotion of specific best practices.

RECOMMENDATIONS

Appendix IV:

Draft feasibility study on a standard – setting instrument on media coverage of elections with a specific focus on gender equality

{as contained in document MSI-MED (2016)11}

5 September 2016   MSI-MED (2016)11

MSI-MED 2nd MEETING
27-28 September 2016 (9:30-17:30)
Strasbourg, AGORA Building (Room G5)

Feasibility study on a standard – setting instrument on media coverage of elections with a specific focus on gender equality

Introduction

[This document is a draft outline that aims at proposing a structure for the final version. The text is in no way final: at this stage, it serves to indicate possible directions or options to be discussed at the MSI-MED meeting].

The suggested outline is the following:

Part 1 covers two (2) existing Council of Europe instruments, namely the CM/Rec(2007)15 on measures concerning media coverage of election campaigns and the CM/Rec(2013)1 on gender equality and media. This section looks at the problems identified in the two (2) instruments and the recommendations they put forward. This is simply a description / summary of the existing texts. There are two (2) different topics (gender equality in media, media coverage of elections) envisaged within the respective recommendations and the rest of the document will try to bring the two (2) topics together.

Part 2 seeks to identify new issues that need to be dealt with (specifically, the new notion of media) and the issues that will arise from bringing the two (2) topics together (what are the specific questions that emerge in relation to media coverage of elections when you specifically focus on gender equality).

Part 3 looks at existing practices, in Member States, that seek to improve (a) gender equality in media generally, and (b) gender equality in media coverage of elections specifically. This serves to identify examples, good practices, and to assess the need for further recommendations or initiatives.

Part 4 then gathers recommendations on how to improve gender equality in the media coverage of elections.

Conclusions: Here, an important discussion will be whether the Committee thinks that existing instruments are sufficient but their implementation needs to be improved, or whether a new instrument is needed.]

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, the Steering Committee on Media and Information Society (CDMSI) within its term of reference valid from: 1 January 2016 until 31 December 2017, has a specific activity to :

"(ii) Carry out a feasibility study on a possible standard-setting instrument on media coverage of elections, with particular regard to gender equality and the use of the Internet in elections, and, if appropriate, submit to the Committee of Ministers".

The above stated specific task was assigned to Committee of experts on Media Pluralism and Transparency of Media Ownership (MSI-MED) and during its first meeting (22-23 March 2016) the MSI-MED had an exchange of views on issue mapping non-paper for Feasibility study on a standard-setting instrument on media coverage of elections, with a specific focus on gender equality, and the use of the Internet in elections.

The feasibility study will have two focuses: a. the use of Internet in elections and b. gender equality on the coverage of election campaigns.

The MSI-MED decided that the two components of their second task, namely the feasibility study on the use of Internet in elections and the gender equality in the context of media coverage of elections, will be dealt with separately.

On the second focus, "gender aspects of media coverage of electoral campaigns", a reflection at CDMSI level had started by an informal group[1] who met in Strasbourg on 27 September 2011. Their work, which was not followed-up by a specific standard-setting instrument, is the basis for the relevant part of this paper[2].

Part I   General context: instruments of the Council of Europe dealing with the topics of media coverage of election campaigns and gender equality in media

Media coverage of elections is crucial for public, civil society, state institutions and political parties, but also for private, nongovernmental sector, and international community as well. By providing access to political candidates to convey their messages to the public, the media has an essential role as the primary source of information about politics and elections. The fundamental freedoms such as freedom of expression and freedom of information must be consistent part of the member states' regulatory framework for media coverage and as such must also protect citizens' right to adequate and balanced information, right of political parties and candidates to equal opportunities, as well as guarantee free democratic process by authorities' attitude of non-interference.

Media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The demands which result from Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms will be fully satisfied only if each person is given the possibility to form his or her own opinion from diverse sources of information.[3]

Given the important role of the media as a significant influence on citizens' critical thinking and forming opinions, especially in the time of elections, it is necessary to enable the media to provide fair, balanced and impartial media coverage during electoral periods. These three principles of fairness, balance and impartiality are stipulated in the Council of Europe

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[1] The following experts participated in the meeting: Margaret Gallagher (UK/IR), Joke Hermes (NL), Emir Povlakic (BiH), Bissera Zankova (BG).

[2] The existence of such a previous work is the only reason why that part is more detailed in this paper than the "use of internet" focus

[3] Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content

Recommendation CM/REC(2007)15[4] encouraging member states to ensure free and fair coverage of election campaigns by the media. For the purposes of the stated Recommendation, the term "media" refers to "those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public". In practice, this is taken to mean print and broadcast media, as well as "online news-services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television)". The scope of the Recommendation encompasses "all types of political elections taking place in member states, including presidential, legislative, regional and, where practicable, local elections and referenda".

Two sets of principles are stipulated: general provisions and measures concerning broadcast media. The general provisions envisage that, the public authorities should refrain from interfering in the activities of journalists and other media personnel with the aim to influence elections. At the same time, the public authorities have to ensure effective protection to journalists and the media against any attacks, intimidation or other types of unlawful pressure but in a way that it does not obstruct the media in carrying out their work. The editorial independence of the media must be enshrined in the regulatory framework of all member states and should be fully respected. Where media are owned by public authorities, the media coverage has to be fair, balanced and impartial without discriminating against or supporting a specific political party or candidate. Moreover, the media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns including respect of principles of human dignity and non-discrimination.

Furthermore, transparency is stressed as an important principle, especially when it comes to paid political advertising. Such advertising has to be readily recognisable as such and made transparent to the public. The right of reply or equivalent remedies, if available under national laws, should be respected during the campaign period and be able to be exercised without undue delay. In the case of opinion polls, the regulatory and self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information in order to enable citizens to make a judgement on the value of the polls. The principle of "Day of reflection" recommends to member states to consider merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral massages on the day preceding voting or to provide for their correction.

When it comes to measures concerning broadcast media, the CM encourages regulatory frameworks that foster the pluralistic expression of opinions via the broadcast media. The three principles of fairness, balance and impartiality are especially stressed for news and current affairs programmes during campaign periods. The foregoing principles are also applicable to non-linear audiovisual services of public service media. Free airtime and equivalent presence for political parties and candidates on public service media should be offered in a fair and non-discriminatory manner and on the basis of transparent and

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[4] Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns

objective criteria. The last measure in the Recommendation stresses that paid political advertising should be available on and according to equal conditions and rates of payment. According to the CM, member states "may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase". It also finds that "[r]egular presenters of news and current affairs programmes should not take part in paid political advertising".

« Gender equality is an indispensable condition for the full enjoyment of human rights. Genuine democracy requires the equal participation of women and men in society. Democracy and gender equality are interdependent and mutually reinforcing. The inclusion of women and men, with respect for equal rights and opportunities, is an essential condition for democratic governance and sound decision making. Gender equality means equal visibility, empowerment, responsibility and participation of both women and men in all spheres of public life, including the media. The achievement of gender equality is a prerequisite for the achievement of social justice. This is not of interest to women only, but it concerns society as a whole. »

In CM/Rec(2013)1 on gender equality and media, the Committee of Ministers of the Council of Europe observed that "There is a gender dimension to media pluralism and diversity of media content. The Recommendation on media pluralism and diversity of media content reaffirms that pluralism and diversity are essential for the functioning of a democratic society, for fostering public debate, political pluralism and awareness of diverse opinions by different groups in society. The media are centrally placed to shape society's perceptions, ideas, attitudes and behaviour. They should reflect the reality of women and men, in all their diversity. »

« The media can either hinder or hasten structural change towards gender equality. Inequalities in society are reproduced in the media. This is true in respect of women's under-representation in media ownership, in information production and journalism, in newsrooms and management posts. It is even more blatant as regards women's low visibility, both in terms of quality and quantity, in media content, the rare use of women as experts and the relative absence of women's viewpoints and opinions in the media. Media coverage of political events and election campaigns is particularly telling in this respect, as are the persistence of sexist stereotypes and the scarcity of counter-stereotypes. Furthermore, women, as media professionals, often encounter pay inequalities, the "glass ceiling" and precarious conditions of employment. »

There are recommendations directed towards States and media actors. The recommendation also gives attention to its implementation. The Gender Equality Commission has published a handbook on the implementation of CM/Rec(2013)1 on gender equality and media.

Part II   Current issues related to gender equality in relation with the media coverage of elections

[It is suggested that MSI-MED Committee should decide what is to be understood as "media" for this document, as this will have consequences for the following sections of the document]

II.1   What is the media?

In 2011, the Council of Europe has adopted a recommendation on a new definition of media which stated that:

'With these changes in the media ecosystem, the functioning and existence of traditional media actors, as well as their economic models and professional standards, are being complemented or replaced by other actors. New actors have assumed functions in the production and distribution process of media services which, until recently, had been performed only (or mostly) by traditional media organisations; these include content aggregators, application designers and users who are also producers of content. A number of "intermediaries" or "auxiliaries", often stemming from the information and communication (ICT) sector, including those serving at the outset as mere hosts or conduits (for example infrastructure, network or platform operators), are essential for digital media's outreach and people's access to them. Services provided by these new actors have become essential pathfinders to information, at times turning the intermediaries or auxiliaries into gatekeepers or into players who assume an active role in mass communication editorial processes. Such services have complemented or, on occasion, partly replaced traditional media actors in respect of those functions. The roles of each actor can easily change or evolve fluidly and seamlessly. Furthermore, some have developed services or applications which have put them in a dominant position on a national or even at a global level.'[5]

This extends the notion of media to new actors in the media ecosystems. Discussions within MSI-MED on the draft resolution on pluralism in the media and transparency of ownership also consider the existence of new actors that have become very powerful in the distribution of media content in the contemporary media landscapes, such as social media and online platforms generally. In as much as the roles of these actors extend beyond the hosting of third-party content – where the regime of conditional liability immunity applies – it is necessary to look into their possible influence on gender equality in the coverage of elections.

Should we include these new actors in the feasibility study? We would have to identify the possible duties, good practices, etc, that would be relevant for social media and online platforms in connection with gender equality and the coverage of elections.

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[5] Council of Europe CM Rec(2011)7 Recommendation on a new notion of media.

II.2   Gender equality in the coverage of elections

II.2.1   Current situation of gender equality in the media

Genuine democracy requires the equal participation of women and men in society. Democracy and gender equality are interdependent and mutually reinforcing. The inclusion of women and men, with respect for equal rights and opportunities, is an essential condition for democratic governance and sound decision-making. Gender equality means equal visibility, empowerment, responsibility and participation of both women and men in all spheres of public life, including the media. The achievement of gender equality is a prerequisite for the achievement of social justice. This is not of interest to women only, but it concerns society as a whole. The Council of Europe has accorded much importance to these matters over the last few decades, demonstrated, inter alia, by the 1988 Committee of Ministers' Declaration on equality of women and men and by the 2009 Committee of Ministers' Declaration on making gender equality a reality.

In contemporary democratic societies media have fundamental political, social, economic, and cultural functions as they cover issues of public interest and have an essential role in creating public opinion.

The Global Media Monitoring Project 2015 Report shows that in fifteen years there has been an improvement of only 5% when it comes to female reporters covering topics on politics and government and no improvement at all when it comes to covering legal and social topics (table 1).

TABLE 1

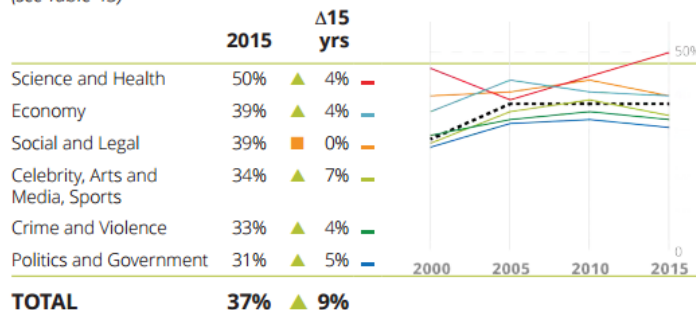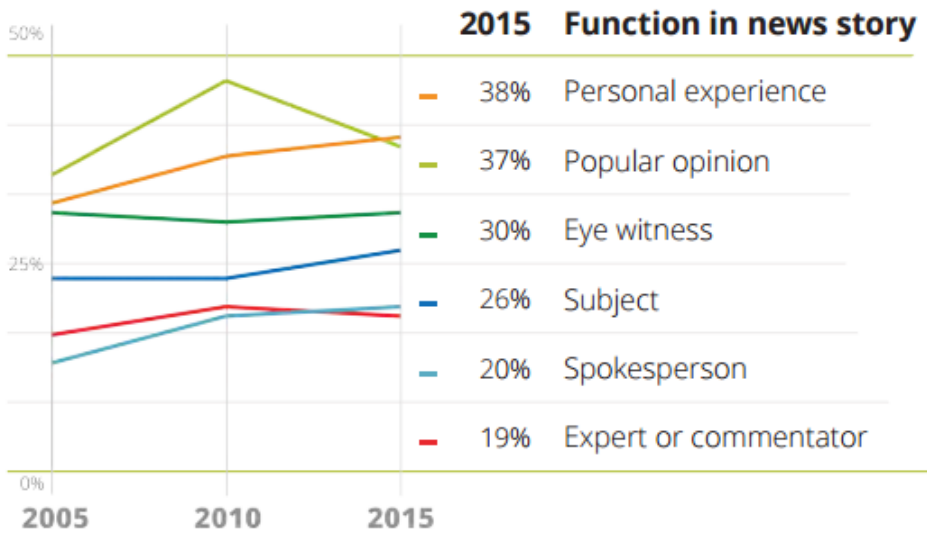Stories by female reporters, by major topics. 2000-2015
(see Table 43)

	2015	Δ15 yrs	
Science and Health	50%	▲ 4%	
Economy	39%	▲ 4%	
Social and Legal	39%	■ 0%	
Celebrity, Arts and Media, Sports	34%	▲ 7%	
Crime and Violence	33%	▲ 4%	
Politics and Government	31%	▲ 5%	
TOTAL	**37%**	**▲ 9%**	

TABLE 2

Functions of female news subjects. 2005-2015. *(see Table*

|	2015	Function in news story
—	38%	Personal experience
—	37%	Popular opinion
—	30%	Eye witness
—	26%	Subject
—	20%	Spokesperson
—	19%	Expert or commentator

The stated report also analyzes the functions of female news subjects in the 10-year period (2005-2015) showing that only 20% of women in the news have a role of spokesperson and only 19% of women have expert or commentator functions (table 2).

TABLE 3

NEWS SOURCES

Fig. 1 - overall presence of women as news sources and subjects by medium

[6]

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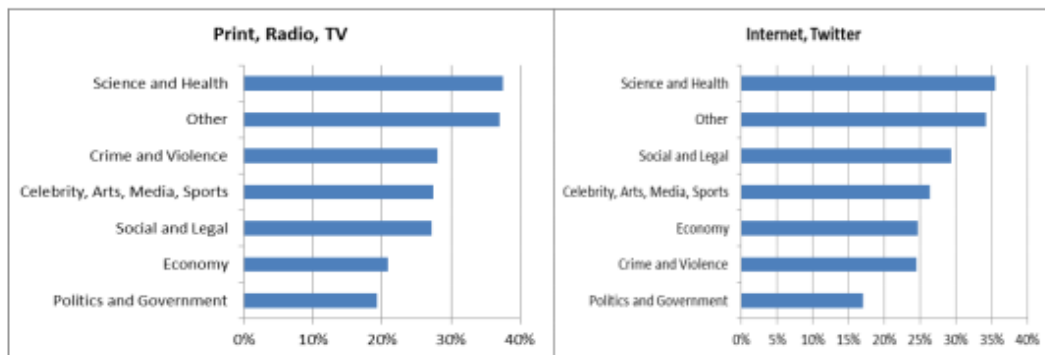
Table 3 reflects that women who are used as sources in news stories are significantly under-represented in stories in the category of politics/government and the economy, and over-represented in the category science/health, both in linear media and online and twitter stories. The results indicate no change in volume of proportion of women sources since 2010. Women still make up just 24% of the people seen, heard or watched in the news.

These data were also discussed during the Council of Europe Conference on gender equality "Are we there yet"[7] held in Tallinn, Estonia, on 30 June and 1 July 2016 and discussions lead to conclusion that the lack of presence of women in the news is closely linked to the lack of gender culture in the newsrooms.

II.2.1.i   Media education and social norms, values and practices

Media education and media literacy measures with special focus on gender equality and braking stereotypes can help influence social and cultural norms, values and practices. Thus empowerment of girls can lead to more adequate representation of women in decision-making, politics and public life and ultimately their proper portrayal in media content.

Adolescents' views on gender roles are likely to shape their expectations and aspirations for future career and also shape the culture within schools. Gender roles and their relation to education are perpetuated also through the media. For example, national media in the UK drew attention to the impact of the role of single working mothers on low educational attainment This demonstrates how women are singled out for scrutiny for their role in the family, not only when it comes to employment but also in education. Other research identifies in both media accounts and academic research a tendency to blame educational and social inequalities on women, particularly middle class mothers, for making 'hypocritical' choices to work rather than look after children. The focus on mothers represents a shift in research away from the impact of state and organizational cultures within schools. A number of articles in this review examined the gendered impact of bullying and aggression within schools. This body of research commonly identifies bullying as a pervasive and potent experience for students which may affect their educational outcomes"[8]. Bullying takes on many forms and efforts to tackle bullying should also address traditional views on gender roles. Media education and media literacy strengthen citizens' skills, knowledge and provide tools to address interlinked and mutually reinforcing factors such as gender stereotypes, cyber bullying, sexism, hate speech and are beneficial to efforts put in achieving gender equality in media space in general.

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[7] http://www.coe.int/en/web/genderequality/tallinn-conference

[8] Empowering women and girls through education, Study for the FEMM Committee 2015, http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510022/IPOL_STU(2015)510022_EN.pdf

II.2.2.   Discussion on what constitutes fair and balanced media coverage of election campaigns from the perspective of gender equality

[This needs to be developed. In terms of structure of the document, this section is connected with the recommendations (below): we should avoid repetition.]

What elements/factors to be included in the examination and possible standard-setting regarding media coverage of elections:

- o   Presentation in the media of female candidates;
- o   Participation of female journalists, news presenters, presenters of political programmes, editors, etc. in the election-related topics;
- o   Participation of female panellists, media and political experts, analysts, commentators, etc. in media coverage within the electoral period.

(We should we focus only on female candidates or should we include the latter two categories to obtain a more comprehensive picture of gender representation in media coverage of election).

Part III   Gender equality and media coverage of elections in media policy initiatives and practices from Member States

III.1.   Regulation, self-regulation and gender equality: initiatives and practices in Member StatesMS

"A further problem concerning the regulation of media coverage relates to its objectives. What kinds of programmes should be regulated? According to which criteria? The main areas of concern are free access, paid political advertisements, news and current affairs coverage, campaign debates, and voter education. Where self-regulation does not provide for this, states should adopt measures to ensure that public and private broadcasters, during the election period, are fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates."[9]

Self-Regulation: the benchmark of the BBC Rules

The United Kingdom provides the best-known examples of media self-regulation. The fact that these regulations are self-made by the media does not imply a lack of precise guidelines on the ethics and conduct of journalists. The concept of impartiality is stated in the values, standards and principles of the BBC Producers' Guidelines:

Due impartiality lies at the heart of the BBC. It is a core value and no area of programming is exempt from it. All BBC programmes and services should be open-minded, fair and show a respect for truth.

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[9] Recommendation No. R/99/ 15, Committee of Ministers, Council of Europe

The BBC is committed to providing programmes of great diversity that reflect the full range of audiences' interests, beliefs and perspectives. Representing the whole spectrum is a requirement on all programme genres from arts to news and current affairs, from sport to drama, from comedy to documentaries, from entertainment to education and religion. No significant strand of thought should go unreflected or under represented on the BBC.

In order to achieve that range, the BBC is free to make programmes about any subject it chooses, and to make programmes which explore, or are presented from, a particular point of view.

The BBC applies due impartiality to all its broadcasting and services, both to domestic and international audiences. The duty of impartiality has been defined in all the different genres, as well as in the news programmes where, for example, "a reporter may express a professional, journalistic judgment but not a personal opinion. Judgment must be recognized as perceptive and fair. Audiences should not be able to gauge from BBC programmes the personal views of presenters and reporters on controversial issues of public policy.

Considering the allocation of time among political subjects in election periods, the distribution is based on the parliamentary representation (number of seats in Parliament) and on the potential representation, calculated on the number of candidates in the single-mandate constituencies. In a system with a long tradition of democratic values, self-regulation has the advantage of allowing media operators to discuss among themselves and therefore build confidence on the rules without undue interference from the political system.

A mix of internal rules and external regulation: the Italian public broadcaster

In Italy the law on "Dispositions for equal access to mass media and for political communication during electoral and referenda campaign" provided broadcasters (both public and private) with some indications related to political programmes. The implementing rules issued by the "Autorità per le Garanzie delle Comunicazioni" regulated the election campaign on the private and public electronic media. During the 2001 Parliamentary Elections, the Parliamentary Commission of Control (the institutional body supervising the behavior of the public service broadcaster RAI) drafted rules on political communication for RAI. In addition, in 1998 RAI itself issued an internal code of behavior specifying duties and obligations of public service operators. This internal regulation included such issues as the reporting of opinion polls, the duty of fairness and impartiality of journalists hosting debates and political programmes and the duty to balanced treatment for election contestants. In order to evaluate the actual pluralism of its programmes, the public broadcaster organized its own supervision via media monitoring which was carried out by an external institution 111 over the whole year (and not only during the election campaign period).

External regulation: the rules in France

France is well known for having one of the most regulated kinds of election campaigns from a media perspective. The French broadcasting regulatory authority, the Conseil Supérieur de l'Audiovisuel (CSA), usually adopts very detailed rules for media coverage of candidates and parties. Rules provide broadcasters with indications for all programmes including entertainment and newscasts. On the occasion of the 2002 Presidential Election, the CSA issued a recommendation112 according to which radio and television services had to take care that candidates and those supporting them received equitable access and presentation. The editorial staff were obliged to constantly pay attention to balance and honesty when publishing reports, commentaries and presentations on the elections. The principle of equality applied to newscasts, information programmes and special news editions. As for any other kind of programmes, the CSA strongly recommended that no candidates should be invited at all if the principle of equality could not be respected.

Self-regulatory measures by media professionals - Slovak parliamentary elections in 2002

Given the absence of proper media regulations and the desirability of a fair, peaceful and well-regulated election, and also to avoid aggravating political tension and discord, a Slovak media watchdog MEMO 98 drafted a Code of Conduct for the Media and Political Contestants based on international documents and best practices for the media coverage during the elections. All the registered political parties and a majority of media outlets signed it and voluntarily agreed to adhere to the Code. By signing the Code, political parties and the media made a commitment to accept, respect, observe and contribute to free and fair elections. While the Code was not a legally binding document, MEMO 98 believed that it was better to put public pressure on those who violated the rules of the game, which was much more closely followed by all those who had signed the Code. The breaches of the Code were assessed by an Independent Panel of two Czech media experts as well as by MEMO staff."[10]

If we include social media and online platforms in the study, we should also discuss the methodology for regulation/self-regulation as applicable to them.

III.2. *Regulation, self-regulation and gender equality in relation with the coverage of elections: initiatives and practices in Member States*

[This section needs to be developed. It is suggested that the experts of the MSI-MED Committee might contribute with information related to their Member States. Other contributions would also be welcome.]

-       Are there any existing analyses of the gender representation in media coverage of elections or at least media coverage of political issues that might provide insight into the current situation within the member states of the Council of Europe?

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[10] GUIDELINES ON MEDIA ANALYSIS DURING ELECTION OBSERVATION MISSIONS, Venice Commision CDL-AD(2005)032

Part IV   Means of achieving gender equality in media coverage of elections

With regard to the regulatory level, the Council of Europe may call upon member states to consider the effectiveness of their legislative framework and concrete mechanisms for the implementation of strategies and policies to achieve gender equality in the media coverage of electoral campaigns:

- Legislative framework concerning electoral rules and mechanisms to promote women candidates.

- Mechanisms for the implementation of strategies and policies to achieve gender equality in the media coverage of electoral campaigns:

    i.   Electoral mechanisms and rules, such as quotas, incentives, campaign finance laws facilitating the necessary resource mobilization to achieve gender equality etc, can encourage women's participation in politics, with clear repercussions on their visibility in electoral campaigns reported by media;

    ii.   Mechanisms and rules for opinion poll organizations, on which media coverage largely depends;

    iii. Mechanisms and rules in order to support awareness – raising initiatives and campaigns on combating gender stereotypes in the media, as well as to ensure an equal representation of women in political campaigns.

With regard to media, bearing in mind that equal representation of female candidates in the media coverage of electoral campaigns has an impact on the perception of voters and on the electoral procedure itself, media, off-line and on-line, media could be encouraged to set up good practices aiming at:

    i.   Ensuring an equal representation of women and men in political campaigns in respect of women's adequate presence on media;

    ii.   Ensuring that the set-up of shows, selection of guests, time attributed to each guest, role of host, the way shots are framed, allow female candidates to give effective contribution to the debate and to avoid the stereotype which puts men at the centre and women at the margins of politics;

    iii. Avoiding the "tabloidization" of media in terms of the representation of female candidates;

    iv.   Avoiding that women candidates are identified in respect of their family status or their relationship with others ("mother", "wife", "daughter", etc.);

    v.   Avoiding using gender stereotyping or biased language;

    vi.   Making equal gender representation a matter of editorial policy;

    vii. Promoting broadcasting that is inclusive and capable of reaching out to women and that reflects gender-based differences of perspective on the issues at stake;

viii. Promoting the training of journalists on gender aspects so that they are encouraged to publicly highlight issues faced by women candidates;

ix. Monitoring gender commitments made by political parties and reporting on their progress;

x. Monitoring regularly their own output setting targets for an equal gender representation.

Political parties could be encouraged to develop internal policies mindful of a gender equality perspective and to ensure a balanced representation for men and women to off-line and on-line media in electoral campaigns, for example by:

i. Addressing gender equality in the party's legal framework. This can include the adoption of a statement on gender equality in the party's founding documents;

ii. Adopting measures, including internal quotas, that ensure women's participation on governing boards;

iii. Setting targets for participation in party conventions. This can include holding separate forums for women delegates at the conventions;

iv. Establishing women's wings and sections within parties, which should be formally integrated into the party structure, with defined roles and responsibilities and appropriate funding if needed;

v. Ensuring that gender is mainstreamed into all the party's policies;

vi. Ensuring women's visibility in electoral campaigns and access to the media by providing female candidates with the necessary (financial, etc.) support;

vii. Promoting the participation of female candidates in public political debates;

viii. Monitoring regularly their own output setting targets for an equal gender representation in media;

ix. Conducting gender audits ensuring women's equal participation and representation on media;

x. Ensuring that political communication does not give a gender-based stereotyped representation of candidates;

xi. Ensuring that the language used in political communication does not reflect a stereotyped representation of sexes;

xii. Building women's capacity to campaign and participate in media public debates;

xiii. Sensitising party members about gender equality and work with men to promote gender issues in public debates.

Member states should be encouraged to engage in co-operation projects that provide considerable added value towards efforts of member states and neighboring countries to implement gender mainstreaming policies. The Council of Europe is implementing targeted co-operation projects on gender equality issues with the purpose of providing national authorities with information about relevant standards, tools and expertise. Incorporating activities in the sphere of media coverage of elections in such co-operation projects would be beneficial.

Member states should be encouraged to implement measures envisaged in Recommendation CM/Rec(2013)1 of the Committee of Ministers of the Council of Europe on gender equality and media and: develop training modules for media professionals, organizations and self-regulatory bodies; encompass the obligation to continuously review the composition of editorial teams and the assignment of political subjects to journalists, taking proper account of gender breakdown; encourage and support the establishment of a European network of researchers on gender equality in the media and include activities and events to publicize their work among the media, governments and research centers.

Conclusions/Recommendations

[There is an important option to be discussed here: Do we need a standard-setting instrument on gender equality in media coverage of elections, could the means be achieved through rigorous implementation of already existing standards, etc. At present, existing instruments do not specifically cover the topic of the study (gender equality in media coverage of elections). A possibility would be to revise existing instruments to include that additional perspective. Another possibility is to draft a new instrument.]

Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns apart from non-discrimination principle mentioned as a broader notion encompassing gender equality, does not contain special focus on gender equality in terms of media coverage. The fact is that there is a gender dimension to media pluralism and diversity of content which needs to be brought to attention of member states in the context of media coverage of elections, such as gender balance statements, angle from which the story is told, pluralism of sources, gender representation, and gender portrayals. This provides the opportunity for Council of Europe through CDMSI and MSI-MED work respectively to address this issue in the form of a revision of the stated Recommendation or through production of a new standard-setting document.

Vast range of instruments and standards that address gender equality in the field of politics, media and media coverage of electoral campaigns are in place but there is need to continuously examine their implementation across the member states in the Council of Europe in order to acquire accurate overview on the implementation process, environmental changes and obstacles faced in gender mainstreaming. As gender equality is a cross-cutting issue, the enlisted instruments are in most member states to be implemented across several sectors and therefore at some member states this may hinder prompt and proper implementation. The production of a new comprehensive standard setting document would

provide opportunity to better reflect and address rapid changes in media environment and incorporate gender mainstreaming policy while it would benefit member states and their efforts regarding the implementation of gender equality standards and measures in the domain of media coverage of elections.

Appendix – The standard-setting instruments of the Council of Europe

GENDER EQUALITY IN ELECTORAL PROCESS IS GOVERNED BY THE FOLLOWING INSTRUMENTS:

- Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (CETS No.005) and its Protocol No.12, 2000 (CETS No.177);
- International Covenant on Civil and Political Rights, 1966 (ICCPR);
- United Nations, Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW);
- UNESO Gender Sensitive Indicators for Media GSIM 2012;
- OSCE, Moscow Document, 1991;
- Council of Europe, Committee of Ministers, declaration on equality between women and men, 1997;
- Council of Europe, Committee of Ministers, Recommendation (2003)3on balanced participation of women and men in political and public decision-making, 2003;
- Council of Europe, Gender Equality Strategy 2014-2017, including the objective to achieve a balanced participation in political and public decision-making and gender mainstreaming in all policies and measures;
- OSCE/ODIHR and Venice Commission, Guidelines on political party regulation, 2010 (CDL-AD(2010)024);

THE FOLLOWING VENICE COMMISSION DOCUMENTS:

- 2002, Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);
- 2006, Declaration on Women's Participation in Elections (CDL-AD(2006)020);
- 2009, Report on the Impact of Electoral Systems on Women's Representation in Politics (CDL-AD(2009)029);
- 2015, Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists) (CDL-AD(2015)001);
- 2015, Report on the method of nomination of candidates within political parties (CDL-AD(2015)020);
- OSCE/ODIHR, Election Observation Handbook, sixth edition;
- International IDEA, Atlas of Electoral Gender Quotas, 2014.

WHEN IT COMES TO MEDIA COVERAGE AND GENDER EQUALITY IT IS GOVERNED BY HEREAFTER STATED INSTRUMENTS:

- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns;
- Recommendation No. R (99) 15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns;

- Recommendation CM/Rec(2013)1 of the Committee of Ministers to member States on gender equality and media;

- Handbook on the implementation of Recommendation CM/Rec(2013)1 on gender equality and media;

- Recommendation 1931 (2010) and Resolution 1751 (2010) on Combating sexist stereotypes in the media, Parliamentary Assembly, 25 June 2010;

- Resolution 1557 and Recommendation 1799 (2007) on the image of women in advertising, Parliamentary Assembly, 2007;

- Recommendation CM/Rec(96)10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting;

- Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society;

- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member states on right of reply in the new media environment;

- The Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content;

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media

Appendix V

Draft feasibility study on the use of Internet in elections

{as contained in document MSI-MED(2016)10}

MSI-MED 2nd MEETING, 27-28 September 2016 (9:30-17:30)
Strasbourg, AGORA Building (Room G5)

Draft feasibility study on the use of Internet in elections

The rules of the game: the Internet, Social Media and Election Communications

I.   KEY MESSAGES

- New Internet technologies pose challenges for established institutions and principles of regulation of election communications such as freedom of association, spending limits, and regulation of political advertising.

- The Internet and new communications technologies undermine the ability of existing regulation to maintain a level playing field in electoral communication between new and established, rich and poor, corporate and civil society campaigns.

- Election communication has been subject to a complex set of legal and ethical regulations that have evolved since the nineteenth century. The objective is to maintain a level playing field, guard against corruption and safeguard transparency.

- New intermediaries and platforms now occupy important gatekeeper positions once occupied by journalists but have not adopted the ethical obligations of the media. This presents a threat to elections and potential for corrupt practices to emerge.

- These problems are beginning to emerge in the new communications environment that can undermine the legitimacy of democracy. There is therefore a need for new standards in this area, and an expanded watching brief for communications regulators, parliaments, electoral monitors and civil society.

II.   Introduction: What could possibly go wrong? Social Media, Elections and Democratic Legitimacy

In human rights and constitutional law, freedom of expression is fundamental, and political speech is the most protected form of speech. But political communication during election periods has long been subject to various forms of regulation. 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. These rules are contained in election law, broadcasting law and self-regulatory codes and are also reflected in international human rights standards that require that rules are necessary and proportionate. This policy brief sets out the principles and institutions of campaign regulation and discusses the implications of development in Internet campaigning.

In recent years, a growing number of researchers have raised questions about the potential impact of the Internet, social media and the wider context of media change, on referenda and elections.

- **Broadcasting:** In an environment in which broadcasting regulation could help ensure a level playing field for political debate was easier to guarantee. As political campaigns move online effectiveness of these regimes declines.

- **Spending:** Campaign finance controls seek to limit the role of money in electoral outcomes. But existing regulations limiting advertising spend are no longer effective due to a shift in balance between local and national spending, and because detailed quotas do not effectively record online spend. Rules vary by country and according to local market conditions but it is clear that campaign spending limits will need recalibration.

- **Targeting:** Targeting of key messages to key demographics raises new challenges for individual autonomy and deliberation. On one hand as Solon Barocas (2012) has pointed out, individual citizens' autonomy may be undermined by a lack of impartial information and on the other entire demographic groups or regional interests may be excluded from political deliberation.[1]

- **Intermediaries** adopt powerful new gatekeeper positions that enable them to influence the outcome of electoral processes. Epstein (2015) has highlighted the "search engine manipulation effect" and Diakopoulos (2016) has demonstrated the potentially powerful implications of display of search results.[2] This could lead to new forms of corruption and manipulation that are not captured by existing rules that focus mainly on broadcasting and cross jurisdiction boundaries.

- **Truth and misleading statements:** Disintermediation of political campaigning undermines traditional filters based on journalism values of truth, fact-checking and separation of opinion from fact. This has led to a situation in which traditional rules governing false and misleading claims are no longer effective.

- **Representation of public opinion** ([3] silence periods)[4]. Most democracies have rules governing publication of opinion polls, and campaigning on election day and in a specified period before. These have come under scrutiny because of the difficulty of enforcing them online.

- **Transparency:** [5] Public scrutiny of campaigns has been enabled by a number of rules obliging campaigners to be transparent about funding and origin of campaign

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[1] Barocas, S. (2012). The price of precision: Voter microtargeting and its potential harms to the democratic process. Paper presented at the Proceedings of the first edition workshop on Politics, elections and data pp.33-35.

[2] Diakopoulos. N and M. Koliska. 2016. Algorithmic Transparency in the News Media. *Digital Journalism*; Epstein, R. and Robertson, R.E., 2015. The search engine manipulation effect (SEME) and its possible impact on the outcomes of elections. *Proceedings of the National Academy of Sciences*, *112*(33), pp.E4512-E4521.

[3] See http://www.lse.ac.uk/media@lse/documents/MPP/Policy-Brief-5-Semantic-Polling_The-Ethics-of-Online-Public-Opinion.pdf

[4] See Ofcom code rule 6.5. Compare Par Condicio in Italy

[5] (PPERA Ch III s126) http://www.legislation.gov.uk/ukpga/2000/41/section/126

communications: These include the obligation to note the printer and funder of leaflets. These are difficult to impose online.[6]

Whilst many of these phenomena remain possibilities rather than empirically demonstrable outcomes it is essential that policy and civil society respond to the potential undermining of democratic legitimacy that they present.   Existing regulation is based on traditional media and should be reviewed to prevent democratic failures.

III.   Background: Regulation of electoral campaigns: fair clean and clear

The use of Internet in elections engages standards and regulatory institutions across a range of distinct areas including freedom of expression, freedom of association and electoral law and international election monitoring.

According to the Venice Commission, Guidelines on Political Party Regulation (2010)[7] money in election 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 & campaign finance controls,

b.   Subsidies for campaigning communications.[8]

c.   Pre-poll black outs

d.   Media regulation in particular broadcast licensing.[9]

e.   Rules on political advertising including impartiality, subsidies and free air time[10];

f.   Self-regulation and journalism ethics.

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[6] UK electoral commission has repeatedly called all such rules to be applied to campaign communications including Non print communications.

[7] European Commission for Democracy through Law (Venice Commission) 2010 : Guidelines on Political Party Regultion CDL-AD(2010)024   pp.35, para.159

[8] IDEA: 142-3.

[9] For the relevant UK rules see the Ofcom broadcasting code section on elections. http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections-and-referendums/

[10] To see for example communications act 2003 section 333.

(i)   Objectives

The overarching objective of campaign regulation is to protect the integrity of elections, ensure they are free and fair, and not captured by a narrow range of interests.

Rules seek to do this in two ways: on one hand they attempt to facilitate the opinion formation process in society by helping ensure that each citizen has access to a balanced range of views and opinions. On the other hand, they limit the role of money in the electoral process, through for example limits on political advertising and campaign spending. Campaign finance is considered a form of beneficial speech but can be problematic particularly if parties and campaigns depend on a small number of large donations. These policy objectives are achieved through a combination of media law, election law and international human rights standards. According to The Committee for Standards in Public Life in the UK, one of the primary reasons for campaign spending limits was to prevent an "undue focus on fundraising."[11] The commission pointed out that funding of political parties through private contributions is also a form of civic participation and freedom of expression thus any legislation should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.

(ii)   Institutions

Regulation of political campaigns are internationally recognised in a set of international treaties including The International Covenant on Civil and Political Rights[12] (ICCPR), (ECHR) and the United Nations Convention against Corruption[13.]

Because of the rate of technological change, it is useful to outline the principles that underlie these important protections of democratic process. The Council of Europe's Parliamentary Assembly in its recommendation 1516 of 2001[14] recommended some general principles the financing of political parties should abide by:

- A reasonable balance between public and private funding.

- A fair criteria for the distribution of state contributions to parties,

- Strict rules concerning private donations including bans on contributions from foreign donors, religious organisations and restrictions on corporations and anonymous donations.

- A limit on parties' expenditures linked to election campaigns.

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[11] The Committee on Standards in Public Life, 1998. The Funding of Political Parties in the United Kingdom, Cm 4057–I, pp.120. para 10.29

[12] United Nations National Assembly. 1966. International Covenant on Civil and Political Rights. Article 25.b. pp.179

[13] UN Convention against Corruption (UNCAC). 2003. Article 7.3.pp.11

[14] Parliamentary Assembly of the Council of Europe: Recommendation 1516 (2001), Financing of political parties. Para.8

- Transparency of donations and expenses of political parties.

- The establishment of an independent authority and meaningful sanctions for those who violate the rules.

- The above legislations should also be extended to third party- non-political party group.

Rules on broadcasting and political advertising

Broadcasting in contrast to press and online media has been subject to detailed regulation of political campaigns. Firstly licence requirements require impartiality in political matters, for many television and radio channels specific codes are applied and these pay particular attention to election and referendum periods. Secondly broadcasters are required to exercise restraint in publication of opinion poll findings and also enforce quiet periods prior to election day. Third, political advertising is regulated as regards to: (i) transparency (ii) advertising time and cost (iii) in some cases such as the UK broadcast political advertising is banned (iv) subsidies for advertising budgets and/ or reserved time on public broadcasters constitutes a form of rationing that serves to level the political playing field.

A number of European countries have in place complete bans on political advertising on broadcasting media e.g. Switzerland, the UK. In ECHR cases where such bans have been challenged they have been justified as a means to ensure fair campaigns. Even where such bans are not official in place, an agreement between the main political parties has effectively kept political advertising off T.V such as Denmark. In countries such as the UK, the ban on commercial political advertising is balanced by rationing system whereby commercial public service broadcasters are obliged to carry advertising spots for the political parties based on the share of the vote at the last election. Other countries have adopted other forms of rationing system for example through regulating the amount of funding political parties may use to purchase television advertising.

Ethics and journalism self-regulation

Elections have long featured a healthy scepticism about whether politicians "tell the truth" but the Brexit referendum and the U.S. Presidential campaign in 2016 has led to a renewed debate about " post-truth, or post-fact politics"[15] and the role of social media in propagating rumour and untruth.[16] The factual basis of politics has been in part supported by a filter of journalism ethics and fact-checking. As a greater proportion of electoral information is now shown independently of such editorial gatekeeping for example on social media, this raises questions about the efficiency of these filters. Electoral laws do in some cases regulate the telling of deliberate

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[15] http://www.nytimes.com/2016/08/24/opinion/campaign-stops/the-age-of-post-truth-politics.html?_r=0

[16]   http://www.nytimes.com/2016/08/28/magazine/inside-facebooks-totally-insane-unintentionally-gigantic-hyperpartisan-political-media-machine.html?smid=fb-share&_r=0 See also Myth vs. fact: are we living in a post factual democracy? Susan Banducci and Dan Stevens. In The EU referendum analysis 2016: media, in voters and the campaign. Daniel Jackson Et Al eds.

untruths in campaigns[17] in strictly limited circumstances, but such rules may be difficult to enforce in future.

The existing regulatory framework in Europe: overview

Figure 1: Overview of political advertising regulation in select European countries.

	TV Political Advertising Permitted	Spending Limits on Expenditure	Direct Public Funding	Spending Disclosure Rules	Provision of free political advertising time on TV
United Kingdom	No	Yes	Yes	Yes	Yes
France	No	Yes	Yes	Yes	Yes
Germany	Yes	No	Yes	Yes	Yes
Italy	No	Yes	Yes	Yes	Yes
Spain	Yes	Yes, The ceiling on party election expenditure is established for each electoral cycle by the General Accounting Court	Yes	Yes	Yes
Denmark	No	No	Yes	Yes	Yes
Sweden	No	No		No. Parties must generate an annual report, but it is not made public	Yes
Poland	Yes	Yes	Yes	Yes	Yes
Ireland	No	No, A party can only spend part of a party candidate's election expenditure limit, which the candidate has to agree to	Yes	Yes. Disclosure is required for campaign expenditure	Yes
Portugal	No	Yes, EUR 3M	Yes	Yes	Yes
Switzerland	No	No	No	No	No
Belgium	No	Yes, EUR 1M	Yes	Yes	Yes
Netherlands	No	No	Yes	Yes	Yes

Source: Compiled from: Holtz-Bacha, C., & Kaid, L. L. (2006). Advertising in international comparison. The Sage handbook of political advertising, 3-14 and IDEA. 2014. Funding of Political Parties and Election Campaigns: A Handbook on Political Finance

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[17] Robertson and Nicol (1992) pp. 615

There are a number of other notable rules. For example France Poland and Bulgaria have absolute bans on corporate donations to political parties (Venice Commission: 51). [18] In countries such as Ukraine, new rules on transparency of political advertising and clear labelling of political advertising funding have been recommended by bodies such as the OSCE. [19]

The Changing Reality of Political Campaigning

(i)   Spending

In Europe, as elsewhere, advertising spend has shifted significantly to digital over the past decade. This has raised questions about the efficacy of existing campaign finance regulation.

A shift of consumers to digital forms has seen advertisers follow suit with their marketing budgets. The result has been the percentage of ad spend devoted to online forms has grown significantly and taken share from more traditional media such as TV, radio and print. In Europe more than a third (36%) of advertising spend is spent on digital channels (up from 6% in 2006) surpassing TV advertising (33%) for the first time in 2015, although this masks significant difference between regions.[20] In the UK, one of the more advanced digital markets, more than 50% of every advertising pound spent goes to online channels.

SHARE OF AD SPEND BY MEDIA TYPE: 2015
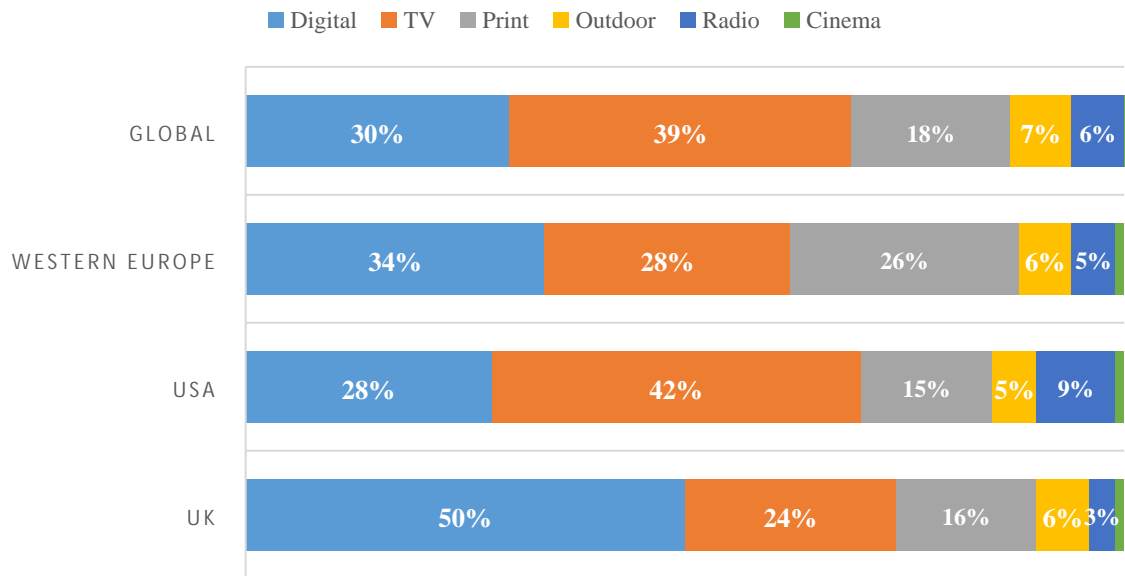
Source: Strategy Analytics Advertising Forecast, 2015

Reflecting these larger structural trends in the advertising market, political parties have also begun to shift their advertising spend towards digital channels. In the UK, 2015 was the first year where figures have been reported on digital spending on political campaigns. In total £1.6M was spent by the main parties on digital, about 23% of the total advertising budget with the vast majority of the digital budget being spent with Facebook.[21] In the US, even with the presence of T.V advertising spend (largely absent in Europe), almost a billion dollars or 10% of political ad spend is forecast to be spent in the 2016 elections[22].

Total Political Ad Spend (Share %)					
	2008	2010	2012	2014	2016E
Broadcast	69%	65%	64%	61%	59%
Cable TV	8%	8%	11%	10%	11%
Radio	9%	7%	9%	7%	8%
Print	10%	11%	10%	11%	8%
Out of Home	4%	9%	4%	9%	4%
Digital	0%	0%	2%	4%	10%

Source: Borrell and Associated, Kantar/CMAG, Nomura estimates

These new forms of digital advertising are less widely understood than their analogue predecessors and are inherently less transparent. They may undermine existing definitions and linens based on specific media, and the ability of the regime as a whole to create a level playing field.

(ii)   New Digital Marketing Techniques and their application in politics.23

Push vs Pull Advertising

The basic models for political online advertising do not differ from what is available to commercial firms looking to target potential customers online. There are two categories, push and pull although more recently the lines between the two have blurred as data from one is used to for the other.

The pull method is largely associated with search engine advertising. It is keyword triggered. In other words ads are targeted to users after they search on a keyword which an advertiser has chosen to trigger their advertising copy. For example a political party might choose to bid on a keyword ' EU Referendum' which would trigger their ad to appear on the search results page if a user searched for this term or a related one. This is akin to the yellow pages or telephone book, where a user

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[21] Electoral Commission. 2016. UK Parliamentary General Election 2015: Campaign spending report pp.28.

[22] Borrell and Associated, Kantar/CMAG, Nomura estimates

[23] The author acknowledges the excellent research assistance of Sharif Labo on this paper and particularly on this section.

looking for a product or service consulted a directory which listed providers of that service and potentially advertisers who might have paid for a more prominent listing. The business model is based on cost per click i.e. if the user clicks on the ad in question, the advertiser (in this case the political party) is charged. The amount they are charged is largely dependent on how popular the service they are advertising is and how closely related it is to what they are offering. Another less popular business model is the cost per impression. Ads are charged every time they are displayed rather than when they are clicked. Cost per click is largely the business model for search advertising.

In addition to keyword trigger, advertisers are also able to target and tailor their ads based on what devices users are on, language and regional settings.

Push advertising on the other hand involves little agency from the user. In this case advertisements are displayed to users unprompted as they carry out their regular activities online. This would include adverts on regular publisher's websites; news, magazines, blogs as well as on platforms such as social media and video sites. Here the targeting options are myriad. Advertisers are able to target by demographic group, or interests, according to what websites the users have visited previously, what pages they like, their behavior and personal details and so on.

Increasingly the sharing of data across platforms means the lines between push and pull are blurred. For example Facebook ads can be targeted not just according to data volunteered and in circulation in the Facebook ecosystem but also what users do outside of Facebook, for example their browsing history on other websites. Similarly an advertiser, a political party for example or a supermarket can upload lists of their users into Facebook and use the platform to advertise to them and similar users. Search advertising can also take advantage of data from users who have performed an action away from the search engine results page, for example a user who has visited a website and did not purchase or sign up can be 'remarketed' to.

Message targeting

The common thread that emerges from these new advertising techniques is one of a movement from scale to precision. Political parties (and commercial advertisers) have moved from blunt methods that favoured reaching millions of people with a similar message to more precise tools which are able to target smaller audiences with bespoke such messages.

In political terms, it has allowed party officials to reach the thousands that win elections. As one person who was involved with the UK Conservatives election campaign in 2015 put it " People said to me….I don't see anything from you guys….This was like stealth, Basically if you don't live in one of the 100 key constituencies you are going to see very little from us. "

Potential Problems associated with New Digital Techniques

These new methods however raise concerns about their impact on the legitimacy and fairness of elections, and the ability of the current regulatory and ethical framework to protect it including:

(i)   Regulation of broadcast advertising

Online media may undermine T.V advertising rules. For example in the recently concluded EU referendum in the UK, Britain Stronger in Europe targeted videos towards certain demographics. One entitled "What would Brexit mean for my children" targeted at mothers registered almost 600k views. With younger demographics increasingly consuming the majority of their T.V content via online video channels such as YouTube, it raises questions as to the effectiveness of the current regulatory framework.

(ii)   Transparency

2015 was the first year where figures have been reported on digital spending on political campaigns in the UK. In total £1.6M was spent by the main parties on digital, about 23% of the total advertising budget with the vast majority of the digital budget being spent with Facebook. There are however big gaps in how digital spending is reported due to current reporting requirements. These gaps mean it is unclear whether or not we are looking at the entire picture. The main issue is there are no separate reporting lines for social or digital media. According to the UK Electoral Commission digital advertising could be hidden within larger categories such as market research, advertising and unsolicited campaign material. Identification of what constitutes digital is made based on the name of the provider. For example Google or Facebook being recognised providers of advertising services on digital platforms however a lot of digital spending takes places via Intermediaries such as advertising agencies or consultancies. A case in point is the Labour Party's reported spend on digital advertising in the 2015 UKPGE. Initial reports about Labours online spend indicated they had spent only £16k spent, however this proved to be erroneous as they had spent about £130,000 using an advertising agency which is common practice. The Electoral Commission has identified this as an important issue to monitor and put forward a recommendation that parties be required to report on more detailed breakdowns including social media spend before the next parliamentary general election.[24]

(iii)   Campaigning on Wedge Issues

The ability to micro-target political messages increases the likelihood that parties and candidates campaign on wedge issues. Issues which are highly divisive in a public forum but also have the ability to mobilize voters such as matters on immigration and welfare.[25] Research from the U.S [26] has shown that candidates are

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[24] Electoral Commission. 2016. UK Parliamentary General Election 2015: Campaign spending report pp.55-56.

[25] Barocas, S., 2012, November. The price of precision: Voter microtargeting and its potential harms to the democratic process. In *Proceedings of the first edition workshop on Politics, elections and data* (pp. 31-36). ACM.

more likely to campaign on these wedge issues when the forum is not public. This however again raises questions about the impact this type of precise hidden campaigning and asymmetric informational flows has on the polarization of citizens. Message targeting speaks to the individual concerns of citizens as part of a group. The legitimate concerns of opposing groups are discredited or dismissed. Because these messages are being played out largely in secret they cannot be challenged or fact checked.

(iv)   Political Redlining[27]

Message targeting encourages contact and engagement only with those who are deemed worthy of political campaigning, for example those in marginal seats or judged to be undecided voters might receive attention, however it begs the question what happens to those who are not regarded as strategically important. Groups less likely to vote risk being further disenfranchised with this move to precise targeting during election campaigning'. There is also a risk of a compounding effect. Data on past elections are often used as a guide to inform future campaigning, so groups which are seen as not worth the resources are likely to be bypassed in the future. On the flip side those already seen as 'decided' are likely to receive information only from their affiliated party, if at all (as it might be considered a waste of resources). If democratic societies flourish through the free flow of information which in turn allow citizens to consider issues on balance then any move to restrict information flow might exacerbate polarization. As Karpf (2012) noted advances in technology which allow message targeting removes a "beneficial inefficiency" that aided the public sphere.[28]

(v)   Intermediaries

Gatekeeping, message targeting and opinion shaping taking place on opaque Internet intermediaries: By virtue of their new position in not only hosting the audience that political parties wish to reach but also the targeting tools and the all-important user data, they sit on top of a new power hierarchy. These platforms have the ability to facilitate or impede information dissemination. They could in theory make it easier for a political party which their business/ideological interests align with to reach their supporters or vice versa. There are already real concerns about this with one former Facebook employee recently claiming to have been involved in keeping conservative issues from trending on the site. The methods used to curate and display information on these sites are opaque which means it is impossible to independently authenticate these claims. On a structural level this raises questions about the future of the public sphere if discourse fundamental to a democracy is taking place in a privatized sphere. A sphere where the terms of discourse are controlled by a few private Internet companies and which favors those with the resources to understand and make sense of this highly technical world.

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[26] Sunshine Hillygus .D & Shields.G. T. 2009. "The Persuadable Voter: Wedge Issues in Presidential Campaigns

[27] Howard, P.2006. New Media Campaigns and the Managed Citizen. Cambridge University Press

[28] Karpf, D. 2012. The MoveOn Effect: The Unexpected Transformation of American Political Advocacy, Oxford University Press.

(vi)   Privacy

Privacy helps protect freedom of speech and facilitates political debate by providing citizens a space to form opinions and develop identities free from surveillance. An online sphere where every conversation, comment or post is recorded, scanned and analysed for its commercial and political use could have negative repercussions for the free expression and exchange of views especially as privacy concerns among citizens grow.[29]

(vii)   Overview: the objectives revisited

Summary: the new threats to fair clean and clear election campaigning.

In summary, the economics of campaigning is changing. Television is still important but online is growing most quickly and shaping political campaigns in ways that researchers are only beginning to understand.

Internet campaigning challenges all three of the high level policy objectives identified by the Venice Commission.

Of particular concern is the first objective: maintaining a level playing field and the principle of equality of opportunity for political parties. The key problem is that most safeguards were written into the broadcast licensing regime which contained rationing means to ensure fair access to broadcasters and the audience as they could guarantee. In addition, less money goes further in the era of targeting. Therefore absolute spending limits may do less to protect democracy.

The second objective was guarding against corruption and we can see that the key instruments in particular party finance and campaign finance rules do face challenges. Existing methods for calculating spend and categories for reporting political spend needs to be revisited.

Transparency, the third objective is undermined in a variety of ways. Not only is it more difficult to implement a labelling regime that makes citizens aware of campaign finance it becomes more difficult to implement reporting requirements to electoral regulators. Message targeting involves not just the delivery of messages themselves but a huge amount of resources behind the scenes to analyse the data to determine the target segments and messages[30]. In addition to these established policy principles, academic research has highlighted new challenges to election legitimacy, namely problems of autonomy, privacy deliberation and message targeting that may in the long term need to be addressed to protect the legitimacy of democratic processes.

This is not only about the democratic system as a whole but about each individual citizen –the autonomy of their decisions, the privacy of their data and of the ballot itself. Data privacy and freedoms of association and expression are fundamentally impossible to separate. Increasing the 'knowability' of processes of will formation leads to self-censorship and itself chills political mobilisation.

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[29] Kreiss, D. (2012). Yes we can (profile you): A brief primer on campaigns and political data. *Stanford Law Review Online, 64*, 70.

[30] Tufekci, Z. (2014). *Engineering the public: Big data, surveillance and computational politics*.

The Scottish independence referendum 2014

> The Electoral Commission (2013, 2016) made several recommendations; for example 'there should be proportionate imprint requirements on non-printed material at referendums and elections across the UK. However, we would welcome the opportunity to work with relevant governments, not only in Scotland but also in other parts of the UK, when they are considering future legislation for referendums, to ensure that the imprint rules strike the right balance between ensuring there is transparency about who is behind the material and proportionate and modern regulatory requirements.'
>
> They also recommended that government should refrain from distributing paid for leaflets (15) which was ignored by the government during the EU referendum, and that regulation of the content of campaigns was inappropriate.

Recommendations

The most fundamental, pernicious, and simultaneously difficult to detect implication of the shift to social media is not the rising power of intermediaries but the inability of regulation to level the playing field for political contest and limit the role of money in elections. It is now well accepted, indeed legal and regulatory norms reflect this point, that media institutions play a key role in shaping democratic debate and voter preference formation. This is why a series of safeguards have been developed to prevent abuse of the political process by mass media. These rules must be updated to take account of media change.

(i)   Standard setting

In the UK, the review of campaign finance legislation by the electoral commission (2014) and the committee for standards in public life (1998) recognised that the job of a regulator would be to keep legislation under review to account for changes in technology.

"In addition to its overall duty of keeping election and funding arrangements under review, the Election Commission should be specifically charged with monitoring the working of the current arrangements…and the effect on political advertising generally of developing communications technologies." [31]

(ii)   Recommendations

Many of the emergent problems with Internet campaigning concern the content of campaigns messaging which has not been subject to regulation or standard setting. Election monitors and regulators should however maintain a watching brief with regard to issues such as message targeting, redlining and the undermining of deliberation. There are a number of areas where more active standard setting could be fruitful.

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[31] The Committee on Standards in Public Life, 1998. The Funding of Political Parties in the United Kingdom, Cm 4057–I, pp.183.

Personal data and trust in social networks.

In line with proposal 13 of recommendation CM/Rec (2012) and Recommendation CM PC/Rec (2016) on Internet freedom, Social network services should not process personal data beyond the specified purposes for which they have collected it. Electoral campaigning constitutes in most cases a distinct purpose for which distinct consent is required. The use of personal data for message targeting services in the context of electoral campaigns should be scrutinised by national data protection agencies in collaboration with electoral monitors to ensure that it complies with national laws.

Freedom of association and the right to freedom of peaceful assembly.

Recommendation CM PC/Rec (2016) on Internet freedom specifies that individuals and associations are free to use the Internet and Internet platforms to organise themselves for purposes of peaceful assembly. These rights entail responsibilities not only for governments but also for platforms and intermediaries that should respect such fundamental rights.

Election Observation

The principles and standards of the Venice Commission should be urgently updated to reflect the importance of online campaigning. This should include an update of methods of monitoring: selection of media for monitoring and transparency and data requirements for platforms and intermediaries.

The role of electoral commissions

National electoral commissions' statutory duties should urgently be updated. They should work with independent national regulatory agencies in the communications sector to monitor the importance of online political advertising and campaigning in the overall process of electoral campaigning and review the effectiveness of current quotas, limits and reporting categories in the area of electoral spending subsidised public service announcements. A wide review of the ability of the legal framework to ensure a fair clean and clear electoral campaign should be conducted.

Media Law

The role of broadcasting regulation in particular, and its ability to maintain a level playing field in political campaigns should be reviewed. New and innovative measures to ensure that new, less well resourced, and minority political campaigns can be heard should be sought.

Campaign and Party Finance

The shift to online political advertising constitutes a major disruption of political campaigning, and as such should lead national parliaments to review the effectiveness of these rules in their current form.

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