



37th EPRA MEETING – KRAKÓW
Working Group 1 – Political Communication

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Political pluralism and political communication are themes EPRA has dealt with over time. The Paris plenary session in 2000 focused on political communication on television¹. Then the Elsinore plenary² in 2006 and a working group at the Dresden³ meeting in 2009 deepened issues related to political advertising, after having organised a working group on political pluralism in the media and the role of regulators at the Dublin meeting⁴.

In the meantime, the AVMSD has been fully implemented and the nowadays “2.0 Age” - where new and social media are fully complementary to the traditional broadcasting scenario - has enriched the relationship between communication and politics.

Considering the impact that new media, as well as the internet, is having on the political communication in all of its aspects, the aim of this working group is to discuss the main changes introduced in the discipline of political communication in European countries since starting from the last EPRA outputs.

In order to produce an updated report on the regulatory framework across enlarged Europe, taking into consideration both the latest developments occurred and the experience of States that were not EPRA members at the time, a questionnaire has been put on the EPRA website and received 25 responses from EPRA members: Belgium (VRM and CSA); Bosnia and Herzegovina (CRA); Bulgaria (CEM); Denmark (Radio and Television Board); France (CSA); Germany (DLM); Gibraltar (GRA); Croatia (AEM); Ireland (Broadcasting Authority of Ireland); Italy (AGCOM); Latvia (NEPLP); Lithuania (RTCL); Luxembourg (CNP); Macedonia (SRD); Malta (Malta Broadcasting Authority); the Netherlands (Commissariaat voor de Media); Norway (Norwegian Media Authority NMA); Poland (KRRIT); Romania (NAC); Serbia (RBA); Spain (CAC); Sweden (SBA); Switzerland (AIEP); United Kingdom (OFCOM); which we thank very much for their cooperation.

¹ <http://www.epra.org/meetings/paris-2000-11th-epra-meeting-25-26-may-2000>

² http://www.epra.org/news_items/23rd-epra-meeting-in-elsinore

³ http://epra3-production.s3.amazonaws.com/attachments/files/682/original/political_advertising_background_document_final.pdf?1323685427

⁴ http://epra3-production.s3.amazonaws.com/attachments/files/556/original/political_pluralism_final.pdf

1. Definition: the regulatory scenario

Pluralism is largely recognized as a constitutional value and equal access over media for all opinions represents a corollary to it. Though a European framework does not exist in such matter, many common points emerge from the analysis of the single national disciplines.

In almost every responding country, the national NRAs result to be in charge of the regulation and the monitoring of the coverage of political and electoral information on broadcasting media, through the provisions established by Broadcasting Acts, frequently finding a deeper articulation in Electoral Laws. This happens, for example, in Italy, where generic and always binding provisions regarding pluralism are spelled out in the AVMS Code, but for more specific rules for the electoral period the so-called “par condicio” law (equal chances) take over. Also in Latvia, where the Electronic Mass Media Law contains no provisions on political communication, the latter are set out by the Law on Pre-election agitation.

In many countries, such as Bosnia and Herzegovina, Bulgaria, Lithuania, Spain, the Electoral Commissions play a crucial role.

The Netherlands and Norway NRAs do not play a role in the regulation of media coverage of politics and electoral campaigns, while in Sweden and Luxembourg the only subject on which political communication provisions have impact is the public service broadcaster (PSB). Enhanced and more specific requirements for PSB, in order to guarantee the access and giving a balanced, impartial information, are very common, being also, for example, in Norway, Italy, the Netherlands. It is worth noting that in Ireland, in case of Parliamentary elections, the PSB tends to weigh coverage basing upon the number of seats that each party has in the parliament prior to the election.

If almost the totality of the respondent countries have specific provisions regarding the right to equal access to media for every political subject (with some exceptions, for example in the Netherlands, see above), as for provisions regarding information programmes and political communication, the scenario is quite differing from country to country.

Of course citizens need to be provided balanced, open and complete information, in order for them to mature their voting decisions. Keeping this in mind, many States have adopted specific provisions to guarantee equal access to all political opinions: e.g. in Italy broadcasters are compelled to ensure that any information is presented impartially and it is forbidden to influence the public even indirectly, same in Latvia where it is allowed to give information for free on the activity of the state politicians, political parties or candidates, encouraging participation in the elections or referendum, though it is forbidden to influence the vote.

Also in Ireland, interviews to politicians and other political actors are allowed, as long as news programmes comply with the due of being fair, objective and impartial, and the information does not result into political communication.

In Poland, the National Broadcasting Council has issued a regulation in 2003, which also specifies the amount of air-time for political parties and social organizations, trade unions and associations of employers.

In UK, all news programming on Ofcom-licensed services must comply with rules requiring that: *“News, in whatever form, must be presented with due accuracy and presented with due impartiality”*. In Gibraltar, same rules concerning due accuracy and impartiality of information. In Bosnia and Herzegovina, political communication cannot be broadcasted immediately (15 minutes) before, during and right after the news programmes. As for the participation of political subjects to programmes differing from news or political debates, this is banned in Serbia and Italy, in Bulgaria such an eventuality is to be “carefully considered”.

Other Countries do not have any specific provision regarding this point, along with others, also Netherlands, Belgium (VRM), Sweden. Belgium (French Community) has no specific rule, except for the due of impartiality requested to PSB, which results in Norway, too.

The possibility for broadcasters to sell advertisement time to political subjects, candidates and party representatives, in order to promote their electoral program, is a matter on which the answering States clearly split in half.

Plenty of the respondents have introduced rules banning this kind of messages from being broadcasted, though there are some particular cases in a few countries.

For example, in Spain political advertising is prohibited, both on public and private television and on public radio, during non-electoral period, while, during the campaigns, it must be offered for free by public service media to candidates and it is ruled by the Central Electoral Commissions (the national one and the regional or local ones, depending from the kind of the election). Another peculiarity in Germany, where the general ban has an exception before parliamentary elections (both national and European): for a limited period broadcasters may (PSB has to) grant appropriate time to the candidates, subject to reimbursement of costs.

In Bosnia and Herzegovina, paid political advertising from the period of official announcement of the elections to the official beginning of the election campaign is forbidden, except paid political advertising aimed to inform members of the political subjects’ organs on organization of internal meetings for all political parties. Paid political advertising is allowed during election campaigns, i.e. 30 days before the election day. Prices for political advertising must be the same for all political subjects, and the price lists shall be submitted to CRA and to registered political parties 15 days before commencement of the election campaign.

In Serbia, pre-election messages are allowed but considered as included in the total amount for advertising. In Italy, these clips cannot interrupt other programs and have to be broadcasted in appropriate spaces (“containers”). Times and spaces are equally shared between political parties. PSB is compelled to broadcast political messages for free in electoral period, and to offer the technical equipment (studios etc) to the political parties for the production of their messages.

2. New media and political communication

Although the AVMSD is fully implemented – this leading to linear and non-linear services being regulated – and despite the deep impact that new media and internet have gained on electoral campaigns, still the greatest part of the respondents countries has not yet adopted specific provisions regarding political communication on the new media, nor has the existing framework extended to these. On the political communication side, we might say that new media, as well as the internet, are still un-ruled.

There are, however, a few exceptions. Belgium (both French and Flemish communities) the existing political communication regime has widened to all AVMS. The Belgian framework (French Community) applies to linear and non-linear services and the only differences are registered between public service media – compelled in every period to guarantee a balanced information – and private media providers, subject to political communication rules only during the electoral period.

In Romania, pursuant to a deliberation adopted by National Audiovisual Council, n. 320/2012, the same political communication rules are, since then, binding for both linear and non-linear services: "Art. 11. – *Law provisions and Audiovisual Code provisions shall apply also to video on demand audiovisual media services, having in view their specific nature of being available for viewing at the moment chosen by the user and at his individual request.*"

The Lithuanian "Rules on Marking of Political Advertising", adopted by the Central Electoral Commission on 7 September 2010, use a very extended and general language, providing that the Rules apply to "*all electronic media*" and that under the scope of rules for political advertising are falling every medium "*despite the technical means of dissemination*".

In Bulgaria, political communication is still regulated only on linear services, seeing no specific provisions regarding the internet and the new media, except for the fact that the agreements between media service providers and political parties / coalitions should be published on the websites of the broadcasters. During the last campaign a few restrictions regarding the exit polls have been registered on media on the election day.

As for proposals of reviewing the regulatory framework, in Serbia a new "Law on electronic media" is under preparation which, according to the draft, will align political communication provisions to AVMSD, extending these to linear and on-demand services. Also Norway has some ongoing initiatives, since the Ministers Committee is evaluating whether or not Norway has implemented sufficient measures following the EHRC's pronouncement in the well-known "TV Vest case". The Ministry of Culture has stated that Norwegian prohibition on political advertisement may be revised once the Committee findings will be presented.

The Broadcasting Authority of Ireland has a limited role with regard to VOD services, which are self-regulated via an industry Code of Practice, approved by BAI, but whose responsibility for the development and implementation belongs to the ODAS group (On-demand Audiovisual Services Group). Nonetheless, the ODAS Code of conduct is currently under revision, in order to consider the inclusion a requirement for fairness, objectivity and

impartiality in news and current affairs. Political advertising is allowed on these services.

3. Opinion polls: information or manipulation?

With regard to the diffusion of polls during the electoral period and close to the date of the vote, many of the answering States have introduced a cut-off time with the exclusion of Sweden, Netherlands, Belgium (Flemish Community), Denmark. Although in Germany and Switzerland the diffusion of polls during the electoral period is not prohibited by a specific law provision, nonetheless public broadcasters in both countries decided voluntarily to suspend it respectively one week and ten days prior the election date.

As for the length of the cut-off period, it stretches from the moment of opening of the election, as in Gibraltar, 24 hours (UK, France and Bulgaria) to 30 hours (Lithuania), 48 hours (Romania, Bosnia and Herzegovina, Norway, Belgium French Community), 5 days (Spain, Macedonia), 6 days (Malta), to 15 days (Italy). It happens frequently that media broadcast spontaneous, non-scientific, manifestations of opinions, such as televoting or online voting, qualifying them as polls. On the other hand, this kind of spontaneous manifestation of opinion can also be used to circumvent the ban of diffusion of polls.

Some of the respondent countries did not address the matter, a few extend to these “manifestation of opinion” their rules regarding polls, while others have adopted specific provisions. Belgium (French Community) and Serbia consider unscientific consultations or vote simulations to be subject, during the electoral period, to the same rules for polls. Macedonia’s Rulebook for equitable access to the media presentation during election campaigns states that broadcasters should not present, during the whole period of the election campaign (including the cut-off period), results from unscientific and unrepresentative researches such as televoting, surveys conducted through Internet and similar.

Bosnia and Herzegovina, Macedonia, Malta, Romania, Serbia, Spain and Italy have somehow similar provisions, prescribing that a poll, when broadcasted/published, has to be presented along with some basic information on technical characteristics, such as the sampling system, the size of the panel, the margin of error etc. Also Bulgaria has recently introduced some similar rules, already effective. On such matter, Spain has had an interesting case during the last election, where a Catalan newspaper, “El Periódico de Catalunya”, having a parallel edition in Andorra, ruled by a different electoral law, published on this foreign version some polls the day before the election, which were quoted and commented in the Catalan and Spanish editions.

A similar approach is shown also in the UK, where Ofcom lays out (non-binding) factors that broadcasters may take into account when considering “the degree to which opinion polling data constitute evidence of significant current support”. In Ireland there are no specific rules on opinion polls, since broadcasters are free to make editorial decisions as to which aspects of a poll are covered and analysed, but the information on opinion polls must be presented in a fair, objective and impartial way. BAI operates a moratorium on

coverage before an election or referendum and this includes a restriction on coverage of opinion polls linked to elections/referenda.

In France, polls are regulated by a Poll Commission which has to determine whether a survey detecting opinions is or isn't a poll. In a press release of 2012, the Commission has stated that when people have voluntarily accepted to answer an online investigation, it may not be considered as a poll.

As for the cut-off period, it starts at 00.00 of the day before the ballot: from this moment it is forbidden to deliver by any means of electronic communications, any message which may constitute political propaganda. Providers cannot publish online or broadcast any new content which is related to the election. It is however allowed not to block access to content already made available to the public. Moreover, the day of the vote the communication of any results, on any media, is forbidden from 6 pm (closing time of the first voting booth) until 8 pm (closing time of the last voting booth). This applies to the internet as well.

4. Current developments

EPRA members have been asked also to indicate current developments, initiatives in order to amend the existing framework and to mention current debate cases related to political communication, if any. Our respondents have experienced many interesting cases.

France, during the last presidential election, has experienced the results of the elections being made available through social networks, websites of foreign newspapers and foreign channels, which is forbidden by French national law before the closing of the last polling. UK was awaiting a judgment from the European Court of Human Rights with regard to a challenge to the political advertising ban under Article 10 of the Convention on Human Rights. The Court held on 22 April 2013, by nine votes to eight, that there was no violation of Article 10 (freedom of expression)⁵.

In Bosnia and Herzegovina, on 1 January 2012 a new set of rules and regulations in line with the AVMSD entered into force. CRA has been promoting several initiatives towards the Central Elections Commission regarding the necessity of amending the current national framework regarding political communication, in such a way to extend the scope to all audiovisual media services. There is also a need for regulating non-electoral periods, since all the rules and regulations only refer to electoral period.

Also in Malta, where elections took place recently, two issues arose during the last electoral campaign: firstly, the claim by the opposition party that some news programmes presenters were not treating party spokespersons/shadow ministers appropriately and, secondly, some problems with political spots which depicted a fictitious event as a news update.

Also Ireland was recently conducting the Presidential elections (2012), during which BAI received a number of complaints relating to debates held on the national public service broadcaster RTÉ and focused on the behavior of a TV presenter with regard to a candidate.

⁵ http://www.epra.org/news_items/echr-rules-that-ban-on-paid-political-advertising-in-the-uk-justified