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for Evaluation, Impact Assessment and
Related Policy Support Services in the Justice
and Consumers Policy Areas (Lot 1)

**Study to support the preparation of an
EU instrument to help increase the
resilience of our democracy in the EU
and address the threats of interference
in elections through greater
transparency in political advertising,
and other measures**

**Request for Specific Services:
JUST/2020/RCIT/FW/RIGH/0103**

**Case Study Report –
POLAND/2020 PRESIDENTIAL ELECTIONS**

16 April 2021

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1 Introduction

This case study analyses the online political advertising that took place during the Polish presidential elections in 2020. The case study covers the time period between 5 February and 10 July 2020, which are the official dates of the beginning and end of the election campaign.

In particular, the case study seeks to explore whether the present legislative measures in Poland are adequate in regulating the online advertising market, that is: if they provide for comparable standards to the ones already present in the offline world, thereby safeguarding fundamental rights and standards; and if they provide legal certainty on political advertising for all actors engaged in this activity. We also examine whether there is a need and necessity to present new regulatory tools at the European Union level.

For the purpose of this study, “online political advertising” is defined as advertising that aims to influence citizen’s choices during the elections using the services, techniques, and technologies that are available in the online sphere. This could include for instance microtargeting in social media or data mining.

In the next sections, first we provide a brief overview of the methodology of the case study, followed by a description of the context of the elections. Then, we describe the general regulatory framework under which these took place, i.e. legislation, practices and standards setting out the normative landscape on online political advertising in Poland. Following this, we identify the main actors involved in online political advertising and discuss the possible attempts of disinformation during the campaign.

2 Methodology

This is one of six case studies conducted to complete the description of the baseline and inform the policy options. The case study was developed between 26 March and 16 April 2021 and was based on the findings of previous study tasks including the literature review, legal mapping, mapping of actors and processes, and interviews with stakeholders. In particular, the case of the Polish presidential elections can provide insights on the issue of online political advertising and the need to regulate it at EU level.

The case study is based on the following sources:

- Country report and summary of findings of the legal mapping which presents relevant legislation and practices, as well as self-regulatory/co-regulatory instruments, guidelines and professional guidelines/codes that exist in Poland to date.
- Findings and bibliography from the literature review conducted during the study's inception and interim phases.
- Interviews conducted with representatives of the state institutions and non-governmental organisations.
- Additional quantitative and qualitative data collected through desk research, including from the review of online advertisement databases, such as Facebook Ad Library, or Google Ad Library.

In terms of the interviews, these included questions concerning the industry of services that supports online political advertising in Poland, the Polish legal framework, the use of micro-targeting, and the difficulties associated with the enforcement of electoral rules.

In regard to the online advertisement databases, it is worth mentioning that these tools have some limitations: they do not show what criteria were chosen in order to target prospective voters. It should also be emphasised that the case study mostly relied on advertisements labelled as political by the payer or by an advertising platform (Facebook or Google). It is difficult to trace post-factum advertisements not labelled as such or the so-called organic advertising which is not labelled as advertisement at all. This topic will be addressed in more detail later.

3 Background and the context of the elections

Poland is a semi-presidential republic with a prime minister who leads the cabinet and a president who is directly chosen in a single, country-wide constituency by majority of the valid votes. If no candidate receives the majority in the first round, a second round between the two leading candidates is organised two weeks later. The winner of the second round is determined by simple majority of the valid votes cast.

The Polish presidential elections in 2020 took place in the context of the raging COVID-19 pandemic. The unforeseeable new circumstances brought changes to the schedule of the elections and had an impact on the principle of legal certainty.¹ Initially, the presidential election was scheduled to take place on 10 May 2020, as announced by the *Marshal* (Speaker) of the *Sejm* (lower house of the Parliament) on 5 February. After the COVID-19 outbreak, the government initially tried to hold the elections on the scheduled day. In the amendment to the Election Code that was passed on 27 March, the *Sejm* voted on extending postal voting rights to citizens over the age of 60 as well as those under quarantine. Later, a second amendment was introduced which would allow for the elections to be held exclusively by post. These changes were heavily criticised by the opposition, as well as by *Porozumienie*, one of the junior partners of the Law and Justice in the United Right coalition. On 7 May, the National Electoral Commission, the body responsible for organising the elections, issued a statement informing that the voting on 10 May would not take place. The National Electoral Commission issued a second statement on 10 May in which it declared that the inability to vote for candidates was tantamount to a situation where there were no candidates, therefore, it would be up to the *Marshal* of the *Sejm* to call new elections. A new law governing the presidential election was adopted on 2 June. The next day, the *Marshal* of the *Sejm* set the new election date for 28 June.²

The main candidates and results of the election were as follows:

- Andrzej Duda, the incumbent president, supported by the Law and Justice, won the first round and then defeated Rafał Trzaskowski in the runoff with 51.03% of the vote.
- Rafał Trzaskowski, the current mayor of Warsaw, supported by the centre-right Civic Platform, the main opposition party, lost to the incumbent Andrzej Duda in the second round receiving 48.97% of the vote.
- Małgorzata Kidawa-Błońska, the first candidate of the Civic Platform, resigned her candidacy in favour of Rafał Trzaskowski.
- Szymon Hołownia, journalist and television personality ran as an independent candidate and received 13.9% of total votes, coming out third in the first round.
- Krzysztof Bosak, the candidate of the far right-wing Confederacy, received 6.78% of total votes.

¹ Organization for Security and Cooperation in Europe. (2020). *Republic of Poland presidential election on 28 June and 12 July. 2020 ODIHR Special Election Assessment Mission Final Report*. Available at: <https://www.osce.org/files/f/documents/6/2/464601.pdf>.

² Flis, J., & Ciszewski, W. (2020). Nieudane samobójstwo polityczne – ustawa o powszechnym głosowaniu korespondencyjnym w wyborach prezydenckich 2020. *Studia Socjologiczno-Polityczne. Seria Nowa*, 12(1), 99–120.

- Władysław Kosiniak-Kamysz, the candidate of the centre-right Polish People's Party, received 2.36% of total votes.
- Robert Biedroń, the candidate of the left-wing Left Party, received 2.22% of total votes.

4 Regulatory framework

4.1 Political advertising rules during election campaign

The term “political advertising” does not appear in the Polish legislation. Activities close to the notion of political advertising are governed by the Election Code, the Broadcasting Act, and the Press Law. In addition, the Act on political parties lays down rules on the financing of political parties. The Election Code provides rules relevant to political advertising in the context of elections. It contains several references to the Broadcasting Act (e.g., according to Article 119 par. 5 of the Election Code provisions on advertisements from the Broadcasting Act shall apply in the case of paid election broadcasts), and the Press law (e.g., the editor - within the meaning of the Press Law – is responsible for indicating the source of the election materials and who financed it).

Hence, there are no specific or separate pieces of legislation or other regulations governing online political advertising. Rules laid down in the legal acts listed above apply to both traditional and online political advertising. There is no official draft legislation relevant to political advertising and/or online political advertising. Regarding the processing of personal data, rules laid down in the General Data Protection Regulation (e.g., the legal basis for the processing of personal data, rights of data subjects etc.) and the Act on the protection of personal data are applicable. The Election Code lays down rules on the processing of personal data by election committees.

Similarly, there are no particular rules applicable to online platforms or intermediaries during election campaigns. General rules governing the online platform and intermediaries laid down in the Act on electronic services, the General Data Protection Regulation, the Act on the protection of personal data apply.

The election campaign starts on the day of the announcement of the election day and finishes 24 hours before the day of the elections (Art. 104, Election Code).

4.2 Political advertising rules during elections period

Polish law does not define “elections period”. The election day and the day preceding it are referred to as the “election silence” period. During this period, agitation of the election is prohibited. Any violation of the election silence is penalized under Art. 498 of the Election Code. According to this provision, whoever carries out political agitation during the election silence period is subject to a fine of up to 5,000 PLN. According to a statement published by the National Electoral Commission election silence applies also to the Internet. Hence, no political advertising on online media is permitted during the election silence period either.

However, the feasibility of enforcing election silence online is debatable. The applicability of rules on election silence online and on actors registered abroad is contentious. In general, it is agreed that election silence applies on the Polish territory only. Based on an interpretation presented in the academic literature, it could potentially apply to entities registered abroad, if these entities wilfully sent materials and electioneered using information systems located in Polish territory. However, there is yet no case law on this situation.

4.3 Political advertising rules outside of elections period

Relevant rules on advertising are laid down in the Broadcasting Act and in the Press Law. Paid political advertising is not prohibited in Poland. General rules applicable to all advertisements are relevant. The Broadcasting Act prohibits, however, political parties from sponsoring programmes or other broadcasts.

All advertisements published in the press must be clearly distinguished from editorial materials, and all advertisements on the radio or television have to be easily recognisable as advertisements.

There are no specific or separate rules on financing of political parties in relation to political advertisements. General rules on financing of political parties apply.

4.4 Monitoring and enforcement of national rules on political advertising by national authorities

There are no specific national rules on the monitoring of political advertising. In general, the National Electoral Commission oversees compliance with the Election Code (art. 160 par. 1 point 1).

However, there are some specific rules relating to “false information”, fake news” or “disinformation campaigns” during election campaigns. If election materials contain untrue information (understood as false information in general), the candidate or a representative of the relevant election committee has the right to submit a motion to the district court for a ruling and demand:

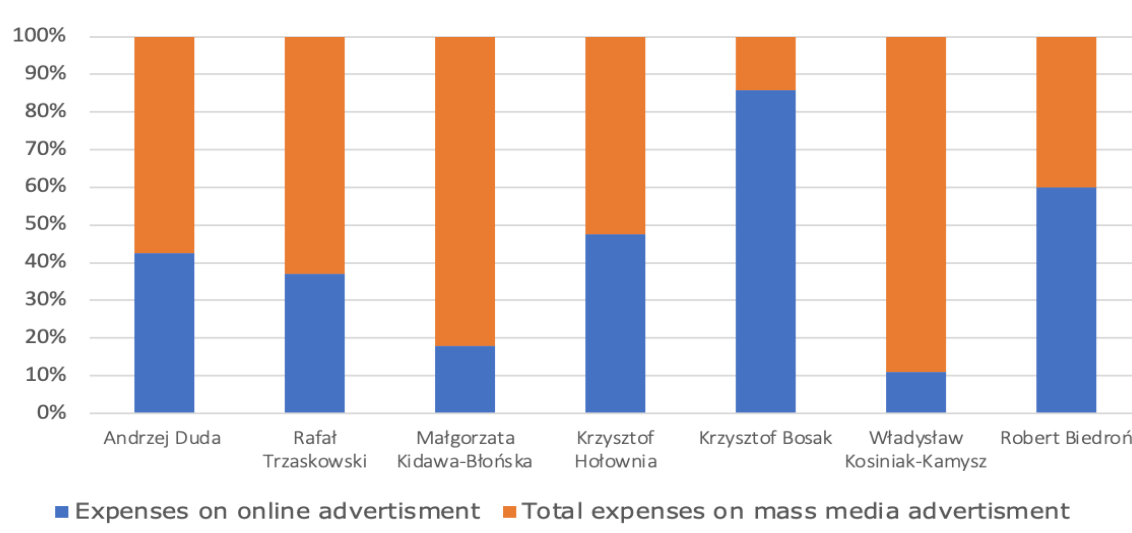
- prohibition of disseminating such information;
- forfeiture of election materials containing such information;
- ordering a rectification of such information;
- ordering publication of responses to statements that violate personal rights;
- ordering an apology to the person whose personal rights have been violated;
- ordering payment of an amount of up to PLN 100,000 to a public benefit organisation.

The district court recognises the application within 24 hours in non-contentious proceedings. The decision of the court may be appealed within 24 hours to the court of appeal, which recognises it within 24 hours. The decision of the court of appeal is not subject to a cassation appeal and is immediately enforceable. A correction, reply or apology should be published not later than 48 hours at the expense of the defendant.

5 The campaign and the existing data

The Polish presidential elections in 2020 confirm the increasing role of the Internet – in general – and social media – in particular – in the distribution and diffusion of political advertising during electoral campaigns. As elsewhere, the Polish political parties and groups are aware of the benefits brought up by the rapid development of social media: the ability to address a voter with a personal message and increase the mobilisation of one's supporters. The COVID-19 pandemic merely exacerbated this movement of political advertising towards the online sphere. The restrictions that were in place during the campaign period before the initial date of the elections (March 26 – May 10) severely limited the presidential candidates' ability to conduct a campaign in a traditional manner, thus putting even greater emphasis on the utilisation of social media. Even when the restrictions were eased, social media remained an important – for some of the candidates even the sole – communication channel.³

Figure 1: Money spent on online advertisement by electoral committees as a percentage of total expenses on mass media advertisement



Source: The National Electoral Commission

Consequently, compared to previous elections, the electoral committees allocated a considerably higher percentage of their resources to political advertisement in the Internet (see Figure 1). For instance, the electoral committee of Andrzej Duda spent a total of 9,856,963.86 PLN (c. 2,140,000 €) on the campaign in the mass media, of which 43% (4,194,490.85 PLN - c. 900,000 €) were on online advertisement. The rest was spent on television advertising (2,537,805.12 PLN - c. 550,000 €), on renting posters and billboards (2,720,568.66 PLN - c. 590,000 €), on advertisements in newspapers or magazines (242,126.19 PLN - c. 50,000 €), and on radio advertisements (161,973.04 PLN - c. 35,000 €).⁴ When it comes to the electoral committee of Rafał Trzaskowski, it allocated 4,327,489.97 PLN (c. 940,000 €) to mass media advertising,

³ Fundacja Odpowiedzialna Polityka. (2021). *Polish 2020 Presidential Election(s) Campaign Amid the COVID-19 Pandemic. Social Media Monitoring Final report*. Available at: http://odpowiedzialnapolityka.pl/wp-content/uploads/2021/01/Polish-2020-Presidential-Election_final_final.pdf.

⁴ Państwowa Komisja Wyborcza. (2020). *Sprawozdanie Finansowe. Komitet wyborczy kandydata na prezydenta Rzeczypospolitej Polskiej Andrzeja Dudy*. Available at: https://pkw.gov.pl/uploaded_files/1606169619_07-kw-kandydata-na-prezydenta-rp-andrzeja-dudy.pdf.

of which 37% (1,599,232.10 PLN - c. 350,000 €) went to online advertising. Considerable sums were also invested in television advertising (1,083,581.42 PLN - c. 235,000 €) and renting posters and billboards (1,644,676.45 PLN - c. 360,000 €).⁵ The electoral committee of Małgorzata Kidawa-Błońska, Civic Platform first candidate, paid 1,549,546.44 PLN (c. 340,000 €) for advertising of which 18% (278,179.18 PLN - c. 60,000 €) was spent on advertising on the Internet. Her committee also bought advertisements in television (1,261,923.43 PLN - c. 270,000 €) and rented posters and billboards (9,443.83 PLN - c. 2,000 €).⁶ The electoral committee of Krzysztof Hołownia's expenses on advertisements in mass media amounted to 1,335,507.42 PLN (c. 290,000 €) of which almost the half – 48% (636,606.32 PLN - 140,000 €) – was used for advertising on the Internet. The remained was allocated to television advertising (1,107 PLN - c. 240 €), renting posters and billboards (240,586 PLN - c. 53,000 €), advertisements in newspapers or magazines (31,795.99 PLN - c. 7,000 €), and radio advertisements (425,412.11 PLN - c. 95,000 €).⁷

In comparison, in the 2015 presidential elections, Andrzej Duda and Bronisław Komorowski, the two main contenders back then, spent roughly 10% of the money allocated to mass media advertising on online advertisements.⁸ Furthermore, it is also worth noticing that non-mainstream candidates (Krzysztof Hołownia) and more radical candidates (Krzysztof Bosak, Robert Biedroń) rely more heavily on political advertising on the Internet. This may be partly explained by their belief that their electoral base lies principally among younger, technologically-savvy, voters (which proved to be correct in the cases of Krzysztof Bosak and Krzysztof Hołownia)⁹; and partly by the weakness of their organisational structures – in comparison to the larger and more established parties – which limit their ability to conduct the campaign on the ground.

Moreover, even though the Polish diaspora has grown in numbers with hundreds of thousand people living now outside of Poland (most notably in the U.S., the UK, and Germany), the money spent on political advertisements seems to have been used mainly in the Polish market. However, according to data from the Goggle Transparency Report of advertisements, there were 234 small, banner-type-ads from candidate Andrzej Duda targeting Poland and other countries at the same time. Over a quarter of these ads were targeted at Poland and Germany (61 ads). Adding to this, a total of 26 ads were targeted at France, 17 at Croatia, 16 at Spain, 16 at the Netherlands, 14 at Czechia, 12 at Slovakia, 10 at the UK, 8 at Lithuania, 7 at Greece, 7 at Italy, 6 at Belgium, 6 at Romania, 6 at Sweden, 5 at Ireland, 4 at Portugal, 4 at Denmark, 3 at Hungary, 2 at Bulgaria, 2 at Austria, 1 at Finland, and 1 at Luxembourg). It should be noted that one single advertisement was usually targeted at a few different countries,

⁵ Państwowa Komisja Wyborcza. (2020). *Sprawozdanie Finansowe. Komitet Wyborczy kandydata na prezydenta Rzeczypospolitej Polskiej Rafała Trzaskowskiego*. Available at: https://pkw.gov.pl/uploaded_files/1606228161_27-kw-kandydata-na-prezydenta-rp-rafala-trzaskowskiego.pdf.

⁶ Państwowa Komisja Wyborcza. (2020). *Sprawozdanie Finansowe. Komitet Wyborczy kandydata na prezydenta Rzeczypospolitej Polskiej Małgorzaty Kidawy-Błońskiej*. Available at: https://pkw.gov.pl/uploaded_files/1606207545_11-kw-kandydata-na-prezydenta-rp-malgorzaty-kidawy-blonskiej.pdf.

⁷ Państwowa Komisja Wyborcza. (2020). *Sprawozdanie Finansowe. Komitet Wyborczy kandydata na prezydenta Rzeczypospolitej Polskiej Krzysztofa Hołowni*. Available at: https://pkw.gov.pl/uploaded_files/1606213813_09-kw-kandydata-na-prezydenta-rp-szymona-holowni.pdf.

⁸ Państwowa Komisja Wyborcza. (2015). *Sprawozdanie Finansowe. Komitet Wyborczy kandydata na prezydenta Rzeczypospolitej Polskiej Andrzeja Dudy*. Available at: https://pkw.gov.pl/oldpagesrepo/pliki_mce/useruploads0/files/91b087a7608bd7ade3801992d3b4f486.pdf;

Państwowa Komisja Wyborcza. (2015). *Sprawozdanie Finansowe. Komitet Wyborczy kandydata na prezydenta Rzeczypospolitej Polskiej Bronisława Komorowskiego*. Available at: https://pkw.gov.pl/oldpagesrepo/pliki_mce/useruploads0/files/6a4c1e7fdf4e29ce83785d6138eb14e5.pdf.

⁹ Tok FM. (2020). *Gdyby prezydenta wybierali Polacy w wieku 18-29, w II turze byłby Trzaskowski i Bosak*. Available at: <https://www.tokfm.pl/Tokfm/7,117303,26080494,exit-poll-gdyby-prezydenta-wybiali-polacy-w-wieku-18-29.html>.

so the total number of unique advertisements is smaller (193 ads of the 10,918 ads bought by Andrzej Duda's electoral committees on Google during the election campaign - see Figure 2). However, the Google Transparency Report provides no data on the number of people that were able to see those advertisements outside of Poland and therefore it is difficult to assess the magnitude of their reach. There is also no evidence on Facebook advertisements targeting foreign countries. Thus, the existing data does not show any far-reaching efforts on the part of electoral committees to buy political advertisements aimed at Poles residing in the foreign countries, except for the examples we presented before. This may be explained by the very unfavourable conditions for campaigning and organising elections abroad created by the COVID-19 pandemic. It was often the case that the lockdown and other measures implemented by the local authorities would severely limit the operation of the Polish consular service (which is tasked with organising elections abroad), hence the only available form of voting for Poles residing abroad would be by post. The candidates did not travel abroad to conduct the campaign, the only exception being a short visit of Andrzej Duda to the U.S. for the purpose of meeting with president Donald Trump. This visit, however, was arguably of greater significance at home: the main topic of discussion were American security guarantees to Poland.

It is worth noting that the numbers shown in Figure 1 might not be showing the entirety of expenses that the electoral committees spent on online advertisement. The consulted experts claimed that the electoral committees would often opt for contracting professional public relations companies that would be tasked with preparing and running the campaign themselves. In such situation, the money paid by an electoral committee to a public relations company (which would not be reflected in the budget line corresponding to "mass media advertisement") would also be used to buy advertisements in the Internet. This practise is impossible to trace in exact numbers, as the electoral committees are only required to present before the National Electoral Commission an invoice and a contract signed with a public relations company which, most of the time, does not detail how the money is supposed to be used exactly. Current regulations do not guarantee enough transparency in this area.

This should be of special concern because of the way in which most of electoral committees fund their campaigns. The Polish laws stipulates that the electoral committees may raise funds by three means only. First, they may rely on contributions made by Polish citizens with permanent residence in Poland. Contributions to the electoral committees cannot be made by citizens of other countries nor by Polish citizens permanently residing outside of Poland, or legal persons, i.e. corporations and organisations. Second, they may take bank loans for election purposes. Third, and the most important, is by using electoral funds of political parties, that is funds in possession of parties that support a candidate (Election Code, art. 125-151). During the presidential campaign, the funds of the electoral committees of Andrzej Duda and Civic Platform candidates consisted almost solely of contributions of political parties. However, the Polish law puts severe restrictions on how the political parties may fund their activities, hence they are mostly dependent on public subsidies. This is why the funds used by many electoral committees are by extension public money. For this reason, it is of outmost important to ensure transparency in how electoral committees spend their money during campaigns.

Concerning the public relations companies present in the market, some of the most prominent ones are: Apostołowie Opinii, City Board Media, Dyna Consulting, Hubspot Solutions, Overs Sp. z o.o., Social Time, Wenecja Sp. z o.o. It is a characteristic feature of the Polish political advertisement market that most of the companies are neither big

corporations, nor Warsaw based, but rather small, local companies. They are usually contracted based on the longstanding relationships and personal connections with the political parties and groups. Before the emergence of social media, they would be preparing posters and other marketing materials; nowadays they have also taken up new forms of political advertising. As it was mentioned earlier, electoral committees are more eager these days to completely outsource the marketing part: from devising a strategy and creating marketing materials to implementing it. The consulted experts predict that the role of public relations companies will only increase in the future electoral campaigns.

A recent article on Andrzej Duda's campaign published by Oko.Press, an investigative journalism website, confirmed this picture while revealing some new concerning facts.¹⁰ The article talks about one of the companies that worked for Andrzej Duda's electoral committee, called hyperCREW. It is a recently-established and rather small company which was contracted due to personal connections of one of its owners with the Law and Justice politicians. However, the article claims that the company may have received a substantial subsidy (1 mln PLN) from a venture capital company (Czysta3.vc) that itself received a grant of 40 mln PLN from a public agency that supports innovative research. It is yet unknown whether the said subsidy was in fact made up of public money and whether it was received after hyperCREW signed a contract with the electoral committee of Andrzej Duda.

Adding to this, an important part in the distribution of political advertisements, although often overlooked, is played by entities not directly affiliated to the electoral committees. Thanks to the Facebook Ad Library, we identified a number of NGOs that would pay for the promotion of election-related content with very clear political preferences or messages. For instance, *Akcja Demokracja* (Democracy Action), an NGO advocating for the rule of law, posted a series of political advertisements that discouraged to vote for Andrzej Duda. Furthermore, there were political advertisements placed by entities which claimed that their goal was to support the high turnout during the elections. However, they were encouraging a specific group of voters to participate in the elections. One of these entities, called *Jak Głosować* (How to vote), tried to reach to young women with posts that provided information on how to register to vote in a local polling station. But the posts were accompanied by illustrations that were not politically neutral.

Last, traditional media also played a role in political advertising during the campaign. *Tygodnik Solidarność* (Solidarity Weekly), a right-wing weekly newspaper, paid for a few posts during the campaign that would attack Rafał Trzaskowski and support Andrzej Duda. *Gazeta Wyborcza* (Electoral Gazette), the biggest opposition newspaper, sponsored articles that emphasised Rafał Trzaskowski's chances for winning, just before the first round of the elections.

¹⁰ Klauziński, S., Szczygieł, K., & Harłukowicz, J. (2021). *Operacja '1% głosów dla Andrzeja'. Kto pomógł Dudzie wygrać w 2020?* OKO.Press., Available at: <https://oko.press/duda-kampania-2020-psychotargetowanie/>

6 Measures to address the disinformation and regulate political advertising

Available data give little evidence of any far-reaching campaign of disinformation with the use of online political advertising during the presidential elections. There is no evidence either on the use of microtargeting in Poland. According to the consulted experts, electoral committees did not use advanced forms of microtargeting to reach their prospective voters. Most often they would rely on the very basic segmentation categories such as gender, age, and geographical area, although Facebook allows for more complex combinations or features that could be applied for the purpose of political advertising. For instance, the committee of Andrzej Duda would post advertisements on Facebook tailored for local constituencies: each of them would show a photo of Andrzej Duda taken during his visit to a given constituency. It is difficult to say whether this is due to a conscious choice on the part of the Polish politicians, or to limitations of public relations companies that usually prepare online political advertisements to use and take advantage of more complex targeting. Furthermore, there is no evidence of any attempts by foreign actors to influence the Polish elections. A social media monitoring report prepared by one NGOs speaks of very low activity of *Sputnik* and similar kind entities with clear links to foreign governments during the presidential campaign.¹¹

The candidates themselves were mostly satisfied with running a non-negative campaign. There were no significant examples of hate speech or black PR, at least on Facebook. The posts of candidates were predominantly neutral in tone, with a low share of negative messages. This was especially the case during the run-off before the second round of the elections, where both Andrzej Duda and Rafał Trzaskowski were pursuing a very positive campaign. Nevertheless, there were still some examples of negative advertisements. The most successful one in the number of likes and views was a post of Andrzej Duda on Facebook. It portrayed Rafał Trzaskowski as a Mario-like character unable to fix a sewage problem (there was a huge sewage system breakdown a year before in Warsaw).¹²

According to the consulted experts, there are however no means available for tracing the so-called organic advertising, which is distributed – free or not free of charge – by the users themselves. Organic advertising allows to reach and, possibly, influence people's behaviour without them being aware that they are being targeted with a political message. The possible distributors here include celebrities, influencers, Facebook Fan Pages with a large following, but otherwise anonymous content-creator. Organic advertising is also connected to another method of manipulation: through creation and usage of fake accounts in social media. Past research indicates that Polish PR companies are capable of generating and maintaining a vast network of fake accounts, each with individualised personality and history. They may be put into action in order to bring about the so-called bandwagon effect, thus swaying the public in the desired direction.¹³ However, there is no data on such activity during the presidential

¹¹ Fundacja Odpowiedzialna Polityka. (2021). *Polish 2020 Presidential Election(s) Campaign Amid the COVID-19 Pandemic. Social Media Monitoring Final report*. Available at: http://odpowiedzialnapolityka.pl/wp-content/uploads/2021/01/Polish-2020-Presidential-Election_final_final.pdf, p. 11, 25.

¹² Ibidem.

¹³ Gorwa, R. (2018). Poland: Unpacking the Ecosystem of Social Media Manipulation. In *Computational Propaganda Section: Computational Propaganda* (pp. 86–103). Oxford University Press.

elections in 2020.

Hence, while the presidential campaign in 2020 took place without any clear evidence of disinformation, the question remains whether the Polish regulatory framework would be adequate to fight against such an attempt in the future. Already in 2018, the National Electoral Commission voiced its concerns that it might not be the case¹⁴. The institution called for the revision of the principles of conducting and financing election campaigns, which, as was declared, are not adequate in regulating the new forms of election campaigning.

It is possible to identify a few issues related to the Polish electoral framework that increase the possibility of disinformation. First, there is an issue of defining the permissible standards of conduct for electoral committees. The Electoral Code allows for two forms of influencing the behaviour of voters, both under scrutiny of public institutions: "electoral agitation" (Electoral Code, art. 105 §1), and "electoral material" (Electoral Code, art. 109 § 1). The terms are defined by emphasising their "public" character: "electoral agitation" is to "publicly persuade or encourage people to vote in a certain way", "electoral material" is "any publicised and recorded communication from an electoral committee relating to the elections". It is difficult to apply these definitions in the online context where the electoral committees may be aiming to target people individually (through microtargeting, or even by e-mail and messaging) or by switching their efforts to target closed groups (on Facebook or in other social media).¹⁵

Second, there is a question of electoral committee's responsibility for the distribution of false information. Currently, the only way of protecting the access to truthful information is dependent on the individual initiative of an interested entity (a candidate or his/her plenipotentiary) to initiate the proceedings before the court in accordance with the art. 111 of the Election Code. However, it may be very unlikely that the court action would be successful in the event of a more refined online disinformation. This remedy is dependent on the identification of a specific "electoral material" as coming from a given electoral committee. If an "electoral material" is unmarked, for example it was posted by an anonymous bot, then the court action is not permissible, even if it may be undisputedly linked to a specific electoral committee. The Election Code provides for a sanction against lack of electoral committee's markings on election material that is to be pursued by public authorities (art. 496 of the Election Code), however this too requires constant monitoring.¹⁶

Which brings up the third deficiency, namely lack of such capabilities by the public institutions. The National Electoral Commission, which is tasked with overseeing compliance with electoral law, does not have the means to monitor and supervise the election campaign online. The reality of online electoral campaign call for a new mechanism of detecting and signalling to the appropriate authorities any breach of art. 496 of the Election Code through the use of unmarked electoral materials. The National Electoral Commission would need to have its mandate extended, but also be adequately equipped financially and organizationally to cope with this new possible task. Only that way will it be able control the already high number of online advertisements on major

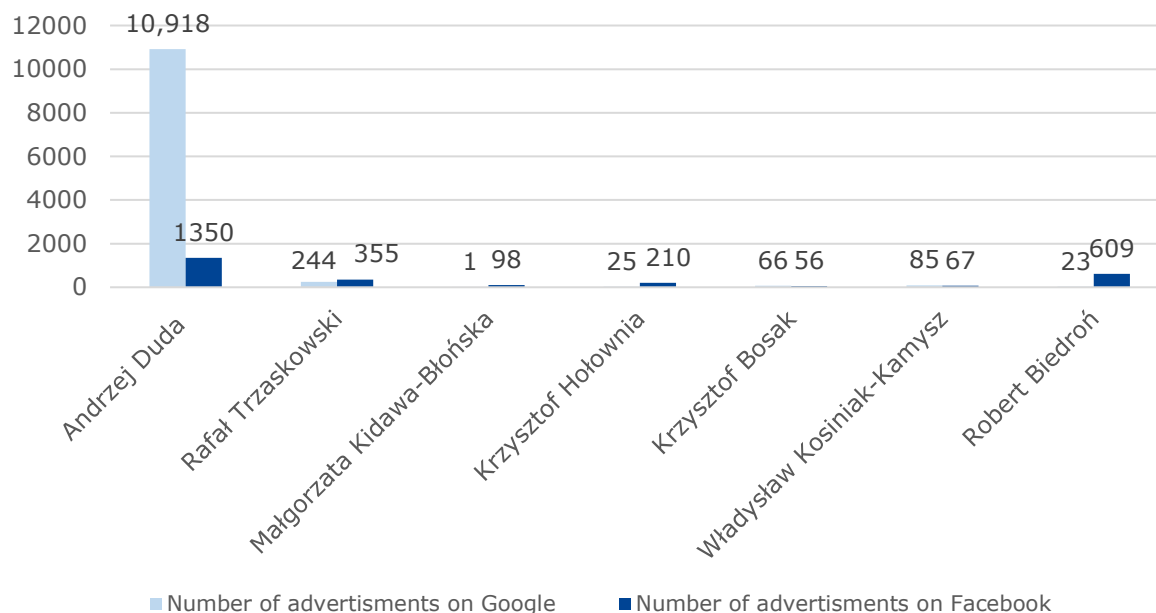
¹⁴ Państwowa Komisja Wyborcza. (2018). *Stanowisko ZKF-811-50/18*. Available at: <https://pkw.gov.pl/aktualnosci/wyjasnienia-stanowiska-komunikaty/stanowisko-panstwowej-komisji-wyborczej-z-dnia-26-wrzesnia-2018-r-w-sprawie-zasad-prowadzenia-i-finansowania-kampanii-wyborczej-w-internecie>.

¹⁵ Bernaczyk, M. (2020). Polski Kodeks wyborczy wobec manipulacji i innych form propagandy obliczeniowej. In M. Bernaczyk, T. Gąsior, J. Misiuna, & M. Serowaniec (Eds.), *Znaczenie nowych technologii dla jakości systemu politycznego: Ujęcie politologiczne, prawne i socjologiczne* (pp. 41–92). Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika.

¹⁶ Ibidem.

platforms (see Figure 2), but also be able to trace those which are not directly affiliated with the electoral committees.

Figure 2: Political advertisements of electoral committees bought on Facebook and Google during the election campaign (5 February and 10 July 2020)



Source: Facebook Ad Library and Google Ad Library

The fourth issue is the revised Election Code (2018) that extended the right to conduct electoral agitation to all citizens (art. 160 of Election Code). Before the change, the electoral agitation could be conducted by electoral committees and by citizens, provided that they were granted a permission by an electoral committee. They were recognised as working on behalf of an electoral committee; hence their activity would be scrutinised similarly to an electoral committee. The new wording of the provision created a new 'grey zone' where the activity of such individuals remains mostly unsupervised. They are not subject to most of the provisions of the Election Code and may use their own funds in any way they see fit. This creates room for wealthy individuals to support their preferred political options beyond the limits of money donations, as it is regulated by the law. They could conduct a political campaign without a fear of litigation based on the art. 111 of the Election Code, thus employing any possible form of disinformation.¹⁷

The last and final issue refers to yet another recent change in the Election Code which significantly broadened the catalogue of non-monetary benefits which can be accepted by an election committee (art. 132 § 5 of the Election Code). This calls into question the effectiveness of the expenditure limits set for election committees or limits on donations made by individual voters. Consequently, electoral campaign may increasingly be conducted outside of an electoral committee by entities not directly affiliated with it. It is not inconceivable that this non-monetary benefit could take a form of an organic advertisement.¹⁸

¹⁷ Gąsior, T. (2020). Możliwość kontroli finansowania kampanii wyborczej i działalności promocyjnej partii w dobie nowych technologii na podstawie regulacji Kodeksu wyborczego i ustawy o partiach politycznych. In M. Bernaczyk, T. Gąsior, J. Misiuna, & M. Serowaniec (Eds.), *Znaczenie nowych technologii dla jakości systemu politycznego: Ujęcie politologiczne, prawne i socjologiczne* (pp. 93–128). Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika.

¹⁸ Ibidem.

7 Conclusions

To conclude, we have identified some key findings of the research conducted in this case study, as follows:

- **No large-scale disinformation campaigns.** The Polish presidential elections in 2020 did not experience any attempts of major scale disinformation campaigns by foreign or domestic actors. The use of microtargeting techniques was equally rather small. However, this conclusion is very much based on the available data which is limited and not fully comprehensive, especially in terms of how much election committees spend on online political advertising and in which ways they use that money.
- **Growing importance of online political advertisement.** The 2020 elections are a testament of the increasing emphasis that election committees put on online advertising, which was only exacerbated by the COVID-19 pandemic. This is evident in the share of the funds that go to online advertising at the expense of other mass media, which grew from 10% in 2015 to circa 40% in 2020 for the two main candidates.
- **PR companies with more responsibilities.** Election committees are more willing to cede on professional PR companies all tasks associated with preparing an advertising campaign: from devising a strategy, to creating materials and putting them online. The typical profile of a company is a small, non-Warsaw based one that relies on longstanding contacts with a specific political party.
- **Participation of actors other than electoral committees in the election campaign.** Political advertisements were not only bought by electoral committees. It was possible to identify other actors (third parties) who engaged in the electoral campaign: NGOs, Facebook Fan Pages, but also traditional media. Their activities are presently not regulated.
- **Outdated legal framework.** The Polish election law does not address the challenges brought by the new ways of political campaigning. Not only it does not distinguish online political advertising from other means of mass media advertising, but it also provides for lack of financial transparency and inadequate mechanisms of executing responsibility for false electoral materials. The National Electoral Commission has no adequate competences and resources to fully execute its mandate. The present regulations will not shield the fairness of the elections process in the event of a large-scale disinformation campaign.
- **Need for new regulations on the EU level.** Consulted experts frequently emphasized the need to create new legislation regulating the political advertising market on the EU level. The steps that Internet platforms (Facebook, Google) took of their own volition in the recent years, such as the creation of ad libraries, are encouraging, but not sufficient. It is essential that:
 - **online platforms should ensure transparency of decisions** made by all actors in the targeting process, i.e. the advertiser (both in terms of selection of the audience and determination of the campaign strategy, including what was it optimised for), as well as methods and parameters used by the platform in the optimisation process;

- for decisions made by the advertisers, public disclosures should include an **equivalent level of information as it is offered to the actual ad buyer** when commissioning the campaign (e.g. actual audience demographics, location and other targeting criteria);
- Users should have access to all ads that have been targeted at them, as well as to all advertisers who targeted them in a defined period (e.g. in the last five years);
- Users should also be provided with **real-time information explaining the logic behind targeting (“why am I seeing this ad”)**;
- With regard to Facebook’s role, public disclosures should **explain the prediction model** used to achieve the optimisation goal.

Annex 1 Case study interviews

- Krzysztof Izdebski, Programme Director, ePaństwo Foundation (Date of the interview: 8/04/2021)
- Representative of the National Electoral Commission (Date of the interview: 13/04/2021)

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