**14 July 2021 MSI-REF(2020)06**

**Draft recommendation CM/Rec(20XX)XX of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns**

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# **Preamble**

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe:

Having regard to the fundamental role of political and electoral communication in ensuring a democratic debate;

Reaffirming that fair, free and trustworthy information is essential to guarantee the integrity of the electoral process;

Underlining that the integrity of elections and their outcomes has to be guaranteed;

Conscious that political parties, politicians and media, each for their own part, perform an essential role in political and electoral communication;

Recognising that online platforms play an increasingly central role in the way citizens gain access to information, including on political matters;

Bearing in mind that electoral communication is shifting online and online platforms are rapidly taking precedence from traditional media as platforms for political advertising, while not being subject to a specific level of regulation and public oversight;

Recognising that new or upgraded techniques of political advertising are widely deployed, and are increasingly employing techniques processing a large amount of personal data to deliver micro-targeted political messages.

Recognising moreover that different, more fragmented and less transparent models of financing are used for political advertising;

Considering that online communication has facilitated the conditions for a permanent political debate and campaigning, making it difficult to distinguish political communication in non-electoral periods from that in electoral periods;

Considering that affordances of online platforms have enabled a wide array of actors with political agendas to take part in political communication and advertising;

Considering that a wide range of individuals and interest groups increasingly engage in political campaigns in a systematic and/or organised ways, combining human and automated actions;

Considering furthermore that data brokers – organisations or companies that collect, aggregate, and analyse data – use different strategies and multiple sources to compile profiles on potential voters to target political advertising dissemination;

Noting that traditional actors of electoral communication, such as the media and political parties and candidates, are adapting and increasingly relying on the tools and possibilities offered by online platforms to connect with voters;

Noting that online platforms are important actors themselves in the democratic debate as their affordances and content moderation policies shape the context for online political advertising and communication;

Considering that online advertising is less costly than in traditional media, which has widened the use of online political advertising while also affecting the transparency of the funding of political advertising and electoral campaigns; further considering that online platforms and political actors may not be fully transparent with regard to the political advertising expenditure, and that other actors with political agendas, in addition to registered political parties and candidates, are economically supporting candidates or parties online, also often in a non-transparent manner;

Recognising that the integrity of the electoral procedures is guaranteed when equal conditions to access to media and fairness in electoral campaigns are respected, and acknowledging that the new information ecosystem may create inequalities and opacity amongst political parties and candidates;

Noting that the massive use of online communication for electoral purposes may lead to practices of abuse of personal data, abuse of microtargeting, use of opaque techniques, especially abuse of bots and algorithms, to distribute information; and acknowledging that a segmentation of the voters may boost the polarisation of the debate and produce a shift from a public political debate to closed, personalised and targeted communication;

Considering that electoral campaigns have developed procedures and technologies for psychological profiling designed to elicit responses from voters on the basis of emotional reactions rather than reasoned, autonomous choices.

Conscious that citizens seem to be increasingly exposed to disinformation online, making it more challenging to maintain the integrity of elections, ensure pluralistic media and protect the democratic process from manipulation;

Considering that the spread of online disinformation has been used to undermine free and fair elections, including through foreign governments strategies and manipulation;

Acknowledging furthermore that risks to the integrity of elections stem also from a lack of empirical research and data on electoral microtargeting, communication practices of political actors, and content moderation practices of online platforms;

Convinced that any changes to the existing frameworks of electoral communication and media coverage of electoral campaigns should build on the principles of media, communication and internet governance set out in the previous Committee of Ministers recommendations to member States, as well as declarations, notably:

* Recommendation CM/Rec (20XX)XX of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age;
* Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems;
* Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership;
* Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries;
* Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality;
* Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors;
* Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom;
* Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media;
* 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(2007)15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns;
* Recommendation Rec(2000)23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector;
* Recommendation No. R (99) 15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns;
* Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age (13 February 2019);
* Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (13 February 2019);
* Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue (11 February 2009),

Recommends that the governments of member States:

1. fully implement the guidelines set out in the Appendix of this Recommendation;

2. in implementing the guidelines, take account of relevant Committee of Ministers recommendations to member States and its declarations, the case law of the European Court of Human Rights, as well as related international standards;

3. promote the goals of this Recommendation at the national level, including in the national and minority languages of the country, engage and co-operate with all interested parties to achieve the widest possible dissemination of its content in a variety of publicity materials, and exchange their expertise and practices across borders with a view to establishing consistent policies to electoral communication and media coverage of election campaigns;

4. review regularly and in consultation with the relevant stakeholders, and report on the measures taken to implement this Recommendation with a view to enhancing their effectiveness.

**Appendix to Recommendation CM/Rec(20XX)XX**

**Guidelines**

**Scope and definitions**

1. The following guidelines apply to all types of political elections taking place in member States, including, where appropriate, referenda and other popular votes.

2. Considering the impact of online communication on public opinion, and the role of online platforms in disseminating information, this Recommendation focuses in particular on principles to ensure transparency of electoral communication and expenditure online; to prevent manipulation of the electorate; to ensure that political parties and candidates can compete on equal terms; and that the national legal frameworks can address the concerns for the fairness and legitimacy of the electoral processes that have emerged as a result of the new formats and digital techniques of electoral campaigning online.

3. Unlike traditional media and especially audiovisual media, public or private (whether radio or television), online political advertising is still largely unregulated. This, and the insufficient levels of transparency – of intermediaries, campaigns, techniques, and actors involved, as well as spending – shapes the general context of contemporary online campaigning.

4. Any legislative measures regulating political communication online should be carefully assessed for their potential impact on a range of human rights of various actors involved, in particular the right to free elections guaranteed by Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter referred to as “the Convention”), the right to freedom of expression enshrined in Article 10 of the Convention and the right to privacy and data protection guaranteed by Article 8 of the Convention. Furthermore, any such measures should be necessary and proportionate to the aims pursued.

5. This Recommendation builds on and complements the principles set out in Recommendation 2007(15) of the Committee of Ministers to member States on measures concerning media coverage of election campaigns, which include general provisions on the media coverage of election campaigns and specific measures concerning broadcast media.

6. Having regard to Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media, the guidelines in this Recommendation are designed to provide additional and complementary principles for media in light of the technological convergence. This implies that the general principles set out in Recommendation CM/Rec(2007)15 should continue to apply to media in a convergent environment, save where new guidelines provide specific standards that impact the validity and/or application of those principles due to the different nature of the online communication as regards technology and usage.

7. For the purpose of this Recommendation:

* “political advertising” refers to content that appears in paid-for space offered by media or online platforms throughout the year advocating directly or indirectly, for or against, a party, a candidate or position in election, referenda, popular votes, legislative bill or any other policy issue (issue-based advertising);
* “political communication” refers to communication about politics distributed by the media and by online platforms, including communication undertaken by politicians and other political actors for the purpose of achieving specific objectives; communication addressed to these actors by non-politicians such as voters, and communication about these actors and their activities, as contained in journalistic and media discussion of politics;
* “electoral communication” refers to political communication in the electoral periods;
* “political actors” are understood as individuals or organisations who aspire, through organisational, institutional, financial and communication means, to directly or indirectly influence the decision-making process;
* “media” includes services offered by actors that have an intent to act as media, have the purpose to produce and disseminate content, have editorial control over content, follow professional standards, seek outreach, and are confronted with public expectation, as proposed by Recommendation CM/Rec(2011)7 on a new notion of media. This definition encompasses print, broadcast and online media including audio and video streaming services;
* “online platforms” are understood as digital services offered by actors that connect participants in multisided markets, set the rules for such interactions, and make use of algorithmic systems to collect and analyse data and personalise their services (in communication such platforms include e.g., search engines, news aggregators, video-sharing services, and social networks);
* “algorithmic systems” are understood as applications that perform one or more tasks such as gathering, combining, cleaning, sorting, classifying and inferring data, as well as selection, prioritisation, the making of recommendations and decision making, as defined in Recommendation CM/Rec(2020)1 on the human rights impacts of algorithmic systems;
* “segmentation” is the process that political campaigners use to identify the segments of a voting population they intend to engage for identification, persuasion, and/or mobilisation;
* “microtargeting” is a strategic data-driven process, which is geared towards addressing persuadable or mobilisable voters with tailor-made messages while ignoring others;
* “co-regulation” (sometimes also called regulated self-regulation) refers to industry self-regulation with a mandate and/or some oversight by the State;
* “disinformation” refers to verifiably false, inaccurate, or misleading information deliberately created and disseminated to cause harm or make economic or political gain by deceiving the public.

**1. Governance principles**

1.1. Legal and regulatory frameworks related to political advertising and election campaigns, as well as self- or co-regulatory approaches in this area, should be developed and enforced in compliance with the Council of Europe standards and the relevant case law of the European Court of Human Rights.Considering the specificities of the online environment and online platforms, States should consider co-regulation as a proportionate approach to regulate political advertising online and, where applicable, election campaigns online. Online platforms should align their terms of service with the principles set by the law and contribute, under this legal framework, to their implementation.

1.2. As part of such co-regulatory frameworks, States should consider specifically addressing political advertising, in an appropriate and proportionate manner, also outside of election periods as defined by the national rules.

1.3. As part of such co-regulatory frameworks, States should further establish appropriate sanctions for non-compliance in order to guarantee the effectiveness of the measures proposed in this Recommendation. States should ensure that the sanctions are proportionate in order to avoid that online platforms apply excessively prudent measures which may lead to limitations of lawful content and unjustified interferences with right of freedom of expression.

1.4. Under this co-regulatory framework, and in line with the Recommendation on principles for media and communication governance, States are encouraged to consider and develop – in cooperation with platforms and civil society organisations – an independent democratic oversight mechanism that should include reporting duties by the platforms to designated independent relevant authorities. These regulatory authorities should engage in regular, open, and inclusive consultation, co-operation, and dialogue with all relevant stakeholders with a view to ensuring that an appropriate balance is struck between the public interest, interests of users and affected parties, and industry interests.

1.5. Independent regulatory authorities should be clearly designated with powers to issue timely, proportionate and, where appropriate, graduated measures and sanctions in case of breach of statutory and co-regulatory rules.

1.6. States should ensure that the independent regulatory authorities have the tools and resources to evaluate online platforms’ content moderation practices, such as takedowns of accounts and content aimed at influencing election campaigns or action taken against illegal electoral campaign behaviour.

1.7. States should provide for the establishment of independent advisory councils to support independent regulatory authorities. These multi-stakeholder advisory councils should be composed of relevant independent experts and representatives of civil society to support independent authorities in assessing, on a regular basis, the compliance with co-regulatory obligations.

1.8. States should require online platforms to offer access to effective remedies for users and media outlets which are affected by the platforms’ actions related to political communication. Furthermore, States should require that online platforms provide channels where users can report political campaign advertisements that are falsely labelled or advertisements that are mistakenly removed; platforms should also provide data about this type of reporting.

**2. Principles for political advertising online**

2.1. Online political advertising including issue-based advertising, should be distinguishable from editorial content, including news.

2.2 As a general principle, online political advertising including issue-based advertising should be transparent. States should promote a co-regulatory framework aimed at ensuring that political advertisements are clearly marked as such and identify the campaigners. At a minimum, political and issue-based advertising materials should contain the names and addresses of the campaigners (i.e. natural or legal persons responsible for the production of the material).

2.3. States should ensure that political parties and candidates keep archives of all their political advertisements published offline and online, together with specifications regarding the groups that have been targeted with individual advertisements, thereby reporting on granular demographics equivalent to the ones used for the purchase and dissemination of the advertisements.

2.4. Under a co-regulatory framework, States should also request online platforms to keep libraries of all political advertisements distributed on their platforms, specifying the target groups with granular demographics equivalent to the ones used for the purchase of the advertisements.

2.5. The libraries held by political actors and online platforms should be kept in an open and machine-readable format; they should be accessible in real time to the general public and to the scrutiny of the relevant independent regulatory authorities, independent advisory councils, academia and civil society.

2.6. The libraries as set out in paragraphs 2.4. and 2.5. should operate in compliance with the requirements arising from the Convention for the Protection of Individuals with Regard to the Processing of Personal Data (CETS No. 108, “Convention 108”) and Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (CETS No. 223, “modernised Convention 108”). In particular, personal data should be deleted once the purpose for which it was processed has been achieved or kept in a form which prevents any direct or indirect identification of the data subjects concerned.

2.7. Relevant independent regulatory authorities, supported by the independent advisory councils, should develop tools to evaluate how successfully platforms are ensuring that political advertisements are classified as such and do not go unnoticed. This includes advertisements from campaigners external to the political parties and candidates, as well as monitoring of bots (software applications that run automated tasks) and coordinated inauthentic behaviours. In order to develop effective evaluation mechanisms, solid collaboration processes should be established with online platforms and involve academic, expert and civil society actors to ensure that the monitoring is developed in a research-grounded, cutting-edge and human rights-compliant manner.

2.8. States should ensure, using co-regulatory measures, that online platforms offer access to political advertising space in a fair and non-discriminatory manner and charge everyone the same prices for the same services. States may also restrict online political advertising during the electoral period.

**3. Limits of campaign support, financing and electoral spending**

3.1. States should ensure that all political parties and candidates have an equal opportunity to compete by preventing improper influence on political campaigns through financial donations, and by requiring transparency of income and expenditure by political parties, candidates and other political actors including persons and entities acting on their behalf, such as campaign organisers, consultancy companies, or data analysts and data collection companies.

3. 2. In terms of regulation of electoral spending limits, States should adapt the legislation regarding spending limits for political parties, candidates and relevant political actors to also effectively apply to the digital environment and its different functioning and price models compared to traditional, offline, campaigning.

3.3. States should adapt the legislation regarding thresholds on donation, including crowdfunding, to the online environment. In addition, States should prohibit foreign donations and political campaign expenditure. States should furthermore prohibit anonymous donations to political parties and candidates. The effective implementation of these rules should be guaranteed by relevant national independent authorities.

3.4. States should introduce obligations for political parties, political candidates, and relevant political actors to disclose to the relevant independent national authorities their campaign spending and campaign contributions (in-kind and financial). States should guarantee data on campaign spending and donations are available in an open and machine-readable format that anyone can access, use and share, in order to enable citizens, journalists and other interested actors to access, cross-reference and analyse the data. The detailed data should cover spending and (in-kind and financial) contributions on each of the following items: (i) online campaigns; (ii) distribution across different media outlets and online platforms; (iii) political advertisements, related consultancy, database and market research costs, and funds channelled through intermediaries such as data analysts or data collection companies aimed at curating political advertisements online for political parties and candidates; (iv) by target group, including granular demographics used for the dissemination of the advertisements.

3.5. States should require, using co-regulatory frameworks, extensive transparency of electoral spending also from online platforms. The online platforms should provide detailed data to relevant independent authorities and also make them accessible to the scrutiny of the independent advisory councils and the general public as open data, covering spending by political parties, candidates, and relevant political actors by target group. These data should be provided with the same type of granular demographics used for the dissemination of the advertisements.

3.6. In designing their frameworks of transparency of campaign spending and contributions as set out in paragraphs 3.4. and 3.5., States should provide for appropriate safeguards for the processing of personal data, considering in particular that data relating to political opinions fall within special categories of data within the meaning of the modernised Convention 108, which due to their sensitive nature should only be processed where complementary safeguards are provided for by law to protect the data subjects from the risks that the processing of such sensitive data may present for their rights and interests.

3.7. States should provide the necessary conditions for the competent independent authorities to reinforce their monitoring of electoral spending and adapt it to online campaigning, ensuring that the authorities:

* have the powers to request information about digital political advertising spends from online platforms and political parties and candidates, as well as powers to enforce such requests including adequate sanctions for non-compliance;
* have the necessary funding, resources and analytical skills to employ up-to-date methods for monitoring of campaign spending, especially that related to online campaigns;
* review the current spending categories and methods for calculating the limits to political spending/donations to adapt them to the online environment;
* review the effectiveness of the current quotas, limits and reporting categories in the area of electoral spending with consideration of the growing trend of online political advertising;
* review the development of new funding methods, such as cryptocurrencies, which are difficult to link to specific organisations, persons and/or states, but are increasingly used for the collection of funds/donations by political actors in Europe.

**4. Transparency, accountability and explainability of algorithmic systems**

4.1. Considering the present context of information abundance, attention scarcity and the polarisation of public debate, and following Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, States should develop co-regulatory policies addressing the algorithmic systems that govern the distribution of online content and specifically political advertising and political communication, with the aim of enhancing exposure diversity. Such diversity can be improved, among others, by changing the presentation of recommendations, interactive navigation through diverse sets of recommendations, or by enabling citizens to change the recommender settings.

4.2. States, under co-regulatory schemes, should establish appropriate levels of transparency of algorithmic systemsto ensure their compliance with international human rights standards and in particular with Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems. The algorithms used by public and private actors to rank and display political advertising, electoral communication material and information related to politics and current affairs should be transparent and verifiable, especially regarding potential biases and inaccuracies of the systems used. To this purpose, States should:

* develop frameworks, standards and policies on algorithmic transparency and explainability, in line with Recommendation CM/Rec(2020)1;
* allocate power and resources to scrutinise and audit algorithms to independent regulatory authorities;
* ensure that these authorities regularly monitor and publicly report on algorithmic transparency and biases;
* create opportunities for multi-stakeholder groups to address concerns in the deployment of algorithms, offering a wider range of stakeholders, including civil society and representatives of political parties to participate in the policymaking processes;
* request that online platforms publish transparency reports and statistics on the usage of algorithms in content curation - periodically and in a timely manner - including information on how they rank and profile digital campaigning material, how they moderate such content and how they target users with this content;
* ensure that online platforms build in feedback and continuous auditing mechanisms for algorithm systems and usage.

**5. Content moderation and handling of problematic accounts**

5.1. States should introduce co-regulatory measures aimed at ensuring that relevant online platforms put in place safeguards against misrepresentation and intentional spread of political disinformation, while ensuring full respect of the right to freedom of expression, anonymity and confidentiality of private communications, and of all other relevant Council of Europe standards.

5.2. With regard to paragraph 5.1., States should require online platforms to implement transparency systems for clearly labelling automated accounts and actions, so that their activities cannot be confused with human interactions.

5.3. With regard to paragraph 5.1., States should ensure that any measure aiming at limiting the spread of harmful content is compliant with the rule of law and human rights as laid down in the Convention and all further relevant Council of Europe standards. To allow for public scrutiny of all the policies and actions undertaken in this respect, States should require online platforms to regularly report, in a manner compliant with the applicable data protection rules, on their content moderation measures as well as the content and accounts blocked, removed or downgraded in a transparent manner, as machine-readable data, including the grounds for the actions taken. States should also require online platforms to collaborate and provide data for an independent oversight by relevant authorities.

5.4. States should require online platforms to improve the scrutiny of advertisement placements to reduce revenues of the purveyors of political disinformation. States should also oblige online platforms to collaborate and provide data for an independent oversight by relevant authorities. Such obligations should be applied in compliance with the applicable Council of Europe standards.

5.5. States should require transparent policies from online platforms about their rules and criteria for publishing and removing political communication.

5.6. States may require online platforms to co-operate, under a co-regulatory framework, during electoral periods, to enforce electoral silence rules or blanket bans on opinion polls.

5.7. States should ensure that online content and data flows pertaining to electoral matters are treated in an equal and non-discriminatory manner by the relevant internet service providers, in accordance with the principle of network neutrality set out in Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality. In particular during electoral periods, relevant internet service providers should be prevented from deciding unilaterally on the effective availability of online data.

**6. Privacy, consent and microtargeting**

6.1. States should consider the implications of the targeted or micro-targeted political advertising on the citizens’ voting behaviour and, in this scope, their right to information, including access to information and exposure to politically diverse viewpoints, and their right to free expression of the opinion in the choice of the legislature. To that end, States should ensure that their data protection laws and policies applicable to the context of electoral campaigning and communication are in full compliance with the data protection requirements arising from the existing legal frameworks for privacy and data protection including relevant international standards set forth in the Convention 108 and Modernised Convention 108.

6.2. States should ensure that citizens receive information from online platforms on why they are targeted with political advertisements online on a case-by-case basis, with the same granular criteria that advertisers are able to select to target their audiences.

6.3. States should require online platforms to create tools that allow citizens to opt out from political advertising online.

6.4. States should provide for formal mechanisms of collaboration between relevant independent regulatory authorities and data protection authorities in order to enable them to effectively define guidance on political microtargeting to inform citizens about their data protection rights.

6.5. Political parties, interest groups supporting parties, candidates, and other political actors are strongly encouraged to adopt codes of conduct aimed at avoiding the abuse of microtargeting techniques.

**7. Media coverage of election campaigns**

7.1. Considering the impact of the media on the formation of public opinion, the following general principles set out in Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns should be considered as remaining in effect in the evolving media and information landscape:

* non-interference by public authorities in the activities of journalists and media;
* protection measures against attacks, intimidation or other unlawful pressure on the media;
* editorial independence of the media;
* equal and fair treatment for political contenders in publicly owned media outlets;
* respect for the professional and ethical standards of the media, including self-regulatory measures by the media;
* transparency of, and access to, the media;
* the right of reply or equivalent remedies;
* transparency of political polls, and
* day of reflection as a possible regulatory option.

7.2. Any regulatory requirements based on the existing principles should be proportionate and graduated to reflect the impact of the different media in a convergent environment, in line with the standards set out in Recommendation CM/Rec(2011)7 on a new notion of media.

7.3. Considering the powerful effect of audiovisual media on public opinion, regulatory frameworks should require these media, and particularly linear private and public media, to cover election campaigns in a fair, balanced and impartial manner. Insofar as political parties and candidates are permitted to buy advertising space for election purposes, all political parties and candidates should be able to buy such space under equal conditions and rates of payment.

7.4. States should recognise the crucial role of independent public service media in fostering public debate and political pluralism, and, regarding the electoral periods, in guaranteeing equal conditions in the allocation of airtime to political parties and candidates. States should recognise this crucial role of public service media and guarantee their independence and sustainability in order to enable them to continue to play this role in the multimedia landscape.

7.5. Media and information literacy, including digital skills and critical thinking, are an essential part of citizenship in the new online environment and precondition for the informed participation in the political life of a country, either as voters or politicians. States should promote media and information literacy as part of school curricula, as part of lifelong learning cycles and through support schemes for media, in particular to public service media and community media.