



Organization for Security and Co-operation in Europe

Office of the Representative on Freedom of the Media (RFoM)

and

Office for Democratic Institutions and Human Rights (ODIHR)

**“FREEDOM OF MEDIA IN ELECTIONS AND COUNTERACTING
DISINFORMATION”**

**Brief Paper for the Expert Meeting organized by the Office of the OSCE Representative on
Freedom of the Media and ODIHR on 29 April 2022**

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INTRODUCTION

1. On 29 April 2022, the Office of the OSCE Representative on Freedom of the Media (RFoM) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) organize an expert meeting to discuss aspects related to freedom of media in election and new challenges for protection of integrity of elections arising from manipulative information. Its aim is to serve as food-for-thought and to inspire further discussions on the matter within and among all OSCE participating States.
2. Free and fair elections are the foundations of a democracy. For elections to be genuinely democratic, a respect for fundamental freedoms and rights, including the freedom of expression and the right to hold opinions without interference is essential. All OSCE participating States have committed to hold democratic elections.
3. The role the media, both traditional and increasingly so online, play during elections by carrying out their activities in a fair and balanced way contributes significantly to creating an enabling environment for voters. However, recently there is an increased presence, especially on social networking sites, of a number of challenges related to proliferation of manipulative information which directly interferes with voters' ability to make free and well-informed choices.
4. Today a number of countries are concerned with the purity, authenticity and truthfulness of information disseminated in the media during election campaigns. The reason behind it is that the proliferation of disinformation and "fake news" may have a lasting and disruptive effect for citizens electing their representatives and thus could present dangers to democracy and the fairness of its instruments.
5. Broadly speaking, while in some OSCE participating States there is no specific legislation aiming to regulate disinformation and "fake news" and the general provisions on defamation apply, other jurisdictions increasingly adopt legal provisions related to prevention of dissemination of untrue information during electoral campaigns.

6. This Brief Paper addresses the following question: What are the main standards available and which efforts OSCE participating States currently take to ensure freedom of media in elections while protecting the integrity of elections from disinformation? It should be noted that elections are complex and lengthy processes of a legal, procedural and political nature and various malicious phenomena, such as disinformation campaigns are increasingly present during elections. However, for comprehensive understanding of the origins of disinformation, their impact on the campaign and on election outcomes, as well as how to effectively counteract disinformation, other election-related aspects such as political and campaign advertising and data protection regimes which can be directly linked with disinformation campaigns should be considered. The Paper is not discussing in detail these latter aspects.

ODIHR and the RFoM have been closely following and reporting on issues related to media coverage of elections and challenges related to the use of online social networks in elections, including disinformation campaigns. In these efforts both institutions have engaged in many discussions and initiatives on this topic with various stakeholders in the OSCE region and beyond. For several years, the RFoM together with other representatives on freedom of expression from various intergovernmental organizations issued numerous Joint Declarations related to freedom of media on Internet and provided some recommendations for various stakeholders, including OSCE participating States in dealing with media during election periods.¹ Most recently, in 2021, ODIHR published its Guidelines for Observation of Election Campaigns on Social Networks² and, in 2020, the RFoM, together with the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression published the Joint Declaration on Freedom of Expression and Elections in the Digital Age³.

7. In offering its services, the RFoM and ODIHR emphasize their continued readiness to engage in further assistance to the interested OSCE participating States on these issues.

¹ See the [Joint Declarations](#) issued by the RFoM and other Special Rapporteurs on Freedom of Expression.

² See the ODIHR [Guidelines for Observation of Election Campaigns on Social Networks](#).

³ See [Joint Declaration on Freedom of Expression and Elections in the Digital Age](#).

I. RELEVANT INTERNATIONAL OBLIGATIONS, STANDARDS AND PRINCIPLES AND OSCE COMMITMENTS

8. Free and fair elections are the foundations of democracy. For elections to be genuinely democratic, a respect for fundamental freedoms and rights, including freedom of expression and the right to hold opinions without interference and freedom of media, is essential.
9. All OSCE's participating States have committed to hold democratic elections. The OSCE commitments as set down in the landmark 1990 Copenhagen Document and in subsequent OSCE commitments and Ministerial Decisions define basic principles for democratic elections.⁴ In addition to the prerequisite for respect for fundamental freedoms, the OSCE principles call for elections to be conducted in a free and fair environment in which States are required to provide equal conditions for competition.
10. Free, fair, balanced and objective media coverage is fundamental for democratic elections. During election periods, the traditional and online media, as well as the relatively new platforms of communication such as social networking sites, provide an invaluable channel of interaction between contestants and voters. By providing an arena for public debate and informing citizens of the policies and activities of election candidates, they enable voters to make an informed decision when they cast their ballots. The ability of voters to make an informed choice, free of undue interference is one of the key aspects of a democratic election.
11. There are several internationally recognized documents that set out the relevant obligations, principles and standards for democratic elections and applicable to the media and other forms of public communication. While the list of election and media-related obligations, principles, standards and commitments is significantly longer, in this paper we discuss only those that are relevant to the 'organic' content created on social networks sites and for contextualizing phenomenon of disinformation. Some of these include:

⁴ See the OSCE [1990 Copenhagen Document](#) and [other relevant OSCE commitments](#).

- a. *Freedom of expression and the right to hold opinions without interference.* In addition to the OSCE documents, on a global level, the United Nations Universal Declaration of Human Rights (UDHR) and the International Covenant for Civil and Political Rights (ICCPR) guarantee this right.⁵ In addition, interpretive documents to the ICCPR note that, “voters should be able to form opinions independently, free from violence or the threat of violence, compulsion, inducement or manipulative interference of any kind.”⁶
- b. *The Principle of Net Neutrality and Access to Information and Internet.* While not yet recognized as a human right under international law, the UN Human Rights Council (HRC) has urged states to promote universal access to Internet.⁷ Essentially related to the right to access the Internet, the principle of Net Neutrality requires that all data traffic is treated equally and that Internet users should be able to use any applications or access any services of their choice without traffic being managed, prioritized or discriminated by network operators.⁸
- c. *The Principle of Non-Discrimination.* In its primary meaning and as stated in the most relevant documents pertaining to this principle it requires that all individuals regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status are treated equally.⁹ In the context of media and elections, this largely relates to the use of discriminatory language against voters or candidates who belong to specific communities and groups. Moreover, the OSCE Copenhagen document requires that citizens are permitted, “to seek political or public office, individually or as representatives of political parties or organizations, without discrimination” and “unimpeded access to the media [is provided] on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.”

⁵ See the UN [UDHR](#) and the [ICCPR](#).

⁶ See the UN Human Rights Committee [General Comment No. 25](#).

⁷ Access to the Internet as a fundamental right has also been promoted in several [Joint Declarations](#) by the OSCE RFoM and the UN and the Organization of American States (OAS) Special Rapporteurs on Freedom of Expression. Several OSCE participating States (Estonia, Finland, France, Greece and Spain) have recognized Internet access as a fundamental right in their national legislation.

⁸ See the OSCE RFoM [2016 Media Freedom on the Internet Guidebook](#) and the 2010 Council of Europe [Declaration of the Committee of Ministers on Network Neutrality](#).

⁹ See the [International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#), the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#), [ICCPR](#) and [General Comment No. 28](#).

d. *The Principle of Transparency.* The implementation of this principle remains a challenge because of the transnational nature of online social networks and the possibility of users to remain anonymous. While the anonymity can potentially serve to the benefit of democratic developments, especially in contexts with more rigid restrictions on the freedom of expression, often the dissemination of manipulative, discriminatory, violent or hateful content is done through anonymous accounts. Another challenge for implementation of this principle is related to the moderation of online content by big-tech companies (promoting, down-ranking or removing from a specific platform).¹⁰

e. *The Right to Effective Remedy.* In the wider context of elections, it requires that all electoral stakeholders can challenge violations of their rights through an effective dispute resolution system. In the context of media coverage of elections, this right requires that the election dispute resolution system should ensure effective and timely remedies for violations of voters and candidates media-related rights, including online, and for violations by social networks and big-tech companies.¹¹

12. Several international institutions reiterated the application of the fundamental freedoms and rights in the online domain as in the real world. For example, the UN HRC has urged States to recognize human rights in cyberspace, while in the context of the Council of Europe, the European Court of Human Rights (ECtHR) recently reaffirmed that, “its jurisprudence [related to] Article 10 [freedom of expression] is fully applicable to the Internet.”¹²

¹⁰ See the 2019 [Report](#) by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN, OSCE and OAS 2011 [Joint Declaration](#).

¹¹ See the [ICCPR](#); [the European Convention on Human Rights](#), the [1990 OSCE Copenhagen Document](#) and the [Commonwealth of Independent States Convention for Human Rights and Fundamental Freedoms](#).

¹² See the UN HRC [2012](#) and [2016](#) Resolutions and the ECtHR [Explanatory Memorandum](#).

II. CONTEXTUALIZING DISINFORMATION – EFFECTS ON ELECTORAL INTEGRITY

13. Different types of manipulative content can have harmful impact on the democratic processes and adversely affect the conduct of genuinely democratic elections. The phenomenon of online proliferation of manipulative content (most commonly called ‘disinformation’), which especially gains in intensity during campaign periods, presents bigger challenges for regulation and often can have decisive or detrimental impacts on election processes and outcomes. As this type of content is used to mislead voters or undermine public confidence in the electoral process, it inhibits the voters’ right to form an opinion without undue interference and weakens their ability to make fully informed decisions.
14. According to experts, “the spread of “false information” has increased dramatically because of the rise of populism and the growing use of the Internet and social media for political purposes”.¹³ Indeed, populist rhetoric seems to present a very important contextual element for the current rise of false news.¹⁴
15. Within the OSCE region there is no universally accepted definition on information of manipulative content. In the academic world, the terms ‘misinformation’, ‘disinformation’ and ‘propaganda’ are sometimes used interchangeably, with shifting and overlapping definitions.¹⁵ However, some international organizations attempted to make distinction between different types of information disorder such as: *Disinformation* - knowingly sharing false or misleading information with the intent to harm; *Misinformation* - false or misleading information, but without the intent of causing harm; *Malinformation* - genuine information shared with the intent to cause harm.

¹³ See Glavaš, Davor. Political advertising and media campaign during the pre-election period: A Comparative Study Commissioned by the OSCE Mission to Montenegro. May/July 2017. <https://tinyurl.com/y99j5egr>

¹⁴ See Haiden, Leonie. “Tell me Lies, Tell me Sweet Little Lies: Post-truth and populist politics – a match made in 2016?” in: Fake News: A Roadmap. Ed.: Althuis, Jente and Leonie Haidenis. – King’s Centre for Strategic Communications (KCSC) and the NATO Strategic Communications Centre of Excellence: Riga, 2018, p. 7-13. <https://tinyurl.com/ybr29km8>

¹⁵ See Social Media and Democracy, The State of the Field and Prospects for Reform, Edited by Nathaniel Persily and Joshua A. Tucker, Cambridge University Press, p.10 <https://tinyurl.com/2p9br5yu>

16. In some cases, manipulative content may also interfere with the right to freedom from unlawful attacks upon honour and reputation ('defamation'), as it often relates to a particular individual, a political or public figure, and is designed to harm her or his reputation. As such it can be subject of general defamation provisions in the law. Moreover, when such content is directed against particular groups in society, such as representatives of certain national or other minority or various vulnerable groups, and incites hatred, violence or discrimination, it can interfere with the non-discrimination principle, as provided by the many international instruments, including the CRPD, ICCPR and several OSCE documents.
17. While disinformation campaigns in elections are not new, recently due to the emergence of the Internet and social networking sites it gained new proportions and its effects are far more severe. According to some international organizations' reports, "[D]isinformation operates within the framework of a decentralized network that has expanded people's ability to express themselves in the public sphere, with access to minimal technological resources. This communication ecosystem presents tremendous opportunities for expanding and strengthening the public discourse and for the circulation of information of public interest."¹⁶
18. While it is certain that widespread disinformation campaigns have negative impact on democratic conduct of elections, the full effect that they have on elections remains unclear and subject of debate. For comprehensive understanding the origins of disinformation, as well as for effective counteracting other election-related aspects such political and campaign advertising and data protection regimes which can be directly linked with disinformation campaign should be considered. In this context, one of the interlocutors in the UK House of Commons' (the Parliament) Digital, Culture, Media and Sport Committee Final Report on Disinformation and 'fake news' stated: "What we need to understand is the degree to which people are being misled or the degree to which elections are being improperly interfered with or influenced and, if they are [...] we need to come up with appropriate responses and defences.

¹⁶ OAS 2019 [Guide to Guarantee Freedom of Expression Regarding Deliberate Disinformation in Electoral Contexts](#).

It is part of a much more holistic landscape and I do not think it is right to try to segment it out.”¹⁷

III. COUNTERACTING DISINFORMATION

A. INTERGOVERNMENTAL AND STATES RESPONSES

19. While OSCE participating States have positive obligation to create necessary conditions for democratic conduct of elections, poor regulation or policy responses from authorities or the big-tech firms can also have detrimental effects on the protection of fundamental rights, in particular the right to freedom of expression. At the same time, overly broad restrictions on content, although with legitimate aim to prevent manipulation and disinformation can lead to the curtailment of legitimate speech.¹⁸
20. In general, four types of approaches to tackle manipulative content can be observed, including among the OSCE participating States:
- a. Application of provisions (some from the pre-Internet era) of existing civil, criminal, administrative, and other laws regulating the media, elections, and anti-defamation;
 - b. Adoption of new legislation that imposes sanctions on social networks that spread false news and ordering the removal of information identified as false;
 - c. Co-operation with election authorities and online platforms to secure a well-informed electorate, by identifying and blocking fake news and providing fact-checking; and
 - d. Employing broader and long-term policies for educating citizens about the dangers of fake news.

¹⁷ Secretary of State for Digital, Culture, Media and Sport (DCMS), Rt Hon Jeremy Wright MP, UK [House of Commons, Digital, Culture, Media and Sport Committee Final Report on Disinformation and ‘fake news’](#).

¹⁸ The 2017 UN, OSCE and OAS [Joint Declaration](#) on freedom of expression and “fake news”, disinformation and propaganda emphasizes that some forms of manipulative content may harm individual reputation and privacy, or incite violence, discrimination or hostility against identifiable groups in society. However, the Declaration concludes that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information,’ are incompatible with international standards for restrictions on freedom of expression [...] and should be abolished.” Moreover, the 2020 [Joint Declaration](#) on elections in the digital age argues against Internet blocking and shutdowns, as well as against overly broad or ambiguous laws on disinformation.

21. At the global level, the UN Secretary General in its 2019 Report on the UN Electoral Assistance stated that “the use of the Internet and social media in the context of elections, as both enablers of participation and tools for spreading disinformation and hate speech, raised complex issues for Member States. The paralyzing suspicion that any information or discourse can be manipulated – and the resulting erosion of trust – lies at the heart of the Internet’s challenge to democracy. The importance of, among other measures, building societies’ resilience against the spread of false or hateful content, increasing transparency in public discourse and pursuing multi-stakeholder dialogue to find answers to those policy challenges, is underlined.”¹⁹ The 2021 Report by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concludes that due to the disinformation phenomenon, “it is easy – but dangerous – to lose sight of the value that digital technology offers to democracy, sustainable development and human rights, or the vital importance of the right to freedom of opinion and expression in that equation. That is why attempts to combat disinformation by undermining human rights are short-sighted and counter-productive. The right to freedom of opinion and expression is not part of the problem, it is the objective and the means for combating disinformation.”²⁰
22. As noted above, in addition to the lack of clarity and agreement on the definition of what constitutes manipulative information, which reduces the effectiveness of responses, one of the key challenges that most of the OSCE participating States face today is how to address and regulate manipulative content in a way that respects human rights and fundamental freedoms and the principles of legality, necessity and proportionality. Here and below the Paper presents some of the efforts by selected number of OSCE participating States in regulating aspects to manipulative content.
23. For example, the UK Representation of the People Act 1983 brands an illegal practice making or publishing “any false statement of fact in relation to the candidate’s personal character or conduct”, in particular knowingly publishing “a false statement of a candidate’s withdrawal at

¹⁹ See the 2019 [Report](#) of the UN Secretary General.

²⁰ See the 2021 [Report](#) by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

the election for the purpose of promoting or procuring the election of another candidate.”²¹ A person making or publishing any false statement of fact may be restrained by injunction by the court from any repetition of that or a similar false statement in relation to the candidate and, for the purpose of granting an interim injunction, *prima facie* proof of the falsity of the statement shall be sufficient.²²

24. In Uzbekistan a Regulation on media use during parliamentary campaigns (Clause 15) provides that “information which is disseminated in the mass media shall be true and shall not violate the rights and legitimate interests of candidates for deputy, political parties and initiative groups of electors”. Clause 20 of the Regulation further stipulates that “editorial offices of the mass media must refrain from dissemination of false information as well as of information denigrating candidates for deputy’s honour and dignity. Candidates for deputy have the right to demand from the editorial office a retraction of false and denigrating information published in the mass media.”²³
25. Similarly, the Code of Administrative Offences of Turkmenistan (Article 69) contains a provision that established the offence of “disseminating information about a candidate known to be false” in election and pre-election processes. According to this article, dissemination of information about a candidate known to be false or other acts harming the honour and dignity of the candidate, his/her close relatives and trusted persons incur a fine of up to five times the base amount for physical persons and up to 10 times the base amount for officials.²⁴
26. In Russia, the election law authorizes the election commissions, if becoming aware about production and distribution of false printed, audio-visual and other election propaganda materials, to take appropriate measures and alert the police so as to seize unlawful election

²¹ See [Representation of the People Act 1983](#).

²² Ibid.

²³ Regulation on the Use of Mass Media by Candidates for Deputy, Political Parties, Initiative Groups of Electors during Canvassing within the Framework of Election Campaign for Elections to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan. As quoted in: Defamation and Insult Laws in the OSCE Region: [A Comparative Study](#) (Commissioned by the OSCE Representative on Freedom of the Media). March 2017. Author/Lead Researcher: Scott Griffen, Managing Editor: Barbara Trionfi, International Press Institute, p.235

²⁴ Ibid., p.240.

propaganda materials and stop unlawful election campaigning. Law enforcement shall identify the producers of such materials and the sources from which they are paid, and shall promptly inform the election commissions on the facts established and measures taken.²⁵

27. In a case related to defamation in a specific context of the election campaign, the European Court of Human Rights found a violation of Article 10 of the Convention in a criminal conviction for a false report. The report was published in 8 copies of the forged edition of the official gazette and claimed that the country's president was dead and had been substituted by a look-alike. In this case a conspiracy-theory type allegation was made of, not so much the death of the President, an easily verifiable fact, but rather of an opinion, based on hearsay, that he was replaced by a double. The complainant therein called not to vote for the wrong person at the forthcoming presidential elections. The ECtHR came to the conclusion that the domestic courts had failed to prove that the complainant was intentionally trying to deceive voters and to impede their ability to vote. It acknowledged that the national government pursued a legitimate aim of providing the voters with truthful information in the course of the presidential campaign, but dismissed the national court decision as manifestly disproportionate to the aim pursued.²⁶

B. OTHER RESPONSES

28. In response to increased public pressure following numerous controversies related to disinformation campaigns, at times leading to hostility and violence, and to avoid sanctions, several big-tech companies adopted a set of response measures. These actions open the dilemma about intermediaries' liability for user-generated content and pose a key question whether their policies can sometimes lead to the removal of lawful and legitimate content with no opportunity for redress. While it is important to note that private companies do not have the same human rights obligations as States, they should implement a human rights approach to content moderation and regulation.²⁷

²⁵ [Federal Law "On the Election of the President of the Russian Federation"](#). 10 January 2003, No. 19-FZ. Articles 55 and 56.

²⁶ See ECtHR [Judgement](#), *Salov v. Ukraine*, case no. 65518/01 from 06 September 2005.

²⁷ See the UN [Guiding Principles on Business and Human Rights](#).

29. Civil society has crucial role in empowering and informing voters and preventing the spread of manipulative content. A number of organizations monitor online content, including during election periods. Several OSCE participating States have institutionalized fact-checking networks in co-operation with journalists, civil society, big-tech companies and the academic community to identify and debunk disinformation and thus combat ‘fake-news’.²⁸

CONCLUSION

30. The development of modern technologies of communication and online media brought new important challenges to the already complex field of elections. While some of these challenges can overshadow the democratic conduct of elections, the benefits that these new technological developments are carrying to the good health of public debate and information are crucial for voters to make more informed choices and for candidates to communicate their platforms and policies.

31. Elections at times can fall short of meeting some of the international standards or political commitments or can be marred by different legal or procedural intricacies. Similarly, elections can be surrounded by various campaigns of manipulative content, either presented in traditional media or online. As it is often said there are no perfect elections and often States can do more to meet all international standards and commitments, similarly there are no elections with pure, objective and fair information campaigns only. The main dilemma, especially related to the latter issue is, what is the impact of these campaigns on the elections processes and their outcomes? - a question answers on which remain mostly uncertain.

32. States have international obligations to provide conditions for democratic elections and some OSCE participating States have attempted to regulate aspects of the Internet, including conduct and coverage of election campaigns online. However, the practice has shown that meaningful, comprehensive and the most effective responses are those pursued multilaterally through actions that recognize the transboundary nature of social networks. Moreover, holistic

²⁸ See the Council of Europe [Information Disorder Report](#) 2017, which lists some fact-checking initiatives.

approach by many actors and stakeholders, such as legislators, election management bodies, regulatory agencies, journalists and civil society organizations, is needed for tackling the multifaceted character of the online challenges.

33. OSCE participating States have the right to regulate online conduct of election campaigns and an obligation to ensure that such regulation is in line with the internationally agreed obligations, standards and principles and their political commitments.