

MARTIN FERTMANN AND MATTHIAS C. KETTEMANN (EDS.)

# **Can Platforms Cancel Politicians?**

How States and Platforms Deal with Private Power over Public and Political Actors: an Exploratory Study of 15 Countries



„All human beings are born free and equal in dignity and rights.“

Art. 1, sentence 1, Universal Declaration of Human Rights (1948),

# Can Platforms Cancel Politicians?

## How States and Platforms Deal with Private Power over Public and Political Actors: an Exploratory Study of 15 Countries

**edited by Martin Fertmann and Matthias C. Kettemann**

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# Executive Summary

- Terms-of-service based actions against political and state actors as both key subjects and objects of political opinion formation have become a focal point of the ongoing debates over who should set and enforce the rules for speech on online platforms.
- With minor differences depending on national contexts, state regulation of platforms creating obligations to disseminate such actors' information is considered dangerous for the free and unhindered discursive process that leads to the formation of public opinions.
- Reactions to the suspension of Trump as not the first, but the most widely discussed action of platform companies against a politician (and incumbent president) provide a glimpse on the state of platform governance debates across participating countries.
- Across the countries surveyed politicians tend to see the exercise of content moderation policies of large platform companies very critically
- The majority of politicians in European countries seem to be critical of the deplatforming of Trump, emphasizing fundamental rights and calling for such decisions to be made by states, not private companies
- These political standpoints stand in an unresolved conflict with the constitutional realities of participating countries, where incumbents usually cannot invoke fundamental rights when acting in their official capacities and where laws with “must carry” requirements for official information do not exist for social media and would likely only be constitutional for narrowly defined, special circumstances such as disaster prevention.
- Facebooks' referral of the Trump-decision to its Oversight Board sparked a larger debate about institutional structures for improving content governance. The majority of participating countries has experience with self- or co-regulatory press-, media- or broadcasting councils to which comparisons can be drawn, foreshadowing the possible (co-regulatory) future of governing online speech.
- Media commentators in participating countries interpreted the deplatforming of Trump as a signal that far-right parties and politicians around the world may face increasing scrutiny, while conservative politicians and governments in multiple participating countries instrumentalized the actions against Trump as supposed proof of platform's bias against conservative opinions.
- Even without specific legal requirements on content moderation, submissions from several countries refer to a general – often: constitutional – privileging of speech of politicians and office holders. This could potentially support or even compel the decisions of platforms to leave content of political actors up even if it violates their terms of service.

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# European States and Platform Power

## What a Study of 15 European States Reveals about the Challenges of Governing Online Political Speech

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### Introduction

In January, a great "deplatforming" took place: from January 6 onwards, Internet platforms like Twitter,<sup>1</sup> Facebook and Instagram,<sup>2</sup> YouTube<sup>3</sup>, Twitch<sup>4</sup> and Snapchat<sup>5</sup> removed the accounts and channels of Donald Trump and his supporters. But it wasn't just the top layer of the Internet – the platforms – that took action. Financial service providers such as Paypal, Venmo, GoFundMe and Stripe also kicked out Trump and his political supporters.<sup>6</sup> The Conservative Facebook clone Parler was pushed out of Apple and Google's app stores<sup>7</sup> and its data out of the cloud of Amazon's profitable data storage division. The reasoning in the latter case: Parler did not have sufficient internal rules against hate speech. Email service providers and even dating apps took similar action.

2021 thus began with an important realization: platforms can intervene (and remove content and users) very effectively if they want to. Even during the U.S. election campaign, they limited algorithmic recommendations, banned political ads, demonetized and deamplified problematic content. In general: 2020 was the year in which platforms (re)discovered that the fight against disinformation, especially in the context of the fight against Corona, also appeals to politicians and customers.

But if politicians themselves are at the core of the problem? Are platforms allowed to remove them? And what about political parties? If platforms should be allowed to act at least in certain circumstances, how

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<sup>1</sup> Twitter, [https://blog.twitter.com/en\\_us/topics/company/2020/suspension.html](https://blog.twitter.com/en_us/topics/company/2020/suspension.html).

<sup>2</sup> See Zuckerberg, <https://www.facebook.com/zuck/posts/10112681480907401>.

<sup>3</sup> <https://edition.cnn.com/2021/01/12/tech/youtube-trump-suspension/index.html>.

<sup>4</sup> Heater/Hatmaker: "Twitch disables Trump's channel until the end of his term to 'minimize harm' during transition", <https://techcrunch.com/2021/01/07/twitch-disables-trumps-channel-over-incendiary-rhetoric/>.

<sup>5</sup> Shu, "Snapchat locks President Donald Trump's account", <https://techcrunch.com/2021/01/06/snapchat-locks-president-donald-trumps-account/>.

<sup>6</sup> Ray, "Stripe Joins Shopify, GoFundMe And Other Businesses In Cutting Ties With Trump Campaign", <https://www.forbes.com/sites/siladityaray/2021/01/11/stripe-joins-shopify-gofundme-and-other-businesses-in-cutting-ties-with-trump-campaign/?sh=52921723362f>.

<sup>7</sup> Peters/Lyons: "Apple removes Parler from the App Store" <https://www.theverge.com/2021/1/9/22221730/apple-removes-suspends-bans-parler-app-store>.

exactly should these decisions be made within them in terms of deciders, processes, justifications and opportunities to appeal?

## The study

Across the world, societies continue to negotiate who the *least-worst* actor to control speech on the internet is, states or private platforms. The question of how to reign in harmful speech by government agencies or public office holders shines a light on the downsides of both approaches. State involvement in how official information is or is not disseminated by private actors is not only met with scepticism, but also subject to significant constitutional constraints in many countries. Vice-versa, the increase of platforms' power over societal discourses that comes with them restricting democratically elected officeholders or determining the rules for political campaigns based on private terms of service is similarly hard to accept.

However, this Groundhog Day-esque discourse loop seems ready to be overcome through proposed new, hybrid actors such as independent "Social Media Councils".<sup>8</sup> Such institutions would be neither constructed exclusively from companies' nor from states' point of view but instead combine elements of external societal input with a degree of independence from both – states and companies.<sup>9</sup>

The Facebook Oversight Board constitutes a first practical shot at creating such a structure and its decision<sup>10</sup> on the question whether Trump should be allowed back was therefore unsurprisingly highly anticipated. In the end, the Oversight Board provided guidelines to re-examine the Trump ban, clarify their rules and the associated sanctions and to investigate what impact the company's own recommendation algorithms and user design had on the increased polarization of the American public and the storming of the U.S. Capitol on 6 January 2021.

Next to the question of "who decides", the private regulation of public and political actors also provokes questions relating to the substantive justification for companies' decisions. Social media companies have been deciding over the limits of expression of politicians, incumbents and other state actors on their platforms for years.

In principle, however, platforms provide exceptions for this group of people. Their statements therefore regularly remain available even in the case of violations of the terms of use and are, if at all, only equipped with a warning label.

Facebook for instance justifies this practice with the fact that there is a special public interest in the behavior of leading politicians and office holders (newsworthiness exemption). As a consequence, the company refrained from fact-checking posts by politicians in Germany in the past on the grounds that it

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<sup>8</sup> See the suggestions by David Kaye, then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in UN General Assembly (2018): "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression", UN A/HRC/38/35, [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/38/35](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/35), paragraphs 58, 59, 63, 72; Article 19: "Self-regulation and 'hate speech' on social media platforms" (2018), [https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-hate-speech-on-social-media-platforms\\_March2018.pdf](https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-hate-speech-on-social-media-platforms_March2018.pdf), pp. 20-22; Global Partners Digital (2018): "A Rights-Respecting Model of Online Content Regulation by Platforms", <https://www.gp-digital.org/wp-content/uploads/2018/05/A-rights-respecting-model-of-online-content-regulation-by-platforms.pdf>, pp. 26-28.

<sup>9</sup> For an overview over the potential of these institutions with a focus on the German and European regulatory environment see Kettemann/Fertmann: "Platform-proofing Democracy: Social Media Councils as Tools to Increase the Public Accountability of Online Platforms", <https://shop.freiheit.org/#!/Publikation/1084>.

<sup>10</sup> Oversight Board: Case decision 2021-001-FB-FBR, <https://oversightboard.com/decision/FB-691QAMHJ/>.



"does not want to interfere in the political discussion".<sup>11</sup> Twitter also privileges "elected representatives and government officials" because there is a considerable public interest in their contributions.<sup>12</sup> This is always the case "when (the posts) directly contribute to the understanding or discussion of a matter of public concern".

However, the privileged treatment is not intended to apply across the board, but to function as a rule of thumb from which exceptions are possible. Twitter, for example, asserts that this "(...) does not mean that a public official covered by this rule can tweet whatever he or she wants, even if it violates Twitter rules (...) [Twitter] balances the potential risk and severity of harm against the public interest in the tweet."<sup>13</sup>

While most platforms' terms of use are global, opinions relating to the preferential treatment of speech by well-known political figures and office holders vary across national legal contexts. How can we as researchers navigate the interplay between global private rules of different platforms vis-à-vis a host of different national conceptions of the right balance between the integrity of political processes and companies' rights to intervene on their platforms?

We are convinced that this can only be achieved through collective scientific action. This study therefore examines how private platform companies' actions against public actors, including those taken in the U.S. against former president Trump, are perceived across different countries and shines a light on how a similar case would play out in the participating countries.

Through synthesizing answers to nine questions submitted by more than 30 researchers from 15 countries within the GDHR Network, this exploratory study provides a first overview of how societies and governments conceive of private power over political actors. This can also provide incentives for further rigorous studies of platforms' actions against such actors and their impacts across different socio-cultural environments.

The individual submissions within this study are not intended to function as stand-alone, comprehensive assessments of the respective country. Rather, they function as pixels that collectively constitute a picture of an especially contested platform governance issue.

## The results

How did politicians, media and public opinion in the participating countries react to the suspensions and deletions of Trumps accounts from social networks?

It is important to note that the actions against Trump were not regarded as turning point in *all* participating countries, and moreover weren't even publicly commented on by some countries' politicians at all.<sup>14</sup> This may not be unsurprising considering Trump was in fact not the first high-level politician whose content was restricted by internet platforms: These had previously acted against a Hungarian cabinet

<sup>11</sup> Gensing, „Sieben Millionen Beiträge gelöscht“, <https://www.tagesschau.de/faktenfinder/facebook-fakenews-109.html>.

<sup>12</sup> Twitter, see <https://help.twitter.com/en/rules-and-policies/public-interest>.

<sup>13</sup> Twitter, see <https://help.twitter.com/en/rules-and-policies/public-interest>.

<sup>14</sup> Question 1, Submissions from Bosnia and Herzegovina, Cyprus, Italy.

member,<sup>15</sup> and the presidents of Brazil and Venezuela.<sup>16</sup> The novelty in the Trump case therefore lay in the fact such a measure was directed against an (albeit: exiting) head of state from the global North.

In the majority of participating countries where the restrictions against Trump sparked a larger societal discussion, politicians concurred that the authority for the suspensions and deletions should not lie with the platforms,<sup>17</sup> arriving not just at similar opinions but in part identical wording: Platforms' actions were described as "problematic" by heads of government in Finland<sup>18</sup> and Germany<sup>19</sup> and even classified as "private censorship" by officials in Hungary<sup>20</sup> and France<sup>21</sup>.

Such political statements often related the Trump case to freedom of expression, disregarding constitutional nuances such as that a) fundamental rights do not (or at least not directly) restrain private platforms and b) that public office holders can, in many countries, not invoke fundamental rights when acting in an official capacity.<sup>22</sup> The actual question whether a holder of public office using an account partially in a private and partially in a public capacity (such as Trump) could invoke his or her right to freedom of expression against private restrictions (in line with doctrines of horizontal effects of fundamental rights) raises complex constitutional questions in most countries. The inapplicability, or degree of lowered protection due to the partially official use would need to be determined on a case-by-case basis across many participating countries.<sup>23</sup>

The public outcry over private actors' power to restrict the accessibility of the account of a public officeholder stands also in a notable discrepancy to the legal situation in all 15 participating countries, of which none reported a statutory obligation for social networks to disperse official information (something which might, notably, change, if the Digital Services Act enters into force unchanged, which provides for certain cooperation duties for very large platforms during emergencies. However, as the Corona crisis has shown us, platforms are very willing to offer privileged space for governmental actors communicating in their official capacity. If at all, such rules existed only with regard to TV and/or radio broadcasters and were predominantly limited to specific emergency cases.<sup>24</sup>

In terms of political implications, media commentators viewed the step as a signal that far-right parties and politicians around the world may be acted against more strictly.<sup>25</sup> Correspondingly, conservative politicians and governments in multiple countries instrumentalized the actions against Trump as supposed

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<sup>15</sup> See Question 1, Submission from Hungary; see also Reuters: „Facebook removes, then restores anti-immigrant video in Hungary“, <https://www.reuters.com/article/europe-migrants-hungary-austria-idUSL5N1QP7FS>.

<sup>16</sup> New York Times: "Misleading coronavirus videos posted by Brazil's president are pulled down", <https://www.nytimes.com/2020/03/30/business/stock-market-today-coronavirus.html#link-6087f5b2>.

<sup>17</sup> Question 1, Submission from Belgium (relating to the region of Flanders)

<sup>18</sup> Question 1, Submission from Finland, quoting Prime minister Marin.

<sup>19</sup> Question 1, Submission from Germany, quoting Chancellor Merkel.

<sup>20</sup> Question 1, Submission from Hungary

<sup>21</sup> Question 1, Submission from France

<sup>22</sup> Question 1, Submissions from Belgium, Germany, Serbia (quoting politicians opining that "(...) a private company took the liberty to restrict the freedom of expression of the highest executive power holder"),

<sup>23</sup> Question 4, Submissions from Belgium, France, Germany, Italy, Latvia

<sup>24</sup> Question 3, Submissions from Belgium, Bosnia and Herzegovina, Finland, Germany, Ireland, Italy, Lithuania, Portugal, Serbia.

<sup>25</sup> Question 1, Submission from Belgium

proof of platform's bias against conservative opinions,<sup>26</sup> a narrative that partially employed to justify new platform regulation initiatives that are presented to mitigate this supposed "bias".<sup>27</sup>

In fact, the accounts of far-right parties and their members *are* reported to be on the receiving end of a large share of platform actions such as content removals or account suspensions in multiple countries,<sup>28</sup> although there is no indication that this would be the consequence of any kind of bias rather than the fact this part of the political spectrum posted a larger amount of content justifying such actions. Politicians who do face platform interventions use restrictions against their content in order to mobilize supporters and find other ways of disseminating restricted content, such as through third-party web sites collecting restricting content<sup>29</sup> or disseminating it through messaging services.<sup>30</sup>

Such divides (or "schisms") that follow restrictions of content at major platforms are pointedly described through a historical comparison by an observer in Lithuania, assessing that both the excommunication from the church in Medieval times and the ban of accounts on social networks today can be taken swiftly, can be revoked upon repentance, are tough to challenge in court and may contribute to the creation of alternative institutions such as King Henry the VIII's creation of the Church of England in 1534, following his excommunication by the Catholic church in 1533<sup>31</sup> - or the joining of a rival social network.

Concerns by commentators from many countries over the implications of the moves against Trump for their countries, are emblematically captured by an Irish newspaper opinion stating that "*if these newly-activist companies are prepared to take actions to stymie a sitting US president, imagine the political influence they could choose to exert, if it suited them, over a financially-puny State on the edge of Europe that badly needs their jobs, money and prestige?*"<sup>32</sup> This, however, misunderstands the special situation surrounding Donald Trump on and after 6 January with a view to his online communication practices. He had lost the election, was trying to steal it by encouraging his fans to fight and rebel. It would seem reasonable that a European politician in similar circumstances – say a presidential candidate who had lost and would act similarly – would also be – rightfully – banned.

When it comes to the respective legal framework, most of the surveyed countries do not have any laws or regulations that specifically cover restrictions by social networks against public actors such as public office holders or political parties.<sup>33</sup> To some of the surveyed scholars, however, the topic touches broader constitutional provisions. This is the case in Italy, where the constitutional protection of political activities by members of parliament is "interpreted in a broad way and is not necessarily connected with activities

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<sup>26</sup> Question 1, Submissions from Hungary, Latvia,

<sup>27</sup> Question 1, Submission from Hungary

<sup>28</sup> Question 2, Submissions from Belgium, Finland, Germany, Ireland, Italy, Latvia,

<sup>29</sup> Question 2, Submission from Latvia

<sup>30</sup> Question 2, Submission from Belgium.

<sup>31</sup> Question 1, Submission from Lithuania, quoting Aurimas Šimeliūnas, Užblokuoti JAV prezidentą, 14/01/2021, [https://www.bernardinai.lt/uzblokuoti-jav-prezidenta/?fb\\_comment\\_id=3704643762891703\\_3708106032545476](https://www.bernardinai.lt/uzblokuoti-jav-prezidenta/?fb_comment_id=3704643762891703_3708106032545476).

<sup>32</sup> Question 1, Submission from Ireland, pointing to Mark Paul, "Ireland Should Be Wary as Tech Giants Cancel Trump", The Irish Times, 14 January 2021, <https://www.irishtimes.com/business/economy/ireland-should-be-wary-as-tech-giants-cancel-trump-1.4458526>.

<sup>33</sup> Question 5, Submissions from Bosnia and Herzegovina, Finland, France, Greece, Hungary, Iceland, and Latvia.

performed within the Parliament” – and could potentially shield MP’s political content against moderation.<sup>34</sup>

In some countries, possible implications of fundamental rights are also being discussed. While those rights usually apply as a legal defence of private actors against the state and *not* against other private entities,<sup>35</sup> the responses from Germany and Ireland elaborate on the potential horizontal effect of constitutional rights in these countries. In the Irish case, a direct horizontal effect of the freedom of expression on private entities appears a mere theoretical option – without any existing case law.<sup>36</sup> However, “it may be that the Irish courts could apply a doctrine of indirect horizontal effect in this context – for example, by interpreting terms of use or consumer protections against unfair contract terms in such a way as to promote freedom of expression rights against arbitrary interference by platforms.”<sup>37</sup> A similar argument is made by the submission from Germany, where in specific cases the public position of the respective user can play a role in the necessary “weighing of the user’s fundamental rights (e.g., freedom of expression) against the rights of the private platform (e.g., property rights)” – but only, if the account is not an “official” state account, where fundamental rights do not apply.<sup>38</sup>

Even without specific legal requirements on content moderation, submissions from several countries refer to a general – often: constitutional – privileging of speech of elected politicians and office holders. This could potentially support or even compel the decisions of platforms to leave content up even if it violates their terms of service.<sup>39</sup> In contrast, some argue that in absence of any specific legal provisions the decision is completely left to the platforms.<sup>40</sup> To many, however, this privileging and discretion only reaches as far as criminal law is not concerned.<sup>41</sup> In general, the content moderation policy of big private actors like Facebook is sometimes seen as a “threat to our democracy,”<sup>42</sup> although the reaction of – especially populist – parties and/or governments apparently depends on whether the private “censorship”<sup>43</sup> is exerted in their favour or rather against them.<sup>44</sup> As pointed out by the Greek submission, the whole situation calls for additional legislation.<sup>45</sup> However, as the Irish assessment puts it, “it seems more likely that Irish law will be overtaken by developments at a European level and particularly the reforms proposed in the Digital Services Act.”<sup>46</sup>

Another potential option for improving moderation practices is the implementation of “platform councils.” Such councils, staffed by representative citizens or experts, can function as advisory boards for platforms. While e.g. Facebook has implemented such a model with the Facebook Oversight Board, the discussion is

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<sup>34</sup> Question 5, Submission from Italy.

<sup>35</sup> As pointed out for example by the submission to question 5 from Belgium.

<sup>36</sup> Question 5, Submissions from Ireland and Germany.

<sup>37</sup> Question 5, Submission from Ireland.

<sup>38</sup> Question 5, Submission from Germany.

<sup>39</sup> Question 6, Submissions from Belgium (pointing at ECtHR case law), Finland, Germany, Italy, and Portugal.

<sup>40</sup> Question 5, Submission from Ireland.

<sup>41</sup> Question 6, Submissions from Bosnia and Herzegovina, Iceland, Latvia, and Serbia; to a certain degree also from Cyprus.

<sup>42</sup> Question 9, Submission from Belgium.

<sup>43</sup> Question 1, Submission from France; Question 9, Submissions from Belgium and Portugal.

<sup>44</sup> Question 9, Submission from Hungary.

<sup>45</sup> Question 6, Submission from Greece.

<sup>46</sup> Question 6, Submission from Ireland.

picked up only in few of the surveyed countries.<sup>47</sup> Instead, existing regulation for traditional media is often referenced as a possible role-model.<sup>48</sup> Especially Broadcasting Councils are an institution that is known in most of the surveyed countries, although their compositions and influence on the program broadcast by public media differ.<sup>49</sup>

The discussion about social media's influence on public discourse, it seems, is just beginning. And although the de-platforming of Donald Trump might not have created the *reason* for said discussion: It has definitely been *cause* for the discussion to reach a broader audience.<sup>50</sup>

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<sup>47</sup> Question 7, Submissions from Cyprus, Germany, Ireland, and Italy.

<sup>48</sup> Question 6, Submissions from Bosnia and Herzegovina, Lithuania, Portugal; Question 7, Submissions from Bosnia and Herzegovina, Finland, Lithuania, and Portugal.

<sup>49</sup> See all submissions to Question 8.

<sup>50</sup> Question 9, Submission from Belgium.

## Contributions by Question and Country

**Question 1: How did your countries' politicians, media and public opinion react to the suspensions and deletions of Trumps accounts from social networks? Please include emblematic quotes if available.**

### Austria

Karoline Edtstadler, Austrian minister for the EU and Constitution (ÖVP) saw the twitter ban “very, very critically” (“sehr, sehr kritisch”). Even though she considered it “despicable how he [Trump] incited to violence and hatred” (“abscheulich, wie er zu Gewalt und Hass aufgestachelt hat”), she was concerned that social media platforms regulate who is (not) allowed to express an opinion.<sup>51</sup>

Michel Reimon, member of the Austrian parliament (Grüne) considered that the ban had happened “quite rightly” (“völlig zu Recht”), but at the same time expressed concerns that such action by platforms is not subject to “any control by the rule of law” (“keiner rechtsstaatlichen Kontrolle unterliegend”) in the US.<sup>52</sup>

Harald Walser, former member of the Austrian parliament (Grüne) reminded that “these companies have a de-facto monopoly and their customers are thus at their mercy” (“diese Konzerne [haben] de facto ein Monopol [...] und ihre Kunden [sind] ihnen somit ausgeliefert [...]).<sup>53</sup>

Thomas Lohninger, executive director of the digital rights NGO epicenter.works considered it “significant that Twitter and other Internet companies only took action against Trump when it was clear that there would be a Democratic majority in the future U.S. administration” (“bezeichnend, dass Twitter und andere Internetfirmen erst gegen Trump tätig wurden, als es klar war, dass es eine Mehrheit der Demokraten in der künftigen US-Regierung geben wird“). He pointed out that it is problematic “when private companies decide on the limits of freedom of expression, especially when these companies have a quasi-monopoly in public communication” (“wenn private Unternehmen über die Grenzen der Meinungsfreiheit entscheiden, gerade wenn diese Unternehmen fast ein Monopol in der öffentlichen Kommunikation haben”).<sup>54</sup>

### Belgium (relating to Flanders)

Disclaimer: Please note that Belgium is a federal state, and that certain answers refer to legislation or bodies of the Communities (Flemish, French, German) and/or Regions (Flanders, Wallonia, Brussels-Capital). Where this is the case the answer makes this explicit. Hence, this means that not all answers are relevant to the whole of Belgium.<sup>55</sup>

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<sup>51</sup> <https://kurier.at/politik/inland/edtstadler-zu-trump-tweets-seien-abscheulich-sperre-aber-falsch/401156664>

<sup>52</sup> <https://www.facebook.com/michel.reimon/posts/10224229819163792>

<sup>53</sup> <http://haraldwalser.at/7150-2/>

<sup>54</sup> <https://zackzack.at/2021/01/13/wo-endet-die-meinungsfreiheit-im-internet-twitter-sperrt-trump-und-70-000-weitere-nutzer/>

<sup>55</sup> For more information about the state structure see [https://www.belgium.be/en/about\\_belgium/government/federale\\_staat](https://www.belgium.be/en/about_belgium/government/federale_staat).

## Debate in the Flemish Parliament

The plenary of the Flemish Parliament of 13 January 2021 discussed “freedom of expression and censorship on social media”, in particular during the “Question-and-Answers” session, which allows Members of Parliament (MPs) to pose questions concerning current affairs to members of the government. Three MPs in particular posed questions, which were all answered by Minister *Benjamin Dalle* (CD&V – Flemish Christian-democratic party), Flemish Minister of Brussels, Youth and Media.

*Klaas Sloomans* (Vlaams Belang - Flemish nationalist, far-right party) heavily criticised the actions taken by social media in the context of the storming of the U.S. Capitol, stating that the decisions to suspend Trump's accounts were not taken by a judge or a media regulator, but by billionaires pleasing the next president of the United States. Whereas the alleged goal of the measures taken was to avoid further danger, at the same time other authoritarian leaders, such as Erdogan and Duterte, may continue tweeting, *Sloomans* added.<sup>56</sup> According to *Sloomans*, this evidences hypocrisy and opportunism. Accordingly, he held that, other than legislative initiatives, a strong political signal denouncing such practices was needed - and currently missing - in Flanders. He underlined the importance of freedom of expression and asked the minister how he will guarantee this fundamental right of the Flemish people. In his opinion, opinions and information should only be banned from social media in case they violate the law.

Criticising Trump for his actions, *Willem-Frederik Schiltz* (Open VLD – Flemish Liberal party) also stressed the importance of the right to freedom of expression. However, he also stated that this freedom has limits, which are laid down by law and enforced by judges. In that context, he held that tech giants seem to have overtaken this role on social media today, adding that this cannot be tolerated. According to him, it needs to be examined how social media *can* ban content that violates the law, while also making sure they do not ban legal content. Lastly, he pointed to the fact that algorithms to a large extent determine which information and ideas are to be seen by users, thus impacting the formation of their opinions as they are built on information and ideas. Accordingly, he asked the minister whether we need more transparency as regards content curation on social media to protect freedom of expression.<sup>57</sup>

*Peter Van Rompuy* (CD&V - Flemish Christian-democratic party), in that regard, asked Minister *Dalle* a question about ‘the impact of tech giants on freedom of expression’. *Van Rompuy* said that three lessons can be drawn from the storming of the U.S. Capitol. According to him, first of all, messages of hate and violence sooner or later effectively lead to violence. Second, he held that the power to determine the limits of the freedom of expression should not lie with private platforms. Under the rule of law, independent institutions and judges determine those limits. In that context, he referred to the EU Commission’s proposal for a Digital Services Act (DSA). Thirdly, he referred to the illegality of incitement to hatred, violence, discrimination and human trafficking in an offline context and added that all this should also be tackled

<sup>56</sup> K. Sloomans at the Plenary meeting of January 13, 2021, “Actuele vraag over de bescherming van de vrijheid van meningsuiting tegen toenemende censuur op sociale media” from Klaas Sloomans to minister Jan Jambon, answered by minister Benjamin Dalle (244, 2020-2021), “Actuele vraag over de transparantie inzake de aanwending van sociale media en de vrije meningsuiting” from Willem-Frederik Schiltz to minister Benjamin Dalle (248, 2020-2021), “Actuele vraag over de impact van de techreuzen op de vrijheid van meningsuiting” from Peter Van Rompuy to minister Benjamin Dalle (254, 2020-2021), Flemish Parliament, <https://www.vlaamsparlament.be/plenaire-vergaderingen/1461471/verslag/1464458>.

<sup>57</sup> W-F. Schiltz at the Plenary meeting of January 13, 2021, “Actuele vraag over de bescherming van de vrijheid van meningsuiting tegen toenemende censuur op sociale media” from Klaas Sloomans to minister Jan Jambon, answered by minister Benjamin Dalle (244, 2020-2021), “Actuele vraag over de transparantie inzake de aanwending van sociale media en de vrije meningsuiting” from Willem-Frederik Schiltz to minister Benjamin Dalle (248, 2020-2021), “Actuele vraag over de impact van de techreuzen op de vrijheid van meningsuiting” from Peter Van Rompuy to minister Benjamin Dalle (254, 2020-2021), Flemish Parliament, <https://www.vlaamsparlament.be/plenaire-vergaderingen/1461471/verslag/1464458>.

in case it occurs through social media.<sup>58</sup> He thus asked the minister how the Flemish Government perceives the proposal for a DSA. In particular, he asked the minister's opinion on the proposal for supervision by national authorities. *Van Rompuy* is in favour of a European supervisory authority in view of some countries' reputation in this context.

In answering these questions, *Benjamin Dalle* (CD&V - Flemish Christian-democratic party) considered the definitive erasure of Trump's social media accounts as a severe interference with the rights of the former President. According to the Minister, the question is not whether this decision is a good one, but rather whether the people who took the decision were well-placed to do so. He stated that *"he is not ready for a democracy where the CEOs decide which opinions he gets to see. That is not their job"*. This statement was later picked up by the media<sup>59</sup>. He added that, moreover, the tech companies in question did not sufficiently take up their responsibility in the years prior to the events that occurred at Capitol Hill.<sup>60</sup> He confirmed that he thinks the proposal for a DSA is a very important initiative and that the Flemish Government will contribute to its adoption. DALLE also stated that it is not only about the tech giants, but also about those who spread disinformation. In that context he referred also to the importance of qualitative journalism and media and digital literacy. In particular, he made a distinction between 'illegal' content - such as hate speech - and 'false information', the spread of which is, according to him, not illegal. In that regard, he referred to the funding by his cabinet of media companies to tackle this problem, pointing to the added value of technology and algorithms in particular.

Continuing the discussion, MPs further referred to the importance of a diverse media landscape, media literacy, a proposal to limit political advertising through social media (which, according to an MP of the Green Party, amounts to 'paid speech' rather than 'free speech') in a similar way as advertising through audiovisual media, funding for 'Factcheck Vlaanderen' ('Factcheck Flanders'), and condemnation of racism.

All cited Flemish politicians share the same opinion: the authority for the suspensions and deletions should not lie with the platforms.

### Other opinions by politicians:

Geert *Bourgeois* (NV-A, Flemish nationalist-conservative party), and member of the European Parliament), during a TV interview with the public media broadcaster, said that social media can now decide themselves which opinions can stay online, and which ones are banned. According to *Bourgeois* this is unacceptable. He thus proposes a universal or public service obligation for social media companies: they need to accept everyone who wants to post opinions to their platforms and the fact that people want to get information via their platforms. In his opinion, social media companies are the letterboxes of the 21st century. He stated

<sup>58</sup> P. Van Rompuy at the Plenary meeting of January 13, 2021, "Actuele vraag over de bescherming van de vrijheid van meningsuiting tegen toenemende censuur op sociale media" from Klaas Sloomans to minister Jan Jambon, answered by minister Benjamin Dalle (244, 2020-2021), "Actuele vraag over de transparantie inzake de aanwending van sociale media en de vrije meningsuiting" from Willem-Frederik Schiltz to minister Benjamin Dalle (248, 2020-2021), "Actuele vraag over de impact van de techreuzen op de vrijheid van meningsuiting" from Peter Van Rompuy to minister Benjamin Dalle (254, 2020-2021), Flemish Parliament, <https://www.vlaamsparlement.be/plenaire-vergaderingen/1461471/verslag/1464458>.

<sup>59</sup> Belga, "Minister Dalle: 'Pas voor democratie waarin ceo's bepalen welke mening ik zie'", Knack January 13, 2021, [https://www.knack.be/nieuws/belgie/minister-dalle-pas-voor-democratie-waar-in-ceo-s-bepalen-welke-mening-ik-zie/article-news-1687891.html?utm\\_medium=social\\_knack&utm\\_source=Twitter-Echobox=1610555851](https://www.knack.be/nieuws/belgie/minister-dalle-pas-voor-democratie-waar-in-ceo-s-bepalen-welke-mening-ik-zie/article-news-1687891.html?utm_medium=social_knack&utm_source=Twitter-Echobox=1610555851).

<sup>60</sup> B. Dalle at the Plenary meeting of January 13, 2021, "Actuele vraag over de bescherming van de vrijheid van meningsuiting tegen toenemende censuur op sociale media" from Klaas Sloomans to minister Jan Jambon, answered by minister Benjamin Dalle (244, 2020-2021), "Actuele vraag over de transparantie inzake de aanwending van sociale media en de vrije meningsuiting" from Willem-Frederik Schiltz to minister Benjamin Dalle (248, 2020-2021), "Actuele vraag over de impact van de techreuzen op de vrijheid van meningsuiting" from Peter Van Rompuy to minister Benjamin Dalle (254, 2020-2021), Flemish Parliament, <https://www.vlaamsparlement.be/plenaire-vergaderingen/1461471/verslag/1464458>.



that the right to freedom of expression is a fundamental achievement and that the limitations on the right to freedom of expression are limited and should be laid down by law. In that context, he referred to the prohibition of censorship laid down in Article 25 of the Belgian Constitution, as a result of which the right to freedom of expression may only be restricted ex-post (in the context of civil or criminal proceedings). He wants to maintain this principle also with the DSA.<sup>61</sup>

### Analysis by Flemish media:

Journalist *Tim Verheyden* (VRT, Flemish Public Service Broadcaster)<sup>62</sup> linked Trump's presidency to fake news and disinformation and warned that it damages society, puts pressure on it and can even incite (deadly) violence. He further referred to the contribution of social media to the *Rabbit Hole* ("*fabeltjesfuik*"), being a social media environment of conspiracy theories (people are being offered such a huge amount of fake news, that eventually they start believing it). Additionally, *Verheyden* points to the impact of algorithms on social media like Facebook or Twitter since they create some kind of chamber in which you only get to see (fake) opinions that support your own view. "*What happened at the Capitol, is the sad peak of 4 years filled with disinformation, fake news, alternative facts and pure lies*", he said. Also, important to note is that although the decision to suspend and delete Trump's accounts was hard, it was in line with the terms of service of the social media platforms in question. *Verheyden* provides the example of Twitter and Facebook, whose terms of service clearly state that when someone incites hatred or violence, their account will be suspended. Nevertheless, it remains a difficult balancing exercise between the authority of platforms in this regard and the fundamental rights of people using them.

On *Apache*, a (digital-only) news website, an article was published stating that far-right parties around the world are worried about the social media bans of Trump, as they are the ones spreading content that may at times be regarded as illegal when it amounts to hate speech.<sup>63</sup>

### Opinion pieces by academics (and journalists)

*Opinion in Knack* by *Natalie Smuha*<sup>64</sup> (Researcher of law, ethics and technology at KU Leuven):

*Smuha* points out that social media are now part of the public sphere, that they shape and form us as well as possibly manipulate us. She refers in that regard to the 'filter bubbles' and the fact that we all see different content and ads as a result of personalisation.

Importantly, she remarks that social media serve a public function, yet are governed by private rules, which are set with a commercial goal in mind. She further states that the 'influencing capacity' of social media is not a bad thing per se: algorithms can also serve public goals. Polarising effects are accordingly not inherent in social media but designed into algorithms by humans. She further says that while freedom of expression is important, it may be limited. According to her, the question is therefore not whether the expression of opinions can be limited, but who is in charge of deciding whether limitations are justifiable. She also

<sup>61</sup> NV-A tweet on G. Bourgeois, see: <https://twitter.com/i/status/1351889978171793413>.

<sup>62</sup> S. Van Poucke, "Hoe de sociale media een rol speelden bij de bestorming van het Capitool: "Triest hoogtepunt van 4 jaar nepnieuws", VRT NWS January 7, 2021, <https://www.vrt.be/vrtnws/nl/2021/01/07/rol-sociale-media-bij-bestorming-capitool/>.

<sup>63</sup> T. Cochez, "Socialemediaban Trump doet alarmbellen afgaan bij Vlaams Belang", *Apache* January 12, 2021, see: <https://www.apache.be/2021/01/12/sociale-mediaban-trump-doet-alarmbellen-afgaan-bij-vlaams-belang>.

<sup>64</sup> N. Smuha, "Verbanning Donald Trump van Facebook en Twitter: er is geen verschil meer tussen online en offline", *Knack* January 11, 2021, [https://www.knack.be/nieuws/belgie/verbanning-donald-trump-van-facebook-en-twitter-er-is-geen-verschil-meer-tussen-online-en-offline/article-opinion-1686535.html?utm\\_medium=social\\_knack&utm\\_source=Twitter#Echobox=1610367686](https://www.knack.be/nieuws/belgie/verbanning-donald-trump-van-facebook-en-twitter-er-is-geen-verschil-meer-tussen-online-en-offline/article-opinion-1686535.html?utm_medium=social_knack&utm_source=Twitter#Echobox=1610367686).

believes that polarisation in society is not just caused by one president or one particular algorithm. Nor does it result from naive social media users that are easy victims of psychographic micro-targeting. Instead, the fact that certain users can be manipulated shows that there are underlying factors in society that allow for this. Regulating algorithms may enable us to prevent the triggering of factors, however, it would not eliminate the underlying problem. Smuha believes that as long as we do not acknowledge that, national, European and even global regulations will not be able to offer solutions.

*Opinions by Steven De Foer (journalist of foreign affairs for De Standaard) and Peter Van Aelst (Professor of Political Communication, Antwerp University) in the news programme 'De Zevende Dag' on VRT<sup>65</sup>: De Foer and Van Aelst discussed the impact of Trump's social media ban in terms of his followers. In particular, they mentioned that banning accounts does not mean that ideas stop existing. In that regard, they referred to the fact that Trump started using Parler after being banned from Twitter. According to them, Parler, however, is much less influential than Twitter, as a result of which Trump would reach much less people using that platform as opposed to when he was still able to tweet.*

## Bosnia and Herzegovina

### Politicians:

There were no strong reactions from politicians in BiH to suspensions and deletions of Trump's accounts from social networks. I have not been able to find a single statement by relevant politicians on the topic.

### Media and public opinion:

Media articles focused on the general issues of platform regulation,<sup>66</sup> rather than on exploring the implications of the suspension and deletion of Trump's accounts. There were no articles featuring opinions or analyses by freedom of expression or digital rights experts. A number of political analysts and public figures expressed their support on social media for the platforms' actions, stating that "those who invoke violence and chaos, incite hate and destroy democracy should not be given space on social networks"<sup>67</sup>, and that "freedom of expression ends when you start insulting and endangering the freedoms of others".<sup>68</sup> Anyway, no polls were conducted to show the opinion of the public about the issue.

## Cyprus

I haven't noticed any official reaction regarding the lawfulness of the suspensions and deletions of Trumps accounts from social networks. The primary interest was given to the political impact of the invasion of Trump supporters to the US Capitol.

<sup>65</sup> F. Windey, "Wat is de impact van de Trump-Twitterban? "Mensen en ideeën die gebannen worden, verdwijnen niet zomaar"", VRT January 10, 2021; <https://www.vrt.be/vrtnws/nl/2021/01/10/alternatieve-platformen-na-twitterban-trump-niet-onderschatten/>.

<sup>66</sup> Trajković, "Da li treba regulisati društvene mreže?", <https://balkans.aljazeera.net/news/technology/2021/2/11/da-li-treba-regulisati-drustvene-mreze>.

<sup>67</sup> <https://twitter.com/MdinoDino/status/1347250136339120137>.

<sup>68</sup> [https://twitter.com/lvana\\_Maric/status/1347299415913095169](https://twitter.com/lvana_Maric/status/1347299415913095169).

## Finland

In Finland high profile politicians commented on Trump's social media ban in the IS Puheenjohtajatentti 12 January 2021 (debate of party leaders due to forthcoming municipal election). Prime minister Marin found the deletion very problematic as a permanent measure. She found that there might be reasons for temporary measures to suspend an account in order to prevent violence, but she would prefer fact checking and twitter making warnings about the content. Similar views were expressed also by the chair of National Coalition Party Petteri Orpo, Center Party Annika Saarikko and True Finns Jussi Halla-aho. Overall tone was that social media giants have too much power. More acceptable for restriction was the Green Party Chair Maria Ohisalo. She considered that Twitter should have had acted already before this.<sup>69</sup>

The Finnish media has almost unanimously considered the deletion of accounts to be a brutal display of power. Public opinion largely considers Trump's style inappropriate. On the other hand, the demonstration of the power of some giants divides opinions.<sup>70</sup>

At the same time, it can be suspected that the ban on communications was an emergency solution that came too late. For years, Trump had time to incite discord and spread lies before he was put on the ice.<sup>71</sup>

This has not been just about self-interest. The idea of freedom of expression has been at the heart of internet culture for decades. It has not been agreed by either the authorities or the IT companies. Year after year, however, social media giants like Facebook and Twitter have increased control over the content of their services. Pressure has come from the authorities, the general public and the companies' own employees. At the same time, however, the companies shot themselves in the ankle.<sup>72</sup>

## France

The decision provoked an outcry from most politicians of the whole political spectrum, from the left to the extreme right wing, who denounced this act of "private censorship". But this outcry also came from members of the government, who insisted on the antidemocratic character of private companies making unilateral decisions on the regulation of the public debate. For instance, Cedric O, the State Secretary in charge of electronic communications, declared that "while it can be justified by a form of emergency prophylaxis", Trump's account suspension by Twitter "raises fundamental issues"<sup>73</sup> and called for "a democratic supervision" of private social networks, that have become "true public spaces".<sup>74</sup> Similarly, Bruno Lemaire, the Ministry of Economy and Finances, "shocked" by the fact that Twitter itself made the decision, affirmed that "the regulation of digital giants cannot and should not be made by the digital oligarchy itself. It is necessary but it must be achieved by the States and the judicial authority".

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<sup>69</sup> Ilta-Sanomat, "Kansa kysyi: Marin, Saarikko, Ohisalo, Halla-aho ja Orpo vastasivat – katso kohokohdat ja koko tallenne IS:n puheenjohtajatentistä", Video 21.10 onwards at <https://www.is.fi/kotimaa/art-2000007734289.html>.

<sup>70</sup> Ilta-Sanomat, "Pääkirjoitus: Trumpin porttikielto Twitteriin oli paniikkijarrutus – jättiyhtiöiden olisi muutettava ennen kaikkea omaa toimintalogiikkaansa ja suosittelualgoritmejaan", <https://www.is.fi/paakirjoitus/art-2000007731408.html>.

<sup>71</sup> Translation by authors, see Ilta-Sanomat, "Pääkirjoitus: Trumpin porttikielto Twitteriin oli paniikkijarrutus – jättiyhtiöiden olisi muutettava ennen kaikkea omaa toimintalogiikkaansa ja suosittelualgoritmejaan", <https://www.is.fi/paakirjoitus/art-2000007731408.html>.

<sup>72</sup> Translation by authors, see "Analyysi: Törkytehdas-Parler on suljettu – ja samalla digijättien valta näkyy paljaampana kuin koskaan aiemmin", <https://yle.fi/uutiset/3-11731128>.

<sup>73</sup> See: [https://twitter.com/cedric\\_o/status/1347841112300519425](https://twitter.com/cedric_o/status/1347841112300519425).

<sup>74</sup> See: [https://twitter.com/cedric\\_o/status/1347983670385238021](https://twitter.com/cedric_o/status/1347983670385238021).

However, some academics and specialized media duly reminded that legislation, regulation and other norms already exist in Europe and, above all, that this very political majority adopted the so-called ‘Avia Law’ (after the name of the member of Parliament who drafted it) in May 2020, that was organizing and reinforcing downgraded content by private companies, and that was almost entirely cancelled by the French Constitutional council, as its main provisions “infringe freedom of expression and communication that is not necessary, appropriate and proportionate”.<sup>75</sup> Some analysts interpreted the comments from the majority as a way to advance its plan of adopting a new legislation, before the implementation of the currently discussed Digital Services Act at EU level.

## Germany

a) Politicians: Chancellor Angela Merkel criticized the permanent suspension of Trump as “problematic”, stating that “limitations of freedom of expression can only be formulated within the frame defined the legislator, not the CEOs of social media companies”.<sup>76</sup>

b) Media and Public Opinion: Torn between welcoming the action in the individual case of Trump and worrying about the increased corporate power brought about by platform’s increased readiness to intervene, large newspaper comments concluded that “The fact that a private company effectively prevents a freely elected (...) head of government and state of a democratic state from being heard must remain a one-off slip.”, asking “Today it is Trump, but who will it be tomorrow?”<sup>77</sup> In trying to find an answer to the new corporate power, some articles turn to new institutional proposals, namely strong independent regulation authorities on a European level that may be brought about by the Digital Services Act or voluntary initiatives such as the Facebook Oversight Board.<sup>78</sup> Public opinion seems to take less of an issue with the increase in corporate power, with 80% stating Twitters decision to permanently suspend Trump was right.<sup>79</sup>

## Greece

Most of the Greek media covered Trump’s ban on social media. The opinions about it were controversial among journalists. Most of them focused on the protests that took place in the capitol and not on the ban of Donald Trump from Twitter. Those, examining the ban, underlined their observations about freedom of speech and the role of Social Media in Democracy.

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<sup>75</sup> <https://edri.org/our-work/french-avia-law-declared-unconstitutional-what-does-this-teach-us-at-eu-level/>.

<sup>76</sup> „Merkel kritisiert Twitter-Sperre für Trump“, <https://www.tagesspiegel.de/politik/meinungsfreiheit-von-elementarer-bedeutung-merkel-kritisiert-twitter-sperre-fuer-trump/26786886.html>.

<sup>77</sup> Posener, „Heute ist es Trump, doch wer wird es morgen sein“, <https://www.zeit.de/politik/ausland/2021-01/meinungsfreiheit-soziale-medien-donald-trump-twitter-sperre>

<sup>78</sup> For instance: Hurtz, “Trumps Rauswurf darf nur der Anfang sein” <https://www.sueddeutsche.de/meinung/twitter-trump-rauswurf-regulierung-1.5169734?reduced=true>; see for an overview of German press on the case: “Höchste Zeit, die Reißleine zu ziehen”, <https://www.tagesschau.de/ausland/pressestimmen-trump-twitter-capitol-101.html>.

<sup>79</sup> In an online poll with n=5003, see: Molter, “Mehrheit der Deutschen begrüßt, dass Trump nicht mehr twittern darf”, <https://www.augsburger-allgemeine.de/special/bayern-monitor/Mehrheit-der-Deutschen-begruesst-dass-Trump-nicht-mehr-twittern-darf-id58876656.html>.

## Hungary

Judit Varga, Minister of Justice: „In the last few days, private censorship has reached a new level and has struck in an unprecedented way. In digital imperialism, it no longer matters whether one is an average user or the democratically elected president of the world's leading power, as both have been shown to be silenced at the touch of a button. All of this highlights how we are actually vulnerable to global control of liberal social media.”<sup>80</sup>

There was a debate about it, mainly because of the plans of the Hungarian government to regulate Facebook and social media. It was an important argument for the government to say that Facebook is censoring the conservative opinion. However, the critics of the government required more than just one sentence to deal with the case in light of its rough intervention, even though the communication of Trump crossed the boundaries of democratic communication already a long time ago.

## Iceland

As expected, the suspensions and deletions of Trump's accounts attracted a lot of attention in our country and many people were to comment on it. The public was divided into two groups; those who considered this a reasonable decision in the light of Trump's conduct past months and others who believed that this limitation on freedom of expression went way too far. In reaching that conclusion considerable weight was put on the fact this was not a ban on certain unlawful content or a warning but rather a complete deletion similar to injection in advance on Trump's expression.

Of course, people realized that this was a special case and could not be given broader or more general meaning. These decisions however triggered a debate about the state of social media in general and their authority regarding limiting people's expression. People wondered, and still wonder, if a private company should be able to limit freedom of speech like that and whether more regulation in that area is necessary.

As a result, there has been a lot of debate in Iceland on freedom of expression on social media and where the boundaries lie in this area. There has been a discussion on the responsibility of individuals as regards their own comments on social media and as well whether responsibility can be established towards the social media companies as regards both unlawful expression (when the companies should be responsible for responding to offenses on behalf individuals) and where the limits lie as regards intervention on behalf of the companies in individuals expression.

The EU discussions in amending the Digital Services Act has been discussed as well as possible draft for a Social Media Act from the Parliament in the future. Many people call for stricter regulations while others believe that the social media companies should be completely irresponsible when it comes to user's expression and that the sole responsibility in each case rests on the user's shoulders. Most people, however, agree on that closing individual accounts is a particularly serious reaction and should not take place unless in exceptional cases.

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<sup>80</sup> Published on the official website of the Government: <https://kormany.hu/hirek/varga-judit-aggalyos-hogy-a-twitter-zarolta-trump-felhasznaloi-fiokjat>.

## Ireland

Trump's removals from social networks attracted significant coverage in Ireland but relatively little political or media comment. There were no reported comments from Irish politicians, and most commentary in the Irish media was republished material from syndicated international columnists rather than by domestic writers. The only newspaper opinion piece directly discussing the removals was somewhat one-sided in being critical of the removal:

The corporate cancellation of the US president Donald Trump in the dying days of his regime is in large parts entertaining and satisfying but also slightly worrying. If it is a harbinger of future corporate activism or large-scale political intervention by business interests, then Ireland is vulnerable to that trend because most of the companies involved are embedded in our society...

If these newly-activist companies are prepared to take actions to stymie a sitting US president, imagine the political influence they could choose to exert, if it suited them, over a financially-puny State on the edge of Europe that badly needs their jobs, money and prestige?<sup>81</sup>

Where there was broadcast discussion, it was generally more balanced. The most detailed assessment was in a radio broadcast by the state broadcaster RTÉ (including a contribution from this author) which looked not just at Trump but at the wider issues around other parts of the far-right ecosystem such as Parler. A full transcript is not available, but the broadcast is summarised and excerpts available in a story on the RTÉ website:

"Under the US Constitution, the First Amendment gives a platform such as Parler the right to say, 'we're going to host this content and we don't care that you don't like it.'"

"But equally there's a corresponding right on the part of the other intermediaries associated with Parler to say 'well we don't want to be associated with that anymore and we are going to exercise our First Amendment right'..."

Ciarán O'Connor, Disinformation Analyst with London-based think tank, the Institute for Strategic Dialogue, said far-right platforms market themselves as "free-speech havens when in reality what this really means is that these platforms take an extremely passive approach to content moderation".

He said this can result in "violence and threatening discussions" fostering and "provides a home for extremist groups".<sup>82</sup>

## Italy

Italian politicians did not comment on this topic. We could not find any credible quote. Though, Matteo Salvini, the leader of Lega, created an account on the pro-Trump and general media skeptical platform *Parler*.<sup>83</sup>

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<sup>81</sup> Mark Paul, "Ireland Should Be Wary as Tech Giants Cancel Trump", The Irish Times, 14 January 2021, <https://www.irishtimes.com/business/economy/ireland-should-be-wary-as-tech-giants-cancel-trump-1.4458526>.

<sup>82</sup> Aengus Cox, "Big Tech Still in Legal Limbo over Policing Hate Speech", RTÉ News, 27 January 2021, <https://www.rte.ie/news/2021/0127/1192289-social-media-debate/>.

<sup>83</sup> Lapapa in La Repubblica: "Lega: Salvini si iscrive a Parler, la piattaforma social dei trumpiani", [https://www.repubblica.it/politica/2021/01/10/news/lega\\_salvini\\_piattaforma\\_trumpiani\\_parler-282001052/](https://www.repubblica.it/politica/2021/01/10/news/lega_salvini_piattaforma_trumpiani_parler-282001052/).

Journalists of two quite prestigious and independent newspapers doubted that the removal of Trump's Twitter and Facebook accounts was a good decision, mainly because of the potential precedent it represented.<sup>84</sup>

## Latvia

As the suspension took place at the same time as Latvia's prime minister firing his health minister in a row over coronavirus vaccination policy, news on Trump's blocking did not gain the attention they would have gained at any other moment. Nevertheless, some public figures did not refrain from expressing their views – mostly critical of Twitter's decision [NB: it is interesting to note that exactly Twitter has been criticised more than other networks; presumably, it is so as the opinions were expressed exactly on this platform.]

For example, the MP and board member of the national-conservative political party "Nacionālā Apvienība" ("National Unity") Mr. Jānis Iesalnieks stated that "The exclusion of conservative views from the major social networks will lead us to where US society is now - in closed communities that not only do not talk to each other, but truly hate each other. I do not want that for Latvia. #CancelCulture"<sup>85</sup>. "I do not like egocentric narcissists and Trump certainly is one, however, censorship is not the way how to deal with it. Ridicule and extortion of his supporters from the democratic debate will lead to even greater radicalisation. Physical clashes between "antifa" and trumpists are already taking place in US cities".<sup>86</sup>

Additionally, Mr. Iesalnieks noted that "It is dangerous that global technology companies, by gaining a de facto monopoly on certain aspects of digital social networking, can determine which views have or do not have a right to exist"<sup>87</sup> and supported this opinion also in the radio show. Later he joyfully noted that "From a financial point of view, Twitter has never been a very successful business and the number of users has stagnated, but in recent days its shares are also falling like a stone. This happens when you consider half of your clients to be second class citizens"<sup>88</sup>. In his opinion, "If Parler is being blamed that some of its users have coordinated the attack in Capitol, then Twitter should have been shut down as early as in June, when Antifa and BLM coordinated the burning and looting of US cities, but the leader of Twitter publicly boasted of a donation to BLM. #DoubleFacednessOfPseudoliberalism"<sup>89</sup>.

Right-wing movement "Austrošā saule" ("The Rising Sun") called this suspension "digital revenge"<sup>90</sup>. They note that "The explanation for the need for these steps sounds unconvincing, given that Twitter CEO Jack Dorsey himself donated 3 million \$ to U.S. basketball player Colin Kaepernick at the time he called for violence in the so-called Black Lives Matter protests"<sup>91</sup>.

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<sup>84</sup> Pagliaro in La Repubblica: "Bloccare Trump sui social non è una soluzione, e non può funzionare", [https://www.repubblica.it/commenti/2021/01/08/news/bloccare\\_trump\\_sui\\_social\\_non\\_e\\_una\\_soluzione\\_e\\_non\\_puo\\_funzionare-281687834/](https://www.repubblica.it/commenti/2021/01/08/news/bloccare_trump_sui_social_non_e_una_soluzione_e_non_puo_funzionare-281687834/); Oggi in Il Sole 24 ore: "Da macchina del consenso a censura: la storia di Trump sui social network", [https://www.ilssole24ore.com/art/da-macchina-consenso-censura-storia-trump-social-network-ADYpj7BB?refresh\\_ce=1](https://www.ilssole24ore.com/art/da-macchina-consenso-censura-storia-trump-social-network-ADYpj7BB?refresh_ce=1).

<sup>85</sup> <https://twitter.com/JanisIesalnieks/status/1347954629829660676>.

<sup>86</sup> <https://twitter.com/JanisIesalnieks/status/1348208354968137729>.

<sup>87</sup> <https://twitter.com/JanisIesalnieks/status/1352236690224590848>.

<sup>88</sup> <https://twitter.com/JanisIesalnieks/status/1348642479604703234>.

<sup>89</sup> <https://twitter.com/JanisIesalnieks/status/1348259124249767937>.

<sup>90</sup> <https://twitter.com/austsaule/status/1348577290595266561>.

<sup>91</sup> "Digitālā izrēķināšanās", [https://www.austsaule.lv/digitala-izrekinasanas/?fbclid=IwAR3btAkwxdfj48CKqSPqVCHExLkHAccrppuY0PRvj86Qh0TCRVDH8o\\_kkFA](https://www.austsaule.lv/digitala-izrekinasanas/?fbclid=IwAR3btAkwxdfj48CKqSPqVCHExLkHAccrppuY0PRvj86Qh0TCRVDH8o_kkFA).

One of the largest news portals NRA.lv published a commentary that notes that “Trump's blocking is a small step in a long way to informative sterility”.<sup>92</sup> This article highlights the view that “Attacks on freedom of expression and ideas have expanded significantly in the recent years. This restriction of freedom does not take place through any official state structures. This happens directly through “persecution” on social networks through what in the West is called “woke” and “cancel culture”. In Latvia, this “culture” is only in its infancy, but this does not mean that it does not have every opportunity to flourish in all its glory.”<sup>93</sup>

Political scientist and MEP Ivars Ijabs (Renew Europe) published an essay in which he sums up the facts and arguments of both sides (“The left-wing democratic flank argues, not without reason, that platforms should filter various extremist and racist content more vigorously. The Conservative wing, on the other hand, argues that platforms are given the right not to take responsibility for third-party content only on the condition that they maintain political neutrality and do not censor views that do not seem to be acceptable to their administration. And here begins the interesting part of the question: can a state oblige a platform to publish opinions which its management does not want to publish at all? And would that not be a gross violation of the same principle of freedom of expression?”) and notes that, “Whatever strategy is chosen by politicians in Europe and the United States in the coming years, it must be borne in mind that language is generally poorly regulated. Where the “criticism” ends and “hatred” and “shouting” begin - there will always be a crypt of subjective perception. Therefore, in a democratic society, any restriction on freedom of expression should be interpreted as narrowly as possible, even if it allows the opinion of a tramp-like populist narcissist to be heard.”<sup>94</sup>

The director of the NATO Strategic Communications Centre of Excellence Jānis Sārts noted that “the removal of an elected politician from the platform is a cardinal change of previous neutrality policy of the platforms, and I think there will be no going back”.<sup>95</sup> As a reaction to this article, the journalist Frederiks Ozols tweeted that “In fact, the consequences of blocking Trump’s accounts may be much more unexpected than experts think. This will put pressure on the use of alternative communication tools. And this, in turn, will make it even more difficult to follow the change of mood in certain groups.”<sup>96</sup>

When looking at the rest of the reactions (which mostly took place on Twitter), one can note references to 1984,<sup>97</sup> discussions on whether Trump had been the initiator of violence<sup>98</sup>, discussions whether Twitter “is bound by any constitution”<sup>99</sup> and, warnings that soon everybody will be blocked.<sup>100</sup>

<sup>92</sup> <https://twitter.com/Neatkariga/status/1348900388632670208>.

<sup>93</sup> Latkovskis, “Trampa bloķēšana tviterī – mazs solis garā un ilga ceļā uz informatīvo sterilitāti”, <https://neatkariga.nra.lv/komentari/bens-latkovskis/335752-trampa-blokesana-tviteri-mazs-solis-gara-un-ilga-cela-uz-informativo-sterilitati>.

<sup>94</sup> Navaļņijs, “Privātās cenzūras priekšvakars”, <https://www.rigaslaiks.lv/zurnals/komentari/privatas-cenzuras-prieksvakars-20513>.

<sup>95</sup> “Sārts: Trampa kontu bloķēšana mainīs sociālo tīklu pieeju informācijas publicēšanai”, <https://www.tvnet.lv/7151507/sarts-trampa-kontu-blokesana-mainis-socialo-tiklu-pieeju-informacijas-publicesanai>.

<sup>96</sup> <https://twitter.com/incaustum/status/1347873530394898432>.

<sup>97</sup> <https://twitter.com/SalvisLapins/status/1347728453894811650>.

<sup>98</sup> <https://twitter.com/elitaveidemane/status/1347827245214269440>.

<sup>99</sup> <https://twitter.com/kasparsskins/status/1347982664494624773>.

<sup>100</sup> <https://twitter.com/IvarsLipskis/status/1354686509295820801>.



## Lithuania

Policy analyst Linas Kojala limited himself to describe the situation in the US and noting that quite many were surprised to see German Chancellor Angela Merkel concur with American President Donald Trump on something, namely the negative assessment of social networks restricting the freedom of speech.<sup>101</sup>

Observer Aurimas Šimeliūnas doubts that it would be right to treat the ban of the President's account on social media as merely a relationship between a private business entity and its client. In social networks business, clients create content which is essential for the meaning of social networks. Twitter tolerated Trump's tweets for a long time and the fact that they banned him right before the end of his term as the President may indicate serving the interests of the social networks themselves rather than a genuine preoccupation with the future of democracy. Concluding his analysis, Šimeliūnas draws a parallel between excommunication from the church in Medieval times and the ban of accounts on social networks these days. Both measures work fast, both can be revoked upon repentance, in both cases court proceedings are not the main option and there is a possibility of following King Henry the VIII's example of founding an alternative institution and becoming its head.<sup>102</sup>

Radio station "Žinių radijas" held a discussion<sup>103</sup> with the chairman of the Journalists' Union Dainius Radzevičius, lawyer Andrius Iškauskas, and security expert Aurimas Navys on whether Trump's removal from social networks by private companies was censoring or defending democracy. The public had an opportunity to ask questions and vote on the subject. Radzevičius stressed the importance of the contract between the social network and the user as well as of its terms. Trump is a user like any other user and, thus, can be suspended for failure to abide by these terms but whether this was justified in the particular case needs to be assessed, ultimately by a court of law. He also stressed that Facebook (and social networks generally) still chooses not to be treated as a traditional mass media and thus refuses full editorial responsibility for content posted on it. He also opined that court decisions on the matter adopted in the US and EU could be different as standards of the freedom of speech differ.

Lawyer Iškauskas was surprised by the decision of the social networks and called the actions rather political than legal. The elections context seems to have been decisive. Social networks are moving closer to the role of traditional mass media including assuming editorial responsibility. He also mentioned a problematic role of private companies in exercising the role of the court and the lack of clear criteria for suspension.

Security expert Navys stressed dangers posed by irresponsible remarks online (he gave an example of a former Lithuanian Parliament member, who is also a TV celebrity, and his figurative appeal, in an interview commenting on parliamentary elections results to news portal *delfi.lt*, to shoot certain politicians "one a year") and the need to take actions to limit possible harm. He supported what the social networks did in Trump's case. Trump had been warned but continued with his posts, and social networks then had to use ultimate measures even though they limited the normal functioning of democracy.

<sup>101</sup> Linas Kojala, Trumpas ir socialiniai tinklai: peržengta riba?, 14/01/2021, <https://www.delfi.lt/news/ringas/lit/linas-kojala-trumpas-ir-socialiniai-tinklai-perzengta-riba.d?id=86229971>.

<sup>102</sup> Aurimas Šimeliūnas, Užblokuoti JAV prezidentą, 14/01/2021, [https://www.bernardinai.lt/uzblokuoti-jav-prezidenta?fb\\_comment\\_id=3704643762891703\\_3708106032545476](https://www.bernardinai.lt/uzblokuoti-jav-prezidenta?fb_comment_id=3704643762891703_3708106032545476).

<sup>103</sup> Aurimas Perednis, Žinių radijas. Dienos klausimas, Donaldo Trumpo išjungimas iš socialinių tinklų – cenzūra ar demokratijos gynimas?, 12/01/2021, [https://www.ziniuradijas.lt/laidos/dienos-klausimas/donaldo-trumpo-isjungimas-is-socialiniu-tinklų-cenzūra-ar-demokratijos-gynimas?fb\\_comment\\_id=3552277668183036\\_3552757698135033](https://www.ziniuradijas.lt/laidos/dienos-klausimas/donaldo-trumpo-isjungimas-is-socialiniu-tinklų-cenzūra-ar-demokratijos-gynimas?fb_comment_id=3552277668183036_3552757698135033).

One listener, communication expert, journalist and youtuber Skirmantas Malinauskas, said that for many people, being removed from social networks would be a disproportionate measure (e.g., for professional youtubers) as it would affect their life in so many respects. Moreover, suspension of accounts is not effective as alternative accounts (networks, TV stations) can be created and the audience can easily migrate. Alternative networks can exacerbate the problem of divide and polarization of society. He also raised the issue of social networks being powerful centers important for the functioning of the state, including in protecting its democratic processes such as elections from foreign influences.

Other listeners *inter alia* (1) compared the situation to that of refusing entry to a restaurant on the grounds of, e.g., race, and thus amounting to discrimination; (2) noted the lack of criteria on when users can be suspended from social networks and possibly selective approach to Trump's accounts; (3) positively assessed the fact that private businesses (social media) in the US were independent from politicians; (4) suspected the presence of "telephone law" in the US, especially in light of the fact of simultaneous (coordinated) response by social networks; (4) noted that incitement to violence was rightly not seen by social networks as protected speech; (5) drew a parallel between harm done by Trump's speech and speech by the so-called "covidiot"; (6) noted negative effects on democracy as Trump's electors' right to get access to his speech was limited. The voting results among listeners were as follows: 41 percent in favour of what social networks did, 55 percent against, and 4 percent opted for "it is difficult to say".

## Norway

**Politicians:** The Norwegian Prime Minister, Erna Solberg (from the Conservative Party) expressed support for Twitter's decision to delete Trump's Twitter profile.<sup>104</sup> Similarly, Torgeir Knag, a politician from the Socialist Party, also supported Twitter's decision, arguing that Trump used Twitter as an arena to spread conspiracy theories and incite violence.<sup>105</sup>

At the same time, the leader of the Norwegian Labor Party (Arbeiderpartiet), Jonas Gahr Støre, stressed that while he understood everyone who distanced themselves from Trump's message on Twitter, he was skeptical to the idea of suspending anyone in order to prevent them from promoting their opinions. He further argued that the suspension risked turning Trump into a martyr and that Trump could use many other channels. As a result, Støre argued that the best option would be to confront Trump on the platform on which he is operating.<sup>106</sup>

**Media and Public Opinion:** While some welcomed the suspensions and deletions of Trump's accounts from social networks, others considered this a worrying step and expressed concern over the increase in corporate power.

In a comment in the Newspaper "Aftenposten", editor Eirik H. Winsnes argued that the suspension of Trump's account from social networks illustrates the huge influence of the social media platforms on public

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<sup>104</sup> <https://www.nrk.no/urix/store-kritisk-til-at-twitter-sletter-trump-1.15320122>

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., as well as <https://www.vg.no/nyheter/utenriks/i/39qdye/usa-ekspert-om-trump-utestengelsen-kanskje-burde-twitter-ha-stoppet-ham-tidligere>

debate all over the world.<sup>107</sup> He further argued that it is much easier to point to problems than to find solutions which can help balance this power.<sup>108</sup>

In another commentary, editor Ingeborg Volan from the newspaper “Dagens Næringsliv” told the Norwegian Broadcasting Corporation, NRK, that she was surprised over the suspension of Trump from Twitter. This was an early reaction, before the suspension was seemingly made permanent. Volan believed his Twitter profile would soon be opened. She maintained that the suspension was part of a long-term plan of the social media platform providers to take on more responsibility with regard to what people say on their platforms, including democratically elected leaders. She expected that Trump’s suspension may have some impact in the short term, as it would make it difficult for him to share his message, but that the impact in the long run would be limited, as Trump in her opinion would most likely switch to other platforms.<sup>109</sup>

## Portugal

Discussion in media concerning the suspensions and deletions of Trump’s accounts from social networks were ambivalent, presenting arguments pro and against such restrictions to freedom of expression. Some considered them justified to “detox” public opinion and protect public security. Some argued it would entitle platforms to rule and censor free speech, deciding at their own will what is wrong and what is right.

In my opinion, regardless of their terms of use, social networks cannot arbitrarily suspend or delete users’ account, as it seriously interferes with freedom of expression. On the contrary, restrictions to freedom of expression have to be carried out in accordance with the principles laid down by international law, notably the ECHR, and national law, including relevant case-law, where the principle of proportionality plays a key role. In this context, social networks should care not only with indecency (pornography) but also with hate speech and fake news. Advocating genocide and other horrendous antihumanitarian actions are very serious criminal offences under national and international law, and social networks risk to be accomplices by inaction if they do not prevent the propagation of such hateful content.

A scenario of total irresponsibility of social networks towards the content disseminated by users is not acceptable. Notwithstanding this, permanently closing or deleting a user’s account should mandatorily be a matter subject to court review.<sup>110</sup>

The Television and On-Demand Audiovisual Services Act, approved Law no. 27/2007 of 30 July (as last amended by Law No. 74/2020 of 19 November, which implements EU Directive 2018/1808 of the European Parliament and the Council 14 November 2018), provides that video sharing platforms – e.g. YouTube – take adequate measures to protect human rights and children and youth, in particular against content with violence, hateful speech, terrorism, racism and xenophobia (Article 69-A and, concerning consumer protection, Article 69-A).

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<sup>107</sup> Aftenposten has historically labeled itself as an independent conservative newspaper.  
<https://www.aftenposten.no/meninger/kommentar/i/M36zME/trump-utestengelsen-fra-twitter-illustrerer-et-stort-problem-det-haste>

<sup>108</sup> Ibid.

<sup>109</sup> <https://www.nrk.no/urix/utestenger-trump-fra-sosiale-medier-i-to-uker-1.15317651>

<sup>110</sup> Andrade, Duas novas propostas de lei querem responsabilizar as redes sociais pela forma como moderam os conteúdos,  
<https://tek.sapo.pt/noticias/internet/artigos/duas-novas-propostas-de-lei-querem-responsabilizar-as-redes-sociais-pela-forma-como-moderam-os-conteudos>.

Specifically, video sharing platforms make available functionalities, which make it possible for video uploaders to declare whether they contain commercial communications. Moreover they set up and use transparent and user friendly mechanisms in order to empower the public to identify videos with such content (Article 69-E). However, this Act does not apply to social media networks such as Facebook or Twitter.

## Serbia

In Serbia, all the media reported as breaking news that the order of the then President of the USA, Donald Trump, was permanently suspended. Serbian media mostly reported the reactions of foreign politicians, primarily representatives of the EU and the USA, but also the reactions of popular public figures who supported this decision on Twitter. The reactions of domestic politicians varied.

The supporters of Trump's policy in Serbia, just as well as in the world, sought other platforms for communication. Thus, for example, mostly right-wing politicians from Serbia, but also some high-ranking members of the ruling party and some opposition non-parliamentary parties in Serbia<sup>111</sup>, after the suspension of Trump's account, shut down their Twitter accounts and called on all their followers to do the same, and switch to the Gab social network (Gab.com). On the other side, even though politicians from the block of democratic parties<sup>112</sup>, opined that with such an action "a private company took the liberty to restrict the freedom of expression of the highest executive power holder of the most powerful country in the world, thus opening space for much wider censorship on social networks", they still considered such an action justified because neither electronic nor print media are not allowed to place freedom of expression above the right of citizens to the inviolability of life, body or the preservation of their dignity.<sup>113</sup>

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<sup>111</sup> Komarčević D, Živanović, M., I političari iz Srbije migriraju na alternativne mreže, Radio Slobodna Evropa, 12.01.2021. ( <https://www.slobodnaevropa.org/a/i-politi%C4%8Dari-iz-srbije-migriraju-na-alternativne-mre%C5%BEE/31043369.html> ).

<sup>112</sup> Miljković, M, Tvitovi (ni)su put u krivično delo, 13.01.2021. ( <https://www.danas.rs/politika/tvitovi-nisu-put-u-krivicno-delo/> )

<sup>113</sup> Ibid.

## Question 2: Have politicians, political parties or authorities in your country faced restrictions such as warning labels, removals of content, account deletions or other service restrictions by internet companies for violations of their terms of service?

### Austria

Just recently, YouTube deleted a video of a speech of Herbert Kickl, Member of the Austrian Parliament (FPÖ), which was originally posted on the YouTube channel of the FPÖ. In his speech, Kickl discussed different matters in regards to the Covid-19 crisis, especially related to vaccines. YouTube found the video contained fake news and not only deleted the video, but also temporarily blocked the YouTube channel of the FPÖ.<sup>114</sup> (See also below, question 5)

Last October, Facebook deleted a video of a speech of politician Michael Schnedlitz (also FPÖ). The video showed him discussing the situation of refugees in Lesbos in a way which Facebook classified as ‘hate speech’.<sup>115</sup>

There are several other examples where content published by Austrian political actors has been removed by social media platforms. In 2018, the right wing extremist Identitarian Movement (“Identitäre Bewegung”) has been banned from Facebook and Instagram. In 2020, the Identitarian Movement as well as some of its members, most prominently its leader, Martin Sellner, have been banned from social media platforms Twitter and YouTube as their content was classified as hate speech.<sup>116</sup> Other than that, there are no cases where a political party or a member of such party has been banned entirely.

### Belgium

Yes, the Flemish nationalist, far-right party *Vlaams Belang* as well as some of its members have experienced **removals of content** as well as **account suspensions** imposed by Facebook.

Last year, Facebook adapted its policy on images of “Zwarte Piet” (black Pete), an important character featured in the Belgian so-called “Sinterklaas” (Saint Nicholas) celebrations on the 6th of December. “Zwarte Piet” is black, not because he has a dark skin, but because he crawls down the chimney to deliver presents to young children on behalf of “Sinterklaas” - a white old man. Since 2013, when the UN asked the Dutch Government for clarifications concerning the celebrations and in particular Zwarte Piet’s stereotypical appearance as ‘Blackface’, it has been heavily debated whether or not “Zwarte Piet” is a racist tradition. In the context of these discussions, Facebook adapted its policy around “Zwarte Piet”, prohibiting images of the figure altogether, even retroactively. Months prior to the policy change, *Vlaams Belang* had

<sup>114</sup> <https://www.derstandard.at/story/2000123293259/zensurakt-youtube-loeschte-kickl-rede-im-parlament-wegen-fake-news>

<sup>115</sup> <https://www.diepresse.com/5875656/rede-von-fpo-generalsekretar-von-facebook-gesperrt>

<sup>116</sup> <https://futurezone.at/netzpolitik/rechtsextreme-identitaere-nun-auch-bei-youtube-gesperrt/400970699>

published pictures of “Zwarte Piet”. Accordingly, Facebook required their erasure. Facebook threatened to take down their page, in case they would not delete them.<sup>117</sup>

In addition, the personal account of Tom Vandendriessche (Vlaams Belang and member of the European Parliament) has already been suspended a number of times by Facebook. One time <sup>118</sup>Vandendriessche's account was temporarily suspended when he refused to delete posts picturing “Zwarte Piet”. Another time<sup>119</sup>, he posted a status update with blurred photos of the beheading of Samuel Paty, the teacher who had used Charlie Hebdo cartoons as class material in his lessons on the freedom of expression. Vandendriessche stated he only sought “to denounce the attack on fundamental rights”. The suspension lasted 30 days. An additional suspension<sup>120</sup> of his user as well as ad account, dates from February 2021. The reason was an old image, already deleted by Facebook in the summer of 2020, that related to the events of the Black Lives Matter movement. Facebook suspended the account of Vandendriessche and, according to him, limited its range because of the posting of that image.

In response to Trump's social media ban, *Vlaams Belang* launched its own Telegram-channel supposedly to protect themselves from any further restrictions that social media platforms could possibly impose on their content.<sup>121</sup> It thereby followed the example of Dries Van Langenhove (*Vlaams Belang*) who also has his own Telegram channel.

## Bosnia and Herzegovina

There have been no restrictions of this kind so far.

## Cyprus

No. (However in Greece the ex-political party “Golden Dawn” was excluded from any presence at television panels, channels etc due to its extreme racist and violent ideas)

## Finland

MP Ano Turtiainen's Facebook account was temporarily closed in the spring of 2020. He has caused widespread uproar with his racist comments and, for example, opposes masks. However, his company produces masks. MP Turtiainen forms his own parliamentary group after the nationalistic party True Finns dismissed him.

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<sup>117</sup> A. V. H., “Facebook speurt ook naar oude Zwarte Piet-foto's: Vlaams Belang kreeg al verschillende waarschuwingen”, *Het Laatste Nieuws* August 28, 2020, <https://www.hln.be/binnenland/facebook-speurt-ook-naar-oude-zwarte-piet-foto-s-vlaams-belang-kreeg-al-verschillende-waarschuwingen-ade25a44/>.

<sup>118</sup> Vlaams Belang, “Vlaams Belang eerste politieke partij gevisieerd door Facebookcensuur Zwarte Piet”, *Website Vlaams Belang - Persberichten* August 28, 2020, <https://www.vlaamsbelang.org/vlaams-belang-eerste-politieke-partij-gevisieerd-door-facebookcensuur-zwarte-piet/>.

<sup>119</sup> Vlaams Belang, “Alweer Facebook-pagina van Vlaams Belang geblokkeerd: “Censuur moet stoppen””, *Vlaams Belang Nieuws* October 18, 2020, <https://www.vlaamsbelang.org/alweer-facebook-pagina-van-vlaams-belang-geblokkeerd-censuur-moet-stoppen/>.

<sup>120</sup> P. Van Berkel, “Facebookpagina Tom Vandendriessche (Vlaams Belang) opnieuw geblokkeerd”, *Palnws* February 21, 2021, <https://palnws.be/2021/02/facebookpagina-tom-vandendriessche-vlaams-belang-opnieuw-geblokkeerd/>.

<sup>121</sup> M. Vanderaspolden, “Vlaams Belang lanceert eigen Telegram-kanaal na Twitterban van Trump”, *Het Belang van Limburg* January 10, 2021, [https://www.hbvl.be/cnt/dmf20210109\\_97311991](https://www.hbvl.be/cnt/dmf20210109_97311991).

## France

Not to my knowledge.

## Germany

In our non-representative, qualitative assessment it seems such restrictions have not yet concerned any public office holder or public authority. Among the reported-on incidents we could find, such restrictions seem to have most often concerned individual politicians from the right-wing populist “AfD” party.<sup>122</sup>

## Greece

There are no such examples regarding politicians, political parties or authorities in Greece.

However, a lot of supporters of right- and left-wing parties often complain, as they face restrictions such as warning labels and account deletions to their personal accounts (especially in Facebook).

## Hungary

In 2018, Facebook deleted a video by János Lázár, then Chancellor, in which he talked about how much the failed Austrian migrant policy had ruined the city of Vienna. The video has been criticized worldwide for its anti-immigrant content. Facebook restored the video again a day later.

In December 2020, Justice Minister Judit Varga claimed that after an earlier posting, Facebook had reduced access to her site to a fraction. As a result, Varga said the political messages she considered important also “reach far fewer people on this channel.” The Minister had already a drawn-up response to that regarding this and therefore suggested in the same post, that, if necessary, amendments to the law would be proposed to regulate social media.

## Iceland

No, not that we know of.

## Ireland

There have been a small number of removals of content posted by fringe political candidates, but this does not appear to have happened in relation to any significant political figures, parties or authorities.<sup>123</sup>

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<sup>122</sup> <https://www.nordkurier.de/mecklenburg-vorpommern/facebook-sperret-account-von-neubrandenburger-afd-abgeordnetem-0736355308.html>.

<sup>123</sup> See e.g. Nick Rabbitts, “Twitter Removes “racist” Tweet Posted by Unsuccessful Limerick Election Candidate”, Limerick Leader, 5 November 2020, <https://www.limerickleader.ie/news/news/586800/twitter-removes-racist-tweet-posted-by-unsuccessful-limerick-election-candidate.html>; Adam Daly, “YouTube Bans Gemma O’Doherty over “hate Speech” Policy Breaches”, TheJournal.ie, 17 July 2019, <https://www.thejournal.ie/gemma-odoherty-youtube-ban-4727835-Jul2019/>; Michelle Hennessy, “Twitter Permanently Suspends Gemma O’Doherty’s Account over “Repeated Violations””, TheJournal.ie, 31 July 2020, <https://www.thejournal.ie/gemma-odoherty-twitter-5165384-Jul2020/>.

## Italy

In 2019 Facebook and Instagram removed the official accounts of the right parties Casa Pound and Forza Nuova (along with some supports' accounts). Twitter kept those profiles online. Facebook and Instagram justified their decision by saying that the content of the parties' accounts reflected hatred incitement and violent content.<sup>124</sup> Later on, Casa Pound obtained from a Tribunal in Rome an order of restoration of the web page along with a compensation of 800 euros for each day of suspension. The reasoning referred to the right to media pluralism. Facebook appealed this injunction, but the Court of Rome upheld the first decision. Nonetheless, Court of Rome took an opposite decision in the *Forza Nuova v. Facebook* case looking at how Facebook is obliged to remove political content based on the contractual relationship with users.

The Facebook profile of the publishing house Altaforte, linked to Casa Pound, has been removed due to published contents, which incite to hatred «thus not respecting the standards of the Facebook community».<sup>125</sup>

Twitter suspended the account of *Libero*, a newspaper close to right parties, for 12 hours, due to suspected activities in relation to fake news.<sup>126</sup>

NewsGuard, an association of journalists that checks the content of accounts with many followers, highlighted some Italian politicians or former politicians may potentially infringe the terms of service of Twitter by spreading fake news. For now, internet companies have not taken any action.<sup>127</sup>

Some politicians removed spontaneously content under social pressure, after improper, mainly racial, comments.

## Latvia

National-conservative political party “Nacionālā Apvienība”, which is represented in the Parliament and the Coalition of Government, has experienced suspension from Twitter.<sup>128</sup> The suspension from April 2020 – at least in accordance with the information provided by the party<sup>129</sup> – had happened by mistake, and Twitter afterwards recognised that none of its rules had been breached. Before the renewal of the account, however, some people already began a “witch hunt” in the media, blaming left-oriented youth for slander of the Nacionālā Apvienība which accordingly, in the opinion of the authors, had been the reason for the suspension of the account.<sup>130</sup>

<sup>124</sup> “Facebook ha rimosso la pagina della casa editrice Altaforte, vicina a CasaPound”, <https://www.ilpost.it/2020/07/11/facebook-rimosso-pagina-altaforte/>; La Repubblica, “CasaPound e Forza nuova oscurate sui social, cancellate le pagine su Facebook e Instagram: ‘Istigano all'odio’”, [https://www.repubblica.it/politica/2019/09/09/news/capound\\_oscurata\\_sui\\_social\\_cancellate\\_decine\\_di\\_pagine\\_e\\_profil\\_i\\_su\\_facebook\\_e\\_instagram-235592742/](https://www.repubblica.it/politica/2019/09/09/news/capound_oscurata_sui_social_cancellate_decine_di_pagine_e_profil_i_su_facebook_e_instagram-235592742/).

<sup>125</sup> Ramotti in IRPA: “Facebook oscura le pagine di Casa Pound e Forza Nuova”, <https://www.irpa.eu/fb-oscura-neofascisti/>.

<sup>126</sup> Ruffilli in La Stampa: “Twitter limita l'account di *Libero* quotidiano”, <https://www.lastampa.it/tecnologia/news/2021/01/11/news/twitter-mette-il-bavaglio-a-libero-quotidiano-1.39761080>.

<sup>127</sup> Brill in Il Sole 24 ore, “Ecco NewsGuard, il servizio anti fake-news. Il Sole 24 Ore promosso a pieni voti”, <https://www.ilssole24ore.com/art/newsguard-arriva-servizio-anti-fake-news-sole-24-ore-promosso-ACjVaUC>.

<sup>128</sup> [https://twitter.com/VL\\_TBLNNK/status/1350569705455693825](https://twitter.com/VL_TBLNNK/status/1350569705455693825).

<sup>129</sup> [https://twitter.com/VL\\_TBLNNK/status/1253320039123415049](https://twitter.com/VL_TBLNNK/status/1253320039123415049).

<sup>130</sup> *Imants Viksne*, “Vēl viens hibrīduzbrukums nacionālistiem”, <https://nra.lv/latvija/312006-vel-viens-hibriduzbrukums-nacionalistiem.htm>.



As a reaction to this suspension the journalist Iveta Buiķe tweeted: “Those who are happy for the suspension of the NA [Nacionāla Apvienība – comment of the authors] account should think that they can become the next ones. How many of Putin’s critics have not been blocked here + FB. This opaque censorship of social networks is dangerous. When the role of censors is taken over by all kinds of rebaltikas [Latvian analytical journalists – comment of the authors], which do not know how to work, then one can say goodnight to freedom.”<sup>131</sup>

Also Mr. Iesalnieks stated that he had been banned on Twitter for 90 days without any explanation on the grounds<sup>132</sup> – “This is the magic of censorship, you are banned and that’s it”.<sup>133</sup> As “Twitter does not respect freedom of expression by aggressively deleting conservative opinions”, he has also asked to follow him on Parler and Facebook.

An article on the webpage of “Nacionāla Apvienība”, published in December 2020, refers to blocking of “several members of NA, including Jānis Iesalnieks, MP, Ģirts Lapiņš, Member of the Riga City Council, and Edvards Ratnieks, Head of the Riga Branch [of the Party], as well as countless other conservative thinkers”<sup>134</sup>.

Also, some other politicians have complained about the blocking of their Twitter accounts, putting a blame for that on their political opposition.<sup>135</sup>

Political figure, opposition MP Aldis Gobzems has several times stated that his posts have been deleted or suspended (“censored”) by Re:Baltica (analytical journalists which assist Facebook as fact-checkers).<sup>136</sup>

Similar arguments have been expressed by the public figure Mr. Jānis Pļaviņš, whose webpage even has a page “Censored in social networks”.<sup>137</sup> This page contains several articles on “Plandemic”, “COVID-19 affaire”, censorship and similar topics.

## Lithuania

A former member and chairman of the Parliament of Lithuania, who is also a showman and TV celebrity specialising in humour, expressed an appeal in an interview commenting on parliamentary elections results to news portal *delfi.lt*, to shoot certain politicians – “one a year” – because they would represent a political power which is acting against the state. This provoked critical reactions on the part of authorities and the general public. A Prosecutor’s office started an investigation under the Criminal Code provision prohibiting hate speech but discontinued the proceedings noting that inappropriate choice of means of expression possibly violated norms of ethics and morality but stayed within the allowed limits of political criticism.<sup>138</sup> In the meantime, interview recording on *delfi.lt* was edited and the contested phrases were

<sup>131</sup> <https://twitter.com/ivetaBuike/status/1252176638923726849>.

<sup>132</sup> <https://twitter.com/JanisIesalnieks/status/1347970495870885900>.

<sup>133</sup> <https://twitter.com/JanisIesalnieks/status/1348204280126255104>.

<sup>134</sup> Roberto Ozols, “Konservatīvo cenzūra – “radikālu sazvērestība” vai realitāte?”, <https://www.nacionalaapvieniba.lv/aktualitate/konservatibo-cenzura-radikalu-sazverestiba-vai-realitate/>.

<sup>135</sup> <https://www.facebook.com/augulisuldis/posts/3156358874477630/>

<sup>136</sup> <https://www.facebook.com/gobzems/videos/nepie%C4%BCauj-ka-inga-spri%C5%86%C4%A3e-un-rebaltica-tagad-dikt%C4%93s-in-cenz%C4%93s-k%C4%81du-viedokli-dr%C4%ABk/921423208290461/>.

<sup>137</sup> See: <https://mainampasauli.news/cenzets-socialajos-tiklos/>

<sup>138</sup> Prokuratūros verdiktas: A. Valinsko pasakymas, kad tokius kaip Tomaševskį reiktų šaudyti – ne nusikaltimas, 8/12/2020,

removed.<sup>139</sup> The author of the contested remarks explained his previously expressed words giving another interview to *delfi.lt* and invited his critics to resolve the matter using legal procedures as expected in the state governed by the rule of law.<sup>140</sup> The removal of content from the original record of the first interview was not contested.

Lithuanian MEP Viktor Uspaskich was expelled from the Renew Europe group of the European Parliament after he referred to gay and trans people as “perverts” and “deviants” on Facebook. The liberal group of the European Parliament said that such comments were incompatible with their values. In a Facebook video posted on January 10, Uspaskich – who serves as leader of the Lithuanian Labor Party – said that in some European countries it is “dangerous” to be “a representative of a natural orientation.”<sup>141</sup> No reaction to this post on the part of Facebook was reported. Similarly, no reaction from Facebook was reported when a few weeks earlier MEP Uspaskich had been promoting mineral water as a cure for Covid-19. A member of the team of another Lithuanian MEP on her website drew a sophisticated parallel between Uspaskich and Trump as both acting in post-truth era and both playing a role of a victim.<sup>142</sup> Implications of such a parallel were not examined.

## Norway

Yes, politicians in Norway have faced restrictions by internet companies for violations of their terms of service. One example of this is a case concerning the Former Minister of Justice, Per-Willy Amundsen, from the Progress Party (Frp), who claims that Facebook contacted him and deleted a post on his Facebook account concerning the British Islam critique and activist Tommy Robinson.<sup>143</sup>

There has also been at least one case where several academics had their Facebook accounts suspended and/or deleted for posting a historical article illustrated by a picture of Adolf Hitler. This has to our knowledge not been documented by the media, but we have personal knowledge of at least one of the involved parties.

Even so, this is not a common occurrence in Norway. A more common “restriction” regularly imposed on Norwegian politicians is the “fact-check” services of various media houses, particularly during election campaigns. Most of these are not related to Facebook in any way, but there are exceptions. Faktisk.no has been part of Facebook’s cooperation “third-party-fact-checking” since 2018 and is also a member of the international fact checking network IFCN. Among other things, they have recently refuted the claim that the Government spends twice as much on external consultants as they do on the actual administration, and

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<https://www.15min.lt/naujiena/aktualu/lietuva/prokuraturos-verdiktas-a-valinsko-pasakymas-kad-tokius-kaip-tomasevski-reiktu-saudyti-ne-nusikaltimas-56-1420664>.

<sup>139</sup> A. Valinsko žodžiai apie tokių kaip V. Tomaševskis šaudymą sukėlė skandalą: pradėtas ikiteisminis tyrimas, 19/10/2020, Skaitkite daugiau: <https://www.15min.lt/naujiena/aktualu/lietuva/a-valinsko-zodziai-apie-tokiu-kaip-v-tomasevskis-saudyma-sukele-skandala-tai-ivardijama-kaip-neapykantos-kurstymas-56-1394314?copied>.

<sup>140</sup> Arūno Valinsko atsakymas Valdemarui Tomaševskiui, 19/10/2020, <https://www.delfi.lt/news/ringas/lit/aruno-valinsko-atsakymas-valdemarui-tomasevskiui.d?id=85526065>.

<sup>141</sup> Emerging Europe this week, 22/01/2021, <https://emerging-europe.com/news/emerging-europe-this-week-35/>; LRT English Newsletter: social bubbles and Russian pop stars, 22/01/2021, <https://www.lrt.lt/en/news-in-english/19/1326545/lrt-english-newsletter-social-bubbles-and-russian-pop-stars>.

<sup>142</sup> Umberto Masi, J'Accuse, monsieur Uspaskich, 15/01/2021, <https://www.europoszinios.lt/jaccuse-monsieur-uspaskich/>.

<sup>143</sup> <https://www.vg.no/nyheter/innenriks/i/wP48e4/stortingsrepresentant-mener-facebook-driver-politisk-sensur>

they have checked whether the Government actually did double the budget for transportation (depends on how one calculates).<sup>144</sup>

## Portugal

No record found.

## Serbia

There was no shutdown of Twitter accounts for politicians in Serbia, but in March 2020, the news that the social network Twitter shut down 8,558 Twitter accounts in Serbia caused great attention of the domestic and world public. The social network Twitter announced on its official "Twitter Safety" profile that their teams dealing with authentication deleted more than 8,500 accounts that were used to promote the ruling party in Serbia and its leader. It was a network of "bot" accounts that were engaged exclusively to promote the ruling party and its leader during the 2017 presidential election campaign, and then to bring down public support for the "1 in 5 million" protests, led by the opposition in Serbia, at the end of 2018. Thanks to the information obtained from Twitter, a report of the Stanford Internet Observatory, part of the renowned Stanford University in California, provided a detailed account of the power of this "bot army".<sup>145</sup> According to the report, an important feature of this (bot) network was the use of the same automation application called castle.rs. Most of the "bots" actually retweeted and responded to the same tweet at the same time, which are clear features of an organized network of "bots" with a political agenda.<sup>146</sup> These accounts, the report claims, tweeted over 43 million times in four years. They published over 8.5 million links to the websites of the ruling party and various pro-government media.<sup>147</sup>

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<sup>144</sup> Faktisk.no@

<sup>145</sup> Bush, D., 2020, "Fighting Like a Lion for Serbia": An Analysis of Government-Linked Influence Operations in Serbia ([https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/serbia\\_march\\_twitter.pdf](https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/serbia_march_twitter.pdf))

<sup>146</sup> Radojević, V., 2020, Kako je radila srpska „bot“ armija: 43 miliona tvitova podrške Vučiću, 4.04.2020., Raskrinkavanje, (<https://www.raskrinkavanje.rs/page.php?id=Kako-je-radila-srpska-bot-armija-43-miliona-tvitova-podrske-Vucicu-642> )

<sup>147</sup> Ibid.

### **Question 3: Are there “Must-Carry” requirements in your national law for a) Social Networks b) TV, Radio, Press or other Media to disperse official information from authorities or holders of public offices?**

#### **Austria**

a.) No.

b.) § 20 (1) öAMD-G requires cable network providers to disperse the program of the ORF (Austrian public service broadcaster), if this can be done without disproportionate effort. §§ 4b (2) and 4c (2) öORF-G include further provisions on how the dispersion has to be realised.

Cable network providers (under certain conditions) are also required to disperse programs which make a special contribution to the diversity of opinion (§ 20 (2) öAMD-G).<sup>148</sup>

There have been propositions for a “must-be-found” provision, as an extension to the current “must-carry” provisions. The ORF as the public broadcaster as well as the “Verband österreichischer Privatsender (VÖP)” (Association of Austrian private broadcasters) both support the idea that content of public interest should have to be found in a privileged manner in all relevant networks, including media platforms<sup>149</sup>.

#### **Belgium**

##### **a) Social Networks**

In the context of the COVID-19 pandemic, the former Minister of Telecommunications, Philippe De Backer (Open VLD, Flemish liberal party), stated that “all major Internet platforms [Facebook, Instagram, Twitter] have made efforts to increase the visibility of the World Health Organization (WHO), and, in Belgium, of the government website [www.info-coronavirus.be](http://www.info-coronavirus.be), on their services”.<sup>150</sup> However, the platforms in question are not legally obliged to do so.<sup>151</sup>

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<sup>148</sup> § 20 öAMD-G

(1) Kabelnetzbetreiber haben die Hörfunk- und Fernsehprogramme des Österreichischen Rundfunks (§ 3 ORF-G) weiter zu verbreiten, sofern dies ohne unverhältnismäßig großen Aufwand möglich ist.  
(2) Kabelnetzbetreiber haben Fernsehprogramme, die einen besonderen Beitrag zur Meinungsvielfalt im Verbreitungsgebiet leisten, auf Nachfrage zu jenen Bedingungen zu verbreiten, die für die überwiegende Anzahl an sonstigen im Kabelnetz verbreiteten Programme gelten.  
(3) Bei der Beurteilung des besonderen Beitrages zur Meinungsvielfalt sind der Anteil an eigengestalteten, eigen- oder auftragsproduzierten Sendungsformaten mit kultureller, politischer oder gesellschaftspolitischer Relevanz für Österreich, insbesondere solche mit überwiegend österreichischem, regionalem oder lokalem Bezug sowie deren Beitrag zur österreichischen Identität, ferner die bestehende Programmbelegung und die Zahl der verfügbaren Programmplätze zu berücksichtigen.  
[...]

<sup>149</sup> [https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME\\_04659/imfname\\_753876.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_04659/imfname_753876.pdf);  
[https://www.voep.at/images/stories/voep\\_dokumente/170620\\_VOeP\\_Media\\_Future\\_Perspectives\\_Juni\\_2017.pdf](https://www.voep.at/images/stories/voep_dokumente/170620_VOeP_Media_Future_Perspectives_Juni_2017.pdf)

<sup>150</sup> ‘Schriftelijke Vraag Nr. 7-418 van Stephanie D'Hose (Open Vld) aan de Minister van Digitale agenda, Telecommunicatie en Post, Belast met Administratieve Vereenvoudiging, Bestrijding van de Sociale Fraude, Privacy en Noordzee: Coronacrisis - Desinformatie - Fake News - Sociale Media - Aanpak - Maatregelen (Covid-19)’ (2020), <https://www.senate.be/www/?Mlval=/Vragen/SchriftelijkeVraag&LEG=7&NR=418&LANG=nl>.

<sup>151</sup> See also: GDHRnet Study 1: How States and Platforms Deal with Covid-19-related Disinformation: an Exploratory Study of 19 Countries.

## b) Flemish Public Broadcaster

In what follows, the legal rules related to must-carry requirements of the Flemish public broadcaster (VRT) are set out.

Art. 34 Flemish Media Decree <sup>152</sup>

§ (1) VRT shall be under the obligation to broadcast, free of charge, announcements by the Flemish Government, the Flemish Parliament, and the ministers and state secretaries of the Brussels Capital Region, for a maximum of fifteen minutes per month, in accordance with the rules and conditions stipulated by the Flemish Government.

§ (2) The announcements shall be broadcast as a continuation of a main news item. The same announcement shall be broadcast only once per network. The announcements are intended to inform the Flemish population of matters of general interest. VRT bears no responsibility for these announcements.

§ (3) The announcements shall meet the conditions and rules determined by the Flemish Government. They must be clearly recognisable and must not give rise to confusion with VRT's own programmes. Before and after the announcements it shall be stated that they were made by the Flemish Government or the Government of the Brussels Capital Region.

## c) Radio and TV-broadcasting (in general)

Other Flemish radio and television broadcasters are authorised (not obliged) to broadcast 'public service announcements' (*'boodschappen van algemeen nut'*).

Art. 50/1 Flemish Media Decree<sup>153</sup>

Broadcasters are *authorised* to transmit public service announcements, subject to the application of the provisions of this Decree. Public service announcements shall be clearly recognisable and distinguished from programmes. In a television broadcasting programme, they shall be preceded and followed by an appropriate announcement that the message is of public benefit and by the source of the message. In a radio programme, they will be distinguished from normal programming by an audible signal (...).

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<sup>152</sup> Art. 34. Vlaams Mediadecreet

§ 1. De VRT is verplicht maximaal vijftien minuten per maand kosteloos mededelingen uit te zenden van de Vlaamse Regering, het Vlaams Parlement, de ministers en de staatssecretarissen van het Brusselse Hoofdstedelijke Gewest, volgens de regels en de voorwaarden die de Vlaamse Regering bepaalt.

§ 2. De mededelingen worden uitgezonden in aansluiting op een hoofdjournaal. Dezelfde mededeling wordt slechts eenmaal per net uitgezonden. De mededelingen strekken tot voorlichting van de Vlaamse bevolking over aangelegenheden van algemeen belang. De VRT draagt geen verantwoordelijkheid voor die mededelingen.

§ 3. De mededelingen voldoen aan de voorwaarden en de regels die de Vlaamse Regering vaststelt. Ze moeten duidelijk herkenbaar zijn en mogen geen aanleiding geven tot verwarring met de eigen programma's van de VRT. Voor en na de mededelingen wordt gesteld dat ze vanwege de Vlaamse overheid of de overheid van het Brusselse Hoofdstedelijke Gewest zijn verstrekt.

<sup>153</sup> Art. 50/1. Vlaams Mediadecreet

Omroeporganisaties zijn gemachtigd boodschappen van algemeen nut uit te zenden, met behoud van de toepassing van de bepalingen van dit decreet. De boodschappen van algemeen nut zijn duidelijk herkenbaar en onderscheiden van de programma's. In een televisieomroepprogramma worden ze voorafgegaan en gevolgd door een passende aankondiging dat het om een boodschap van algemeen nut gaat en van wie de boodschap uitgaat. In een radioprogramma worden ze door middel van een auditief signaal onderscheiden van de gewone programmering (...).

## Bosnia and Herzegovina

In national law, such obligations are envisaged only for public TV and Radio service broadcasters operating at the levels of state and two entities – Federation of BiH and Republika Srpska. These laws prescribe that public broadcasters are obliged to broadcast specific types of content, including information about the work of state and entity parliaments and equal coverage of pre-election campaigns of political parties.<sup>154</sup> There are no specific provisions that deal with social networks. In general, legal framework regulating media landscape, including social media, in BiH is quite outdated and several important pieces of legislation that would align this area with technological progress and international standards have been pending adoption for years.

## Cyprus

- a) There are no such requirements.
- b) There are no such requirements.

## Finland

There are no requirements in cases of opinions or announcements. In Finland media has often broadcast official press conferences on YLE (Finnish Public Broadcasting Company) channels (incl. internet) and often also in the commercial media.

In case of emergencies an emergency population warning must be transmitted in cases based on emergency population warning act.<sup>155</sup> This law applies only to radio, television and other terminals, no social networks or internet. However, the Emergency Response Centre Agency publishes information also in social media and the internet.

In addition, YLE and in some circumstances commercial media have an obligation to publish emergency announcement/ emergency bulletin/public announcement on the basis of Government Decree on the Obligation to Provide Public Bulletins and Preparedness on Communications Market.<sup>156</sup>

## France

Almost none by law or regulation. The national child abduction alert system ('Amber alert'), set up in 2006, includes by voluntary convention most media, and was extended to Facebook's participation in 2011.<sup>157</sup> More recently, after the failure of a smartphone application launched in 2016 to alert the population of a terrorist attack or a disaster, in 2018 the government decided to turn to social networks through contractual

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<sup>154</sup> <http://www.fmks.gov.ba/kultura/legislativa/fbih/44.pdf>;

<https://www.paragraf.ba/propisi/republika-srpska/zakon-o-radio-televiziji-republike-srpske.html>;

<https://www.paragraf.ba/propisi/bih/zakon-o-javnom-radio-televizijskom-sistemu-bosne-i-hercegovine.html>

<sup>155</sup> Available at: <https://finlex.fi/fi/laki/ajantasa/2012/20120466> (no english translation).

<sup>156</sup> Available at: <https://www.finlex.fi/fi/laki/alkup/2003/20030838> (no english translation).

<sup>157</sup> List available at: <http://www.alerte-enlevement.gouv.fr/index.php?rubrique=10446>.

agreements aiming at relaying public alerts, e.g. through Facebook's 'Safety Check' or a dedicated Twitter account. Most recently, an alert system based on cell broadcast was announced for 2022.<sup>158</sup>

## Germany

In national law, such obligations are expressly formulated only for public service broadcasters regarding TV and radio (in German: „Pflicht zur Ausstrahlung amtlicher Verlautbarungen“).<sup>159</sup> Above that, some *Länder* (federal states) have emergency rules for broadcasting emergency administrative regulations (“Notbekanntmachung von Verordnungen”) on radio, tv, loudspeakers or other “locally common” ways (which may nowadays be interpreted to include the internet).<sup>160</sup> Unlike the aforementioned rules for public broadcasters, these rules do not expressly contain a „must-carry“ obligation towards broadcasting stations or other intermediaries.

Next to these long-established legal frameworks in Germany, it's worth noting the recently presented Art. 37 of the Draft for a Digital Services Act (DSA) for the European Union stipulates that in public emergencies – such as in the health sector during the current pandemic – platforms can be induced to establish crisis protocols for the preferential treatment of information from the member states or the EU.<sup>161</sup>

## Greece

a) In Greece do not exist any must carry requirements for social media platforms.

b) In contrast. There is a complex legal framework for requirements in TV and Radio. Particularly, The National Council for Radio and Television is the Greek independent administrative authority (Article 15 par. 2 of the Greek Constitution), which supervises and regulates the broadcasting sector. It was established further to Law no.1866 of October 6th, 1989 amended by Law no.2863/2000 and Law no. 3051/2002. The NCRTV supervises that public and private broadcasters comply with the fundamental principles and rules in force regarding the pursuit of radio and television broadcast activities.

It also surveys and monitors the program's quality, objectivity in disseminating information and the pluralistic expression of political ideas and opinions, as prescribed by Law. In specific, the NCRTV's department for programs' quality and human rights protection monitors television and radio programs in order to ascertain that broadcasters operating on the Greek territory under its jurisdiction conform to the code of journalistic ethics and the provisions of legislation in force, regarding human rights and dignity's protection, presumption of innocence, pluralism, childhood and adolescence protection.

In addition, in each pre- election period the government establishes a legal framework for fair promotion of the political parties in Television and Radio stations.

<sup>158</sup> See: <https://www.numerama.com/tech/650980-la-france-se-met-enfin-aux-sms-durgence-pour-alerter-la-population-en-cas-de-grave-danger.html>.

<sup>159</sup> See for instance § 11 of the NDR-Staatsvertrag, [https://www.ndr.de/der\\_ndr/unternehmen/staatsvertrag100.pdf](https://www.ndr.de/der_ndr/unternehmen/staatsvertrag100.pdf), § 10 of the ZDF-State Contract, [https://www.ard-werbung.de/fileadmin/user\\_upload/media-perspektiven/Dokumentation/2018-1\\_ZDF-Staatsvertrag\\_in\\_Kraft\\_seit\\_25.5.2018.pdf](https://www.ard-werbung.de/fileadmin/user_upload/media-perspektiven/Dokumentation/2018-1_ZDF-Staatsvertrag_in_Kraft_seit_25.5.2018.pdf), § 10 of the Deutschlandradio-State Contract, <https://www.deutschlandradio.de/index.media.c5f38efb69496175a3454f644ca32718.pdf>.

<sup>160</sup> See for instance Art. 51 s. 3 of the Bavarian „Landesstraß- und Verordnungsgesetz“, <https://www.gesetze-bayern.de/Content/Document/BayLStVG-51>.

<sup>161</sup> See Art. 37 (2) a) DSA-draft, available for download at [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en).

## Hungary

a) No.

b) In the event of a state of emergency, the Parliament, the Defense Council, the President of the Republic and the Government, as well as persons and bodies specified by law may oblige the media service provider to publish public service announcements on the status quo free of charge and may prohibit the publication of certain announcements. Further, according to Article 203 (27) of the Media Act, a “public service announcement shall mean any announcement released without consideration, originating from an organization or a natural person fulfilling state or local governmental responsibilities or from a State financed or State managed institution, which provides specific information of public interest for the purpose of attracting the attention of the viewers or the audience, and does not qualify as political advertisement”. The media provider may not ask to be compensated for the public service announcement.

## Iceland

According to Article 31 on the Law No. 38/2011 on Media, all media service providers are required to broadcast notifications from the police and other public emergency services in case of an urgent need and interest of the public.<sup>162</sup>

The public service provider, Ríkisútvarpið, has also certain obligations formulated in Act No. 23/2013 on Ríkisútvarpið, the public media service provider although those don't include dispersing official information from authorities or public offices but rather certain requirements regarding diversity, cultural content, advertising etc.<sup>163</sup>

## Ireland

### TV and Radio

Section 61 of the Broadcasting Act 2009 provides that during an emergency broadcasters may be required “to co-operate with the relevant public bodies in the dissemination of relevant information to the public” and may be required to allocate broadcasting time or carry broadcasting announcements for government Ministers. The full text of section 61 is as follows:

(1) In this section “network provider” means a person providing or operating an electronic communications network which is used for the distribution, transmission or retransmission of broadcasting services to the public.

(2) During the continuance of any national emergency, the Minister may suspend any broadcasting licence or multiplex licence as defined in section 129 and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he or she directs.

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<sup>162</sup> See <https://www.althingi.is/lagas/nuna/2011038.html>.

<sup>163</sup> See <https://www.althingi.is/lagas/151a/2013023.html>.



(3) The Authority shall have the power to require broadcasting contractors and network providers to co-operate with the relevant public bodies in the dissemination of relevant information to the public in the event of a major emergency.

(4) If and whenever the Minister shall exercise the powers conferred on him or her by subsection (2) the broadcasting contractor or multiplex contractor shall be entitled to receive from the Minister, with the consent of the Minister for Finance—

(a) such sums as are required to defray any expenses which, regard being had to the nature of the emergency, have been properly and necessarily incurred by the broadcasting contractor or multiplex contractor and for meeting which revenue is by reason of the exercise of such powers not otherwise available to the broadcasting contractor or multiplex contractor, and

(b) compensation for any damage done to any property of the broadcasting contractor or multiplex contractor, being damage directly attributable to the exercise of such powers.

(5) At the request of the Minister, the Authority shall direct a broadcasting contractor to allocate broadcasting time for announcements for and on behalf of any Minister of the Government, in the event of a major emergency, in connection with the functions of that Minister of the Government. The broadcasting contractor shall comply with the direction.

(6) At the request of the Minister, the Authority shall direct a network provider, in a manner to be specified by the Authority, to carry broadcast announcements for and on behalf of any Minister of the Government, in the event of a major emergency, in connection with the functions of that Minister of the Government. The network provider shall comply with the direction.

(7) In complying with a direction under subsection (5) or (6) a broadcasting contractor or network provider may broadcast an announcement that it has received such a direction from the Authority.

### **Social Networks, Press and other Media**

There are no other “must carry” provisions in Irish law regarding official information in relation to social networks, the press or other forms of media.

## **Italy**

During the Covid-19 crisis, the Council of Ministers established a task force to fight against fake news related to the pandemic. The task force elaborated guidelines (therefore, a form of soft law engagement) that identified three core strategies:

1) Coordinating institutional information via institutional channels, but also the use short tv commercial or gamification technique to reach younger population. Information should be accurate and easily accessible to anyone.

2) Creating accounts on Whatsapp/Messenger/Telegram with have the capability to give automatically generated answers to frequently asked questions in order to prevent, an incorporation of these questions into some fake news portals.

3) Coordinating with other countries and systematically translating distributed materials by the WHO in Italian.<sup>164</sup>

## Latvia

Section 21 of the Law on Public Electronic Media and their Management (covering Latvian Television and Latvian Radio), which came in force on 1 January 2021, states the obligation of the public electronic media to inform the public in exceptional cases:

“(1) In accordance with regulatory enactments regarding the state of emergency and the state of exception, public electronic media have an obligation to give the responsible institutions the opportunity to provide information and notifications to the population during the state of emergency and state of exception.

(2) Public electronic media have the obligation to immediately give the President of the State, the Speaker of the Saeima [Parliament] or the Prime Minister an opportunity to make an extraordinary statement.”

A similar norm previously was included in the Electronic Mass Media Law. Additionally, Section 9, Part 4, and Section 15 of the Law On State of Emergency and State of Exception repeats the clause, noting that “The public electronic mass media shall publish a decision on state on emergency/state of exception free of charge, as well as provide other information regarding state on emergency /state of exception and recommendations for actions of inhabitants in conformity with the conditions of the Cabinet and the responsible authority regarding the procedures and urgency of providing the information.”

Section 24.<sup>1</sup> of the Electronic Mass Media Law states that the electronic media providing public announcements and information on emergencies (including natural disasters) shall do so in a way that is accessible to persons with disabilities

However, no “must-carry” requirements exist for social networks or the press.

## Lithuania

The Law on the Right to Receive Information from State and Municipal Institutions and Agencies,<sup>165</sup> in line with the EU Directive 2003/98/EC (as amended) which it transposes, provides (in Article 8) that a person has a right to re-use the received documents without a consent of the institution and without concluding a specific agreement unless other laws of Lithuania or EU legal acts provide otherwise. Under the general rule, a person may re-use those documents by publishing them publicly in any manner and may make them publicly available on the Internet. The documents cannot be distorted and cannot be used to advertise certain products or for any other illegal purpose. A person is required to indicate the source of documents, the date when they were received and ensure that the rights and legitimate interests of third persons be not violated. The person is responsible for the truthfulness of adapted or otherwise changed documents.

<sup>164</sup> Presidenza del Consiglio dei Ministri Dipartimento per l'informazione e l'editoria Unità di monitoraggio per il contrasto della diffusione di fake news relative al covid-19 sul web e sui social network, <https://informazioneeditoria.gov.it/media/3234/programmaoperativo.pdf>.

<sup>165</sup> Lietuvos Respublikos teisės gauti informaciją iš valstybės ir savivaldybių institucijų ir įstaigų įstatymas (Žin., 2000, Nr. 10-236; 2005, Nr. 139-5008; TAR, 2016-10-17, Nr. 2016-25262).

As regards COVID-19 situation, it is worth noting that emergency (*ekstremalioji situacija*) in Lithuania has been declared by the Government under the Law on Civil Protection<sup>166</sup> and quarantine (*karantinas*) was introduced by the Government under the Law on Prevention and Control of Communicable Diseases in Humans.<sup>167</sup> The two regimes are more lenient than the public emergency (*nepaprastoji padėtis*) foreseen under the Law on Public Emergency<sup>168</sup> in which case it would have been declared by the Parliament and could provide for further-reaching restrictions.

The Law on Civil Protection<sup>169</sup> provides (in Article 22) that warning and information about an emergency (*ekstremalioji situacija*) possessed by state and municipal institutions and agencies is provided immediately, using technical measures and under the procedure established by the Director of Fire and Rescue Department under the Ministry of the Interior. Providers of public communication networks and public electronic services are required to maintain from their own funds the infrastructure and the technological service used for the technical measures installed by the Fire and Rescue Department in order to ensure that warning regarding the emergency can be provided to the public in the territory of Lithuania. State and municipality institutions and agencies as well as commercial entities are required to allow entities who carry out the warning to use, free of charge, their infrastructure required for technical measures of the warning system.

Fire and Rescue Department under the Ministry of the Interior informs that warning shall be provided by sirens, short messages to mobile phones (using cell broadcast technology), by the public broadcaster Lithuanian Radio and Television (LRT) and by officials.<sup>170</sup> The warning system does not explicitly mention the use of news portals, but the public broadcaster LRT has its news portal and would thus be expected to use it also for posting emergency-related warnings. As regards messages to mobile phones, Public Warning and Information System is available on 2G (GSM), 3G (UMTS) and 4G (LTE) networks of all public mobile communication service providers, namely, Bitė Lietuva, Telia and Tele2. However, at the moment, there is no possibility to receive cell broadcast messages for Bitė Lietuva clients who have iPhones. The Department suggests downloading mobile application “GPIS 112” from Apple App Store to receive warning messages via the Internet.<sup>171</sup>

The Law on the Provision of Information to the Public<sup>172</sup> provides (in Article 20) that producers and disseminators of public information are obliged to immediately publish warning messages by the state and municipal institutions and agencies or to provide conditions for them to publish those messages live. Director of the Fire and Rescue Department shall decide on the need of such publishing in the national level producers and disseminators of public information whereas the director of the relevant municipality administration shall decide as regards the regional level. Warning messages shall be published in a manner

<sup>166</sup> Government Resolution of 26 February 2020 No. 152,

<https://www.e-tar.lt/portal/lt/legalAct/df60f5901ea611ebb0038a8cd8ff585f>.

<sup>167</sup> Government Resolution of 4 November 2020 No. 1226,

<https://www.e-tar.lt/portal/lt/legalAct/d85943f0713b11eb9601893677bfd7d8>.

<sup>168</sup> Lietuvos Respublikos nepaprastosios padėties įstatymas (Žin., 2002, Nr. 64-2575).

<sup>169</sup> Lietuvos Respublikos civilinės saugos įstatymas (Žin., 1998, Nr. 115-3230; 2009, Nr. 159-7207).

<sup>170</sup> Priešgaisrinės apsaugos ir gelbėjimo departamentas,

[https://pagd.lrv.lt/uploads/pagd.lrv.lt/documents/images/Civilin%C4%97%20sauga/Gyventoj%C5%B3%20persp%C4%97jimas\(1\).png](https://pagd.lrv.lt/uploads/pagd.lrv.lt/documents/images/Civilin%C4%97%20sauga/Gyventoj%C5%B3%20persp%C4%97jimas(1).png).

<sup>171</sup> Priešgaisrinės apsaugos ir gelbėjimo departamentas, [https://www.lt72.lt/?page\\_id=5030&lang=en](https://www.lt72.lt/?page_id=5030&lang=en).

<sup>172</sup> Lietuvos Respublikos visuomenės informavimo įstatymas (Žin., 1996, Nr. 71-1706; 2006, Nr. 82-3254).

which would make them accessible to persons with disabilities. Further restrictions of activities or obligations of producers and disseminators of public information might be introduced by the parliament by means of a law in the event of a war or a public emergency (*nepaprastoji padėtis*).

The Law on Prevention and Control of Communicable Diseases in Humans<sup>173</sup> (based on which quarantine was introduced during the COVID-19 pandemic) stipulates (in Article 21) that the Ministry of Health shall transmit the information regarding the quarantine regime (announcement, territory, regime, revocation) to Lithuanian Radio and Television within 3 hours.

COVID-19 Management Strategy adopted by the Government in June 2020<sup>174</sup> highlighted the importance of providing timely, objective, and comprehensive information to the public and stated that all forms of media were going to be used for that purpose, exploiting the possibilities offered by the latest digital information and communication technologies.

Official information regarding the COVID-19 pandemic is provided on a dedicated Government website <https://koronastop.lrv.lt> where the website is presented as the “official source of information by the Government of the Republic of Lithuania on the situation in Lithuania.” In order to facilitate the provision of such information to the public, an automated conversation robot called ViLTė was installed. This virtual conversation robot, working with the help of artificial intelligence, can, reportedly, already understand and provide official and reliable answers in Lithuanian and English to thousands of citizens’ questions about coronavirus, travel restrictions, public support for business and many others. It is “learning” rapidly with the help of artificial intelligence; the more questions are asked, the smarter it is.<sup>175</sup>

## Norway

The “Law of Broadcasting” (“Lov om kringkastning”) §2-8, underlines that a broadcaster which has obtained an exclusive right to events of significant importance to society, cannot take advantage of this exclusive right in a way that would deprive viewers the opportunity to follow the event on TV free of charge.<sup>176</sup>

During emergency situations and in times of war, the Norwegian Broadcasting Corporation (NRK) has an obligation to provide information from the Government to the public, through radio.<sup>177</sup> This obligation is laid down in the “Law of Broadcasting” (“Lov om kringkastning”) § 2-4.<sup>178</sup>

## Portugal

There are no specific provisions designed for social Networks. Traditional media, such as TV, Radio and Press provide “Must-Carry” requirements to disperse official information from authorities or holders of public offices.

<sup>173</sup> Lietuvos Respublikos žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas (Žin., 1996, Nr. 104-2363; 2001, Nr. 112-4069).

<sup>174</sup> COVID-19 valdymo strategija, p. 6, 10/06/2020, [https://koronastop.lrv.lt/uploads/documents/files/COVID-19%20valdymo%20strategija\\_aktuali.pdf](https://koronastop.lrv.lt/uploads/documents/files/COVID-19%20valdymo%20strategija_aktuali.pdf).

<sup>175</sup> See: <https://koronastop.lrv.lt/en/news/vilte-is-an-automated-conversation-robot-providing-official-covid-19-related-information>.

<sup>176</sup> [https://lovdata.no/dokument/NL/lov/1992-12-04-127#KAPITTEL\\_1](https://lovdata.no/dokument/NL/lov/1992-12-04-127#KAPITTEL_1)

<sup>177</sup> <https://www.nrk.no/organisasjon/nrks-beredskapsansvar-1.14259568>

<sup>178</sup> [https://lovdata.no/dokument/NL/lov/1992-12-04-127#KAPITTEL\\_1](https://lovdata.no/dokument/NL/lov/1992-12-04-127#KAPITTEL_1)

The Television and On-Demand Audiovisual Services Act, approved Law no. 27/2007 of 30 July, provides that the television public service mandatorily divulgates with due outline and maxim urgency messages which diffusion is requested by the President of the Republic, the Chairman of the National Assembly and the Prime-Minister (Article 30(1)). The same “Must-Carry” requirement applies to other TV broadcasters in case of declaration of siege or of state of emergency (Article 30(2)). These messages take place in accessible mode to people with special needs, including subtitles and verbalization of essential visual contents (Article 30(3)).

Besides this, every national broadcaster of general TV services have to guarantee the exercise of the right of antenna (*direito de antena*) during electoral times as well as the rights of reply and of rectification as statutorily provided (Article 34(2)(e)(f)(g)).

These “Must-Carry” requirements apply specifically to the concessionaire of the public television service, which must also give emission time to the Public Administration to disseminate information of general interest, notably in what concerns public health and security (Article 51(2)(n)). The terms of right of antenna (*direito de antena*) and of the rights of reply and of rectification are provided under Article 59, 64 and 65 of the Television Act. These rights are also enforceable under the Radio Act (Article 32(2)).

## Serbia

The system of disaster risk reduction and emergency management is of special interest to the Republic of Serbia and is part of the national security system. In Serbia, the manner of disaster risk reduction, prevention and strengthening of resilience and readiness of individuals and the community to respond to the consequences of disasters, is regulated by the Law on Disaster Risk Reduction and Emergency Management (hereinafter: the Law).<sup>179</sup>

By disaster, the legislator means a natural disaster or a technical-technological accident whose consequences endanger the safety, life and health of a large number of people, material and cultural assets or the environment on a larger scale, and whose occurrence or consequences cannot be prevented or eliminated by regular actions of competent bodies and services.<sup>180</sup> In line with this law, natural disaster represents a phenomenon of hydrological, meteorological, geological or biological origin, caused by natural forces such as, among other things, pandemics, epidemics of infectious diseases or other natural phenomena of large scale that can endanger safety, life and health of a larger number of people, material and cultural assets or the environment on a larger scale.<sup>181</sup>

This Law stipulates that broadcasting and television stations are obliged to take measures at the request of the Ministry in order to urgently transmit appropriate information of interest for protection and rescue,<sup>182</sup> as well as the competent authorities are obliged to timely and fully inform the public about disaster risks, relevant data and measures for protection against their consequences, as well as about other measures taken to manage disaster risks.<sup>183</sup> Also, companies and other legal entities, owners and users of electronic

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<sup>179</sup> Law on Disaster Risk Reduction and Emergency Management, “Official Gazette of the Republic of Serbia”, no.87/2018.

<sup>180</sup> Art. 2, par. 1 of the Law on Disaster Risk Reduction and Emergency Management.

<sup>181</sup> Art. 2, par. 2 of the Law on Disaster Risk Reduction and Emergency Management

<sup>182</sup> Art. 98 of the Law on Disaster Risk Reduction and Emergency Management

<sup>183</sup> Art. 9 of the Law on Disaster Risk Reduction and Emergency Management

communications networks and information systems and connections, are obliged to make available the use of these systems for protection and rescue purposes, by order of the competent crisis team.<sup>184</sup>

The current experience with the declared coronavirus pandemic in the world led to the declaration of the epidemic of the infectious disease COVID-19 in Serbia, as an epidemic of greater epidemiological significance - for the territory of the Republic of Serbia, after which a state of emergency was declared in March 2020.<sup>185</sup> In such circumstances, the provisions of the relevant laws applicable in the event of a declaration of an infectious disease epidemic have become relevant: *Law on Public Health*<sup>186</sup>, *Law on Healthcare*<sup>187</sup>, *Law on Protection of Population from Infectious Diseases*<sup>188</sup>.

In the event of an epidemic, major disasters and accidents (dangers of ionizing radiation, poisoning, etc.), as well as other crises and emergencies, the Law on Healthcare stipulates that citizens have the right to be informed about the protection of their health.<sup>189</sup> The competent medical institution, other legal entity and private practice are obliged to immediately submit true information regarding the outbreak of the epidemic and other critical and emergency situations to the competent authorities of the local self-government unit, autonomous province and the Republic of Serbia, which shall inform the public about it without delay, in line with the law.<sup>190</sup>

It should also be said that the Constitution of the Republic of Serbia regulates the right to information of citizens according to which everyone has the right to be truthfully, completely and timely informed about matters of public importance and the media are obliged to respect that right; also, everyone has the right to access information in the possession of state bodies and organizations entrusted with public authority, in accordance with the law.<sup>191</sup> During the state of emergency, the Serbian Government passed a series of decrees concerning certain prohibitions and measures taken during the state of emergency. Several such decisions directly violated the right to information, and the pressure on the media was particularly heightened when the government, citing the state of emergency, adopted a conclusion on 28 March banning the publication of information from any source other than official, in order to avoid distribution of fake news and alarming of citizens.<sup>192</sup>

As this caused an outburst of protests in the domestic and global public, the decision was annulled. It should be mentioned that during the state of emergency, journalists encountered a lot of problems when they tried to obtain important information about the situation in medical institutions, the number of infected and dead in several places in Serbia (Bečej, Valjevo, Niš, Kragujevac, Sombor, Novi Sad, Zaječar, Pančevo, Leskovac, Subotica, Vranje, etc.).<sup>193</sup>

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<sup>184</sup> Art. 32 of the Law on Disaster Risk Reduction and Emergency Management

<sup>185</sup> Decision on Declaration of State of Emergency "Official Gazette of the Republic of Serbia", no.29/2020.

<sup>186</sup> Law on Public Health "Official Gazette of the Republic of Serbia", no. 15/2016.

<sup>187</sup> Law on Healthcare "Official Gazette of the Republic of Serbia", no. 25/2019.

<sup>188</sup> Law on Protection of Population from Infectious Diseases, "Official Gazette of the Republic of Serbia", no. 15/2016.

<sup>189</sup> Law on Healthcare "Official Gazette of the Republic of Serbia", no. 25/2019.

<sup>190</sup> Art. 16 of the Law on Healthcare

<sup>191</sup> Art. 51 of the Constitution of the Republic of Serbia "Official Gazette of the Republic of Serbia", no. 98/2006.

<sup>192</sup> Petrović, V.; Pokuševski, D., (ed.), 2020, Human Rights in Serbia: January-June 2020, Belgrade Centre for Human Rights, Belgrade, 2020, p.37.

<sup>193</sup> Ibid.

## Question 4: Would the suspension of a public office holder's social media account used for communicating both official information as well as private information in your country have to consider their right to freedom of expression?

### Austria

Not directly. The only way this could come into play would be via the concept of *Drittwirkung* (“mittelbare Drittwirkung der Grundrechte”), meaning that social media platforms would have to consider freedom of expression when applying their code of conduct. However, there have not (yet) been any judicial decisions applying this concept in the context of social media platforms and their code of conduct in Austria.

### Belgium

The Flemish Code of Ethics for Staff Members of the Flemish government requires staff members to perform their function in an “objective” and neutral manner.<sup>194</sup> Objectivity means treating colleagues, citizens and suppliers in the same way in equal circumstances. This objectivity entails a number of concrete rules of conduct:

- Staff members do not allow their personal interests and preferences to interfere with their work and must be mindful of conflicts of interest.
- Staff members do not discriminate and avoid any appearance of partiality.
- Staff members work open-mindedly and in a neutral manner.<sup>195</sup>

The Belgian Constitutional Court considered that a provision requiring police officers to refrain from expressing their political opinions publicly in all circumstances, engaging in political activities in public, and standing for election to a political office to be in conformity with the Belgian Constitution.<sup>196</sup> Similarly, the Council of State found a provision according to which communal police officers may exercise political activities only on condition that this is not done in public to be constitutional.<sup>197</sup> As staff members of other communal services were not subjected to a similar prohibition, the Council, nonetheless held that the provision in question could also not be applied to administrative or logistic police staff as such would create an unequal treatment between the former and the latter.<sup>198</sup>

Accordingly, it appears that Belgian public office holders may be subjected to specific restrictions of their right to freedom of expression (Article 10 ECHR, Article 19 Belgian Constitution), and, as such, also indirectly in the context of their right to freedom of assembly and association - political activities usually

<sup>194</sup> *Vlaanderen*, “Vlaanderen intern, Personeel, Integriteit, Objectiviteit”, website of the Flemish government, see: <https://overheid.vlaanderen.be/objectiviteit>.

<sup>195</sup> *Vlaanderen*, “Vlaanderen intern, Personeel, Integriteit, Objectiviteit”, website of the Flemish government, see: <https://overheid.vlaanderen.be/objectiviteit>.

<sup>196</sup> I. Van Hiel, “Vrijheid van vergadering en vereniging” in J. Vande Lanotte, G. Goedertier, Y. Haec, J. Goossens & T. De Pelsmaeker, *Belgisch publiekrecht: deel I: Inleiding tot het Belgisch publiekrecht*, Brugge, die Keure, 2015, 531-553, relevante randnummers: 801-802.

<sup>197</sup> I. Van Hiel, “Vrijheid van vergadering en vereniging” in J. Vande Lanotte, G. Goedertier, Y. Haec, J. Goossens & T. De Pelsmaeker, *Belgisch publiekrecht: deel I: Inleiding tot het Belgisch publiekrecht*, Brugge, die Keure, 2015, 531-553, relevante randnummers: 801-802.

<sup>198</sup> I. Van Hiel, “Vrijheid van vergadering en vereniging” in J. Vande Lanotte, G. Goedertier, Y. Haec, J. Goossens & T. De Pelsmaeker, *Belgisch publiekrecht: deel I: Inleiding tot het Belgisch publiekrecht*, Brugge, die Keure, 2015, 531-553, relevante randnummers: 801-802.

require the exercise of Article 11 ECHR rights (Article 26 and 27 Belgian Constitution) -, for purposes of guaranteeing neutrality and objectivity in public service.<sup>199</sup>

As such, we assume that public office holders could possibly be prevented from invoking their rights to freedom of expression and/or freedom of assembly and association (vis-à-vis the authorities), in case they would use their social media account for communicating public information, not respecting the principle of neutrality and objectivity that is associated with their function.

From the decisions of the Constitutional Court and the Council of State, it, however, appears that restrictions may, in theory, could go even further, and also relate to activities that do not qualify as “acting in an official capacity”. As long as those activities are political in nature and take place “publicly, “in public” or concern the standing for election to a political office, such restrictions indeed appear to be considered constitutional.

## Bosnia and Herzegovina

Public office holders in BiH can invoke fundamental rights against state repression in their private capacity.<sup>200</sup> There has been no example of a suspension of a public holder’s office so far. A number of public officials have their official social media accounts, although this number is significantly smaller compared to other countries.<sup>201</sup> These accounts are managed as their personal accounts with information about their political activity, personal comments and interaction with citizens. They are linked to the person of a public official rather than his or her official capacity and are not transferable in case of change of transfer of office. In this sense, it can surely be assumed that a suspension of these “semi-personal” accounts of public office holders would constitute grounds for invoking the fundamental freedoms against state intervention, if such protection was explicitly regulated by the existing legislation, which is currently not the case.<sup>202</sup>

## Cyprus

Yes. During this period, it is discussed in Cyprus the issue of internet governance and regulation of social media.

## Finland

In theory, yes. However, as there is no constitutional court in Finland and the competence of courts to review constitutionality is quite limited, this does not play a role in practice.

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<sup>199</sup> I. VAN HIEL, “Vrijheid van vergadering en vereniging” in J. Vande Lanotte, G. Goedertier, Y. Haeck, J. Goossens & T. De Pelsmaeker, Belgisch publiekrecht: deel I: Inleiding tot het Belgisch publiekrecht, Brugge, die Keure, 2015, 531-553, relevante randnummers: 801-802.

<sup>200</sup> In addition, for example, legislation regulating the right to protection from defamation envisages the possibility for public office holders to seek protection of their reputation only in their private and personal capacity. Public institutions cannot sue for the protection of their reputation. Furthermore, public officials can appeal to the BiH Constitutional Court for violation of their freedom of expression by other individuals only in their personal capacity.

<sup>201</sup> See: “Bh. političari na društvenim mrežama: Nemaju profile, dijele linkove ili se “prepucavaju”, <https://www.klix.ba/vijesti/bih/bh-politicari-na-drustvenim-mrezama-nemaju-profile-dije-le-linkove-ili-se-prepucavaju/180613085>;

*Bebanić*, „Kako političari u BiH koriste društvene mreže: Promocija, psovke, selfiji...”, <https://ba.n1info.com/vijesti/a382471-kako-politicari-u-bih-koriste-drustvene-mreze-promocija-psovke-selfiji/>;

„Analiza: Koliko bh. političari koriste društvene mreže”, <https://www.rtvbn.com/3964453/analiza-koliko-bh-politicari-koriste-drustvene-mreze>

<sup>202</sup> Please see under No. 3 for an explanation of the inadequate regulatory framework for the media and digital platforms.



## France

Freedom of expression is guaranteed, but both the general reserve duty and duty of confidentiality apply to public servants.

## Germany

According to long-established jurisdiction by the German Federal Constitutional Court the fundamental rights enshrined in the Basic Law “concern the relationship of the individual to public authority (...) it is incompatible with this to make the state itself a party to or beneficiary of the fundamental rights; it cannot be both the addressee and the beneficiary of the fundamental rights.”<sup>203</sup> Therefore, public office holders can invoke fundamental rights against state repression in Germany only when they act in a private capacity. In order to determine if this is the case, the court assesses if there is “a recourse to the resources and possibilities associated with the government office (...) [i]f the member of the government makes specific use of the authority of the office or the resources associated with it for his actions”.<sup>204</sup> It would therefore be likely that an account whose parameters of communication evoke public authority (such as a “Bio” or “Handle” citing the official capacity) could not invoke fundamental rights. The equivalent of Trumps’ former @POTUS<sup>205</sup> account would therefore not have been able to invoke fundamental rights in Germany, while Trump’s personal @realDonaldTrump account would, for once, be more of a borderline case. If fundamental rights were found to protect an account, this protection would not only extend against direct state intervention. Under the doctrine of horizontal effects of fundamental rights in German constitutional law,<sup>206</sup> civil court would also have to take these rights into consideration in defining the private, contractual obligations of a social network and its user, for instance if the user sued the network for suspending his/her account.<sup>207</sup>

## Greece

In Greece there is no such differentiation.

## Hungary

There are specific rules concerning the personality rights of public figures, however, there are no specific limitations on practicing human rights in general.

## Iceland

Yes, that would raise question regarding freedom of expression both in terms of Article 73 of the Icelandic Constitution and Article 10 on the European Convention on Human Rights. There is nothing that suggest that the person in question would not be able to invoke the Constitutional provisions as regards the official

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<sup>203</sup>Federal Constitutional Court, Dec. from 02. May 1967 – 1 BvR 578/63, s. 31, available at <https://openjur.de/u/199477.html>.

<sup>204</sup> Federal Constitutional Court, Dec. from 16. December 2014 – 2 BvE 2/14, s. 53, available at <https://www.servat.unibe.ch/Dfr/bv138102.html>.

<sup>205</sup> Short for president of the United States, the handle has now been transferred to the new U.S. President Biden, <https://twitter.com/potus>.

<sup>206</sup> For an overview over how this horizontal effect relates to freedom of expression in Germany, see Heldt, Amélie P. (2020) “Merging the Social and the Public: How Social Media Platforms Could Be a New Public Forum,” in Mitchell Hamline Law Review: Vol. 46 : Iss. 5 , Article 1, available at: <https://open.mitchellhamline.edu/mhlr/vol46/iss5/1/>, p. 1017 - 1023.

<sup>207</sup> Within the German doctrine of horizontal effects of fundamental rights, see for an overview

part of the account. On the other hand, there is a special provision in the Constitution concerning broader freedom of expression of members of the Parliament when communicating at the Parliament. Due to that provision, they can not be sued for something they have said during work at the Parliament.<sup>208</sup>

## Ireland

See question 5: Question 4 and 5 are answered together.

## Italy

Absolutely yes. A public office holder is fully protected when acting as a private citizen. When performing official tasks, he/she may suffer restrictions or held accountable. This regime does not apply to Members of the Parliament who are covered by parliamentary prerogatives (Art. 68 of the Constitution). They cannot be held accountable for expressed votes and opinions *in the exercise of their functions as MPs*.

In a specific case the regime is different. The use of social network by public servants, and especially police and military personnel, could be ground for a disciplinary penalty if it sheds shadow over the honorability and impartiality of the official role vested. Released internal regulations limit the use of uniforms, the diffusion of sensible or confidential information, the expression of personal opinion, explicit sexual content and so on.

## Latvia

To our best knowledge, there is no case law on this yet. However, the ombudsman (Tiesībsargs) of Latvia has expressed his opinion on a case where the person was blocked by the Minister of Justice on Twitter.

In the Ombudsman's view<sup>209</sup>, when assessing situations in which an official chooses to block his followers, it is necessary to pay attention to two important aspects - whether the official's profile is private or public, and why the official has chosen to deny access to (block) individual users' profiles. Concerning the first criterion, the Ombudsman noted that, when examining Mr. Rasnačs (Minister of Justice at that time) Twitter profile, it could be seen that Rasnačs had positioned himself as Minister of Justice in the profile. The official website of the Ministry of Justice also included a link to the "Twitter account" of the Minister, synchronising Rasnačs latest entries. According to the content of the information published in the user's account, it could be concluded that the Minister informs his followers about various important measures, amendments to regulatory enactments, news from the Ministry of Justice, as well as other institutions or activities of public importance. In view of the above, the Ombudsman concluded that Rasnačs Twitter user account was of a public nature, thus the Minister's activity in expressing opinions on social networks and a person's right to receive information from a user account had to be assessed in the context of Article 100 of the Satversme which guarantees freedom of expression (in this case - as the right of the reader).

Nevertheless, it must be noted that Rasnačs also had and still has also private information on his profile. Posting personal information falls under the rights of freedom of expression of an individual user.

<sup>208</sup> See Art. 49, 2 in the Icelandic Constitution: <https://www.althingi.is/lagas/nuna/1944033.html>.

<sup>209</sup> <https://www.apollo.lv/6466539/pie-tiesibsarga-ar-iesniegumu-versusies-privatpersona-kuru-twitter-noblokejis-tieslietu-ministrs>

Therefore, it might be presumed that the suspension of a public office holder's social media account used for communicating - both official information as well as private information - would have to consider their right to freedom of expression from two different perspectives.

## Lithuania

The situation does not seem to be crystal clear. Lithuanian section of "Transparency International" in its study of political advertising on Facebook during parliamentary election campaign in Lithuania in 2020<sup>210</sup> produced a recommendation to consider how posts by politicians on private Facebook accounts should be qualified for the purpose of identifying political advertising during a political campaign. Their research showed that party leaders marked as political advertising twice as many posts on their public accounts than on their private accounts. A part of posts on private accounts could nevertheless be seen as political advertising. The study seems to imply that electoral campaign speech should be treated as being different from standard speech of a private individual. It does not, however, raise the question of applicability of the freedom of expression guarantees to political speech.

It can be expected that Lithuanian courts would take into account the relevant Article 10 case-law of the ECtHR. Generally, heightened protection is afforded to political expression in the ECtHR Article 10 case-law.<sup>211</sup> More specifically, in *Kövesi v. Romania* the ECtHR found a violation of the freedom of expression with regard to criticisms the applicant had made in the exercise of her duties as a prosecutor.<sup>212</sup> The same approach had been taken in an earlier Grand Chamber judgment in *Baka v. Hungary*<sup>213</sup> where a violation of Article 10 was found in a situation where a person was dismissed from the position of the President of the Supreme Court after expressing his opinion, which was his statutory task, on parliamentary bills. Dijkstra<sup>214</sup> holds that in cases filed by judges the ECtHR does not distinguish between the judge as an individual and as a representative of public authorities. Arguably, the same logic would apply in the case of other public office holders. This would mean that freedom of expression applies also in the context of professional expression by public office holders.

## Norway

Yes, the right to freedom of expression, guaranteed under paragraph 100 of the Norwegian Constitution, applies as much to statements on the internet and in social media, as in traditional media such as newspapers, radio, TV and in the arts.<sup>215</sup> The same is of course true for ECHR art. 10 and art. 17 of the UN

<sup>210</sup> „Transparency international“ Lietuvos skyrius, Politinė reklama Facebook. Kaip atrodė Seimo 2020 rinkimų kampanija?, 2020, [https://www.transparency.lt/wp-content/uploads/2020/11/Politin%C4%97-reklama-Facebook\\_Kaip-atrod%C4%97-Seimo-2020-rinkimai.pdf](https://www.transparency.lt/wp-content/uploads/2020/11/Politin%C4%97-reklama-Facebook_Kaip-atrod%C4%97-Seimo-2020-rinkimai.pdf).

<sup>211</sup> ECtHR research report, Article 10. Expression and advertising of political positions through the media/Internet in the context of elections/referendums, 2018, [https://echr.coe.int/Documents/Research\\_report\\_expression\\_advertising\\_media\\_elections\\_ENG.pdf](https://echr.coe.int/Documents/Research_report_expression_advertising_media_elections_ENG.pdf).

<sup>212</sup> *Kövesi v. Romania*, ECtHR judgment of 05/05/2020, § 204: the applicant expressed her views on the legislative reforms at issue in her professional capacity as chief prosecutor of the national anticorruption prosecutor's office. The applicant also used her legal power to start investigations into suspicions of corruption crimes committed by members of the Government in connection with highly disputed pieces of legislation and to inform the public about these investigations. She also availed herself of the possibility to express her opinion directly in the media or during professional gatherings.

<sup>213</sup> *Baka v. Hungary*, ECtHR [GC] judgment of 23/06/2016.

<sup>214</sup> Dijkstra, S. (2017). The Freedom of the Judge to Express his Personal Opinions and Convictions under the ECHR. *Utrecht Law Review*, 13(1), 1–17. DOI, p. 3: <http://doi.org/10.18352/ulr.371>.

<sup>215</sup> <https://www.regjeringen.no/no/tema/utenrikssaker/menneskerettigheter/ny-struktur/medier/id2358336/>

Convention on Civil and Political Rights, both of which have been incorporated into Norwegian law.<sup>216</sup> However, not all types of expression is permitted. For example, it is against Norwegian law and Norway's international human rights commitments to incite violence or to present hateful and discriminating expressions.<sup>217</sup> Nonetheless, the threshold for restricting freedom of expression is high, as freedom of expression, together with freedom of assembly and rule of law are considered key tools to fight hate speech.<sup>218</sup>

Norway has no formal prohibition against political parties of a particular political theory (such as Nazism), nor against statements of a specific content (such as Holocaust denial). In the balance between measures to prevent hate speech and to secure the right to freedom of expression, the government considers knowledge, openness and transparency, information freedom and dialogue to be paramount. The government has a national strategy against hate speech and an international strategy to further the freedom of expression also abroad.<sup>219</sup>

## Portugal

A public office holder's social media account should only be used for communicating official information. If the person wants to have a social media account for communicating private information, he/she should have a "private" account. Social media provide private accounts as well as corporate or institutional accounts.

The right to freedom of expression as a basic civil liberty and human right protects private people and not public officers, who are bound to act and to communicate in accordance with the legislation that governs their powers.

## Serbia

Yes, it would, but only to the extent in which their activity on social networks is not focused on behaviour that is defined as prohibited and when it comes to print and electronic media. Behaviour on social networks in Serbia is still not regulated by law, but by analogy with the norms on media freedom, it could be concluded that if any of the citizens, including the holder of a public office, used social networks in a way that violates a country's positive legal regulations and abuses social networks to promote hatred or incite violence, they would not enjoy legal protection. The Constitution of the Republic of Serbia stipulates that there is no censorship in the country. The competent court may prevent the dissemination of information and ideas through the media only if it is necessary in a democratic society to prevent calls for the violent destruction of the constitutional order or the violation of the territorial integrity of the Republic of Serbia,

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<sup>216</sup> The human rights act (menneskerettsloven) of 1999 <https://lovdata.no/dokument/NL/lov/1999-05-21-30> The Conventions have been incorporated into Norwegian law on the level of ordinary legislation, but according to § 3, they take precedence over other legislation in case of a conflict. They are also relevant for the interpretation of both the Norwegian Constitution and other legislation.

<sup>217</sup> See § 185 of the Criminal Code, as well as <https://www.regjeringen.no/no/tema/utenrikssaker/menneskerettigheter/ny-struktur/medier/id2358336/>.

<sup>218</sup> Ibid.

<sup>219</sup> Ibid.

to prevent the propagation of war or incitement of direct violence, advocating national or religious hatred, which incites discrimination, hostility or violence.<sup>220</sup>

In Serbia, there are numerous legal guarantees of freedom of expression and freedom of the media. They are primarily guaranteed by the Constitution<sup>221</sup>, and also specified by the Law on Public Information<sup>222</sup> and the Law on Electronic Media.<sup>223</sup> Serbia has also ratified the most important international acts guaranteeing freedom of opinion and freedom of the press, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Serbian Constitution requires that the provisions on rights related to freedom of expression and media information be interpreted in favor of promoting the values of a democratic society, in accordance with applicable international standards and the practice of international institutions, including the European Court of Human Rights. All these guarantees apply to all citizens equally.

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<sup>220</sup> Art. 50, par. 3, of the Constitution of the Republic of Serbia "Official Gazette of the Republic of Serbia", no. 98/2006.

<sup>221</sup> Art. 46. of the Constitution of the Republic of Serbia "Official Gazette of the Republic of Serbia", no. 98/2006..

<sup>222</sup> Law on public information, Official Gazette of the Republic of Serbia No. 83/2014, 58/2015 i 12/2016 - authentic interpretation.

<sup>223</sup> Law on Electronic Media, Official Gazette of the Republic of Serbia No. 83/2014 i 6/2016 - dr. zakon.

## **Question 5: What is the legal situation in your country for private restrictions against public actors such as public office holders or political parties?**

### **Specifically**

- a) Are social networks obliged to be more careful in restricting content from these actors (more so than with content from ordinary users), e.g. because of the public interest in their speech?**
- b) Vice-versa: Are social networks obliged to treat these actors the same as ordinary users, so that a differentiation may amount to discrimination?**

### **Austria**

Until now, there are no explicit rules on differential treatment of public actors vis-a-vis other users. One Austrian political party, the Freedom Party (FPÖ), however, seems to advocate the need for special protection of political actors. A YouTube video of an official speech by Herbert Kickl (FPÖ) in the Austrian Parliament was deleted by the platform due to its infringement of YouTube's COVID-disinformation policy, and the party's channel was blocked temporarily. This led to parliamentary questions from Kickl's party colleagues to the EU Commission. Two FPÖ-MEPs asked the Commission:

"A companies will thus be able to set filters in future so that popular parties can only make themselves heard if their politics fit in with the company's own convictions. [sic!/whole sentence]"

1. Is the Commission monitoring this development of censorship by private companies?
2. Will the Commission propose legislation to prevent companies which are used by the population at large from restricting political parties' freedom of expression?"

Question 2. clearly differentiates between political parties and users. The party also introduced a corresponding resolution proposal in the Austrian Parliament. It remains to be seen whether the party's proposal is going to catch on with the coalition government which it is not part of. Until now, there are no further statements from parties and/or public administrators in this regard.

### **Belgium**

Article 25 of the Belgian Constitution states that "censorship can never be introduced", but this refers to prior restraint measures by the government.<sup>224</sup> *Voorhoof* refers in this context to a judgment of the Court of

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<sup>224</sup> D. Voorhoof, "Vrijheid Van meningsuiting En drukpersvrijheid" in J. Vande Lanotte, G. Goedertier, Y. Haeck, J. Goossens & T. De Pelsmaeker, *Belgisch publiekrecht: deel I: Inleiding tot het Belgisch publiekrecht*, Brugge, die Keure, 2015, 577-613.

Appeal of Ghent which found that Article 25 of the Constitution does not prevent an editor-in-chief from refusing a contribution by the journalist.<sup>225</sup>

a) There are no specific rules obliging social networks to be more careful in restricting content from public actors, such as public office holders or political parties, in comparison to ordinary users. Rules that do offer an increased protection to the freedom of expression of, for instance, political figures (such as Article 58 on the parliamentary unaccountability – see Question 6) are addressed to the State, and not to private actors.

b) There are no specific rules obliging social networks to treat public actors, such as public office holders or political parties, in the same way as ordinary users. There is of course a general anti-discrimination law in Belgium which prohibits different treatment of equal circumstances on the basis of a number of protected characteristics (gender, age, etc.) which is also applicable to private actors, but we assume that this is not directly relevant with regard to the subject of the report.

## **Bosnia and Herzegovina**

At the moment, there is no specific provision that deals with this subject matter, neither with regard to ordinary users in BiH nor with regard to public office holders.

## **Cyprus**

Same as previous question.

## **Finland**

There are no such obligations.

In theory, public actors have the same protection of freedom of speech as normal citizens. The exceptions are members of parliament in the Parliament. In the Finnish freedom of speech doctrine political (societal) communications enjoy greater protection, but this is more like a phrase.

## **France**

There is no specific provision for such users.

## **Germany**

German law does neither differentiate between content moderation of public actors and such of “ordinary” people nor is there any specific non-discrimination clause for public figures. However, the public role of a party can be of importance in the weighing of interests in a specific case at hand.

As the German Constitutional Court has ruled:<sup>226</sup> “Depending on the circumstances, especially where private companies take on a position that is so dominant as to be similar to the state’s position, or where they provide the framework for public communication themselves, the binding effect of the fundamental

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<sup>225</sup> Court of Appeal Gent 6 November 2003, NJW 2004, 345.

<sup>226</sup> BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 16/13 -, para. 88

right on private actors can ultimately be close, or even equal to, its binding effect on the state.” As a consequence, single cases of content moderation cannot only be assessed with reference to the platform’s terms and conditions but instead have to take the fundamental rights of the user into account. This “taking into account” includes a weighing of the user’s fundamental rights (e.g., freedom of expression) against the rights of the private platform (e.g., property rights). In this weighing the public position of the user can play a role, e.g., “that the claimant also needs his Twitter account for his political work.”<sup>227</sup>

However, said impact of fundamental rights only comes into play when the account is \*not\* used for official communication by a state representative. In other words: If a social network bans the private account of an individual running for office, the weighing of the measure’s impact against the person’s fundamental freedoms is important. If the platform bans the account of a minister, there is no such weighing.

## Greece

- a) No, the social networks don’t have such legal obligations.
- b) There is no specific legal obligation.

## Hungary

- a) No specific rules
- b) No specific rules

## Iceland

There is no such difference between public actors and other individuals. Public actors such as public office holders or political parties enjoy the same rights when it comes to their freedom of expression and there are no rules regarding restrictions of social networks in terms of those individuals in particular. However, public actors such as politicians and public office holders do obviously not enjoy the same rights as other individuals when it comes to freedom of privacy, at least not when it comes to the public spectrum of their live.

## Ireland

The starting point is that there is no Irish legislation nor litigation on these specific points so the following is necessarily speculative.

In principle, Irish law recognises constitutional rights as having horizontal effect so that they can be invoked against purely private actors.<sup>228</sup> This has been held to extend to a right to fair procedures in relation to the making of decisions which affect rights.<sup>229</sup> In theory, therefore, the constitutional right to freedom of expression could be invoked in relation to a decision to restrict content from a user or to block that user from a service.

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<sup>227</sup> LG Dresden, 21.06.2019 - 1a O 1056/19 EV.

<sup>228</sup> *Meskeil v. ClÉ* [1973] IR 121.

<sup>229</sup> *Glover v. BLN Ltd.* [1973] IR 388.



However there is relatively little caselaw on horizontal effect, resulting in what one author describes as “considerable uncertainty as to how this approach should be applied in practice”, with a “lack of guidance” as to how “[d]ifferent rights may have to be balanced against each other when they come into conflict in the private sphere”.<sup>230</sup> In particular there does not appear to be any caselaw on horizontal effect of freedom of expression: while there is some caselaw on the horizontal effect of other rights such as privacy which may restrict freedom of expression,<sup>231</sup> there does not seem to be any caselaw in which freedom of expression has been invoked to constrain the actions of other private entities.

It is far from clear, therefore, how the horizontal application of the right to freedom of expression might be applied as against social networks. However, the experience from other contexts suggests that the Irish courts would be reluctant to develop a “must carry” rule which second guessed the policies of platforms. For example, in *Kivlehan v. RTE*<sup>232</sup> the High Court rejected a challenge brought by an election candidate to a decision by the state broadcaster that the Green Party would not be invited to take part in a live election debate. Notwithstanding the explicit statutory mandate on the broadcaster to act in an “objective and impartial manner”, the court held that it would be very reluctant to second guess the criteria adopted to decide what parties should take part. *Per* Baker J.:

52. I do not consider that it is the role of the High Court to identify in detail the criteria that must be applied by any broadcaster in establishing threshold criteria of this type. The Court is inherently unable to engage with those questions as the Court has no expertise in the scheduling or producing of broadcasts....

58. When positioning the provisions in particular of s. 114 of the Act of 2009 in the constitutional framework one must also have regard to Article 40.6.1 which recognises the role of the media as a “organ of public opinion”, and that education of public opinion is a matter of “grave import to the common good”.

59. I regard the provisions of Article 40.6.1(i) as importing a positive obligation on a public service broadcaster to produce programmes and to inform and educate. I consider that the framers of the constitution, in recognising the unique and central role of the media, recognised both its duty and any rights that flow therefrom. The right, it seems to me, must include the right of editorial or programming choice, the right of that organ of public opinion to choose the means by which it would educate public opinion. The role thus understood and described as being one of “grave import to the common good” recognises the singular nature of the press and media, and what is singular and unique is found in the editorial process. The Court is not an organ of public opinion, has no expertise as such, and must respect the constitutionally different factors at play in the media.

60. I do not consider that the High Court can have any role in that editorial choice, and the choice is one that must be made by an expert person or body who can weigh the elements of a programme by reference to all of these factors, and presumably factors of which the Court could have no knowledge.<sup>233</sup>

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<sup>230</sup> Colm O’Cinneide, “Irish Constitutional Law and Direct Horizontal Effect - A Successful Experiment?”, in *Human Rights and the Private Sphere: A Comparative Study*, ed. Dawn Oliver and Jörg Fedtke (Abingdon: Routledge-Cavendish, 2007), 228–29; see also Sibo Banda, “Taking Indirect Horizontality Seriously in Ireland: A Time to Magnify the Nuance”, *Dublin University Law Journal* 31 (2009): 263–97.

<sup>231</sup> *Herrity v. Associated Newspapers* [2008] IEHC 249.

<sup>232</sup> [2016] IEHC 88.

<sup>233</sup> A similarly deferential view was taken in *Brandon Book Publishers v. RTÉ* [1993] ILRM 806.

It may be that the Irish courts could apply a doctrine of *indirect* horizontal effect<sup>234</sup> in this context – for example, by interpreting terms of use or consumer protections against unfair contract terms in such a way as to promote freedom of expression rights against arbitrary interference by platforms. However, it seems more likely that Irish law will be overtaken by developments at a European level and particularly the reforms proposed in the Digital Services Act.

On the final part of the question, it is clear that the Irish courts will give special consideration to the public interest in *political speech*, but this does not necessarily mean that *political figures* should receive special treatment. In *Murphy v. IRTC*<sup>235</sup> the Supreme Court identified the Constitution as recognising both a right to communicate and a distinct right of freedom of expression, stating that the latter:

deals with a different though related matter. It is concerned with the public activities of the citizen in a democratic society. That is why, the Court suggests, the framers of the Constitution grouped the right to freedom of expression, the right to free assembly and the right to form associations and unions in the one sub-section. All three rights relate to the practical running of a democratic society.

This language recognises value in the activities of the citizen, not just the politician, suggesting that a wide approach should be taken in identifying particularly valuable speech.<sup>236</sup> In *Cornec v. Morrice* the High Court took a similarly wide approach in finding that bloggers, as well as traditional media organisations, were able to rely on the constitutional guarantees afforded to the “organs of public opinion”:

A person who blogs on an internet site can just as readily constitute an “organ of public opinion” as those which were more familiar in 1937 and which are mentioned (but only as examples) in Article 40.6.1, namely, the radio, the press and the cinema. Since Mr. Garde’s activities fall squarely within the education of public opinion, there is a high constitutional value in ensuring that his right to voice these views in relation to the actions of religious cults is protected.<sup>237</sup>

## Italy

There are no obligations for social media platforms to moderate content of political nature in a different way. Nonetheless, I would say that, regarding Art. 68 of the Constitution, it would be harder for social networks to censor political opinions of MPs, since the protection afforded by Art. 68 is quite broad, so the term political activity is interpreted in a broad way and is not necessarily connected with activities performed within the Parliament.<sup>238</sup>

A significant difference can be found in private law, and specifically concerning the circulation of the personal portrait, which is based, as a general rule, on the consent of the portrayed individual. Indeed, according to Article 97 of Law 633/1941 (Italian’s copyright law), if an individual is famous or vested by political authority, her/his image can be displayed, reproduced or traded without her/his consent, provided

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<sup>234</sup> As to which see Banda, “Taking Indirect Horizontality Seriously in Ireland”.

<sup>235</sup> [1999] 1 IR 12.

<sup>236</sup> Compare the comments of Eoin Carolan, “Constitutionalising Discourse: Democracy, Freedom of Expression and the Future of Press Regulation”, *Irish Jurist* (1935-) 51 (2014): 1–27.

<sup>237</sup> [2012] IEHC 376

<sup>238</sup> See Constitutional Court, dec. n. 320/2000.

that it does not damages her/his honorability. Consequently, social media platforms are allowed to handle images of such individuals differently than those of ordinary people.

## Latvia

There are no legal norms and case law on this topic yet.

## Lithuania

The Law on the Provision of Information to the Public<sup>239</sup> provides (in Article 2) a very broad definition of a means of provision of information to the public, which embraces means of information society. At least in certain cases social networks can be qualified as means of the provision of information to the public and be governed by the abovementioned law. In line with the requirements of this law, social networks would be obliged to comply with the prohibition to publish certain categories of information (e.g., hate speech). Regarding information which does not fall into the category of impermissible information (under Article 19), social networks would have some discretion in deciding what to publish. The discretion is, however, limited by a requirement for producers of disseminators of public information to ensure the diversity of opinions (Article 16) by publishing as many as possible opinions independent of each other. Moreover, a general right of the public to receive information should be considered. A general constitutional guarantee of equality (Article 29 of the Constitution of the Republic of Lithuania<sup>240</sup>) would protect public actors as well as ordinary users against removal of their content. However, it is to be admitted that in line with the jurisdiction of the ECHR there could, in certain cases, be a weightier public interest in publishing (and possibly highlighting) speech by politicians and other public actors rather than that of ordinary users.

## Norway

In Norwegian law, the topic of a statement is considered more important for its level of protection than who actually said it (or wrote it, as the case may be). Statements concerning core political issues have a higher protection than more mundane statements, in the sense that all actors should be particularly careful in placing restrictions on them. Such statements are considered to be of particular importance for the Norwegian society and societal debate and should be counteracted (if necessary) by correcting statements rather than restrictions.

That being said, politicians are to some extent held to a higher standard of caution with regard to information they relay, how they phrase themselves etc., due to their higher impact in societal debate. Situations may arise in which a politician will have to tolerate restrictions (or rather, reactions) which would not be applied to an “ordinary” party, especially if they act in a public capacity. Politicians acting on-line in a private capacity should as a main rule be treated equally to any other private party.

There have been a couple of cases in the media in Norway the last few years where social networks, such as Facebook has restricted content from politicians. As mentioned in question 2, one example of this is a case concerning the Former Minister of Justice, Per-Willy Amundsen, from the Progress Party (Frp), who claims

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<sup>239</sup> Lietuvos Respublikos visuomenės informavimo įstatymas (Žin., 1996, Nr. 71-1706; 2006, Nr. 82-3254).

<sup>240</sup> Lietuvos Respublikos Konstitucija (Lietuvos Aidas, Nr. 220; 1992, Nr. 33-1014).

that Facebook contacted him and deleted a post on his Facebook account concerning the British Islam critique and activist Tommy Robinson.<sup>241</sup>

Also, there is a prohibition against political commercials in Norway.<sup>242</sup> Broadcasters, platform providers etc. are under an obligation to uphold this prohibition also (particularly) against politicians and other public figures.

## **Portugal**

No relevant data found.

## **Serbia**

There is not sufficient data to answer this question.

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<sup>241</sup> <https://www.vg.no/nyheter/innenriks/i/wP48e4/stortingsrepresentant-mener-facebook-driver-politisk-sensur>

<sup>242</sup> The Broadcasting Act (Kringkastingsloven) § 3-1 (2) [https://lovdata.no/pro/#document/NL/lov/1992-12-04-127/KAPITTEL\\_3](https://lovdata.no/pro/#document/NL/lov/1992-12-04-127/KAPITTEL_3)

## **Question 6: Even if there are no explicit legal requirements, is the argumentation by platforms to leave content from political actors available even if it violates their terms of service plausible seen from your legal point of view?**

### **Austria**

There are, until now, no cases that we are aware of in which political actors' expression and platforms' terms clashed in this way in Austria that led to non-deletion. As well, we have not observed official communication from social media platforms that would provide an argumentation on country-specific cases in this regard.

### **Belgium**

ECtHR case-law

In this context, reference can be made to the case-law of the European Court of Human Rights. When considering restrictions on an individual's rights to freedom of expression, specifically in defamation cases, the ECtHR has stated that:

"As regards, in particular, protection of the rights of politicians, the Court has held that while freedom of expression is important for everybody, it is especially so for elected representatives of the people. They represent the electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with their freedom of expression call for the closest scrutiny on the part of the Court (see *Castells v. Spain*, 23 April 1992, § 42, Series A no. 236; *Lombardo and Others v. Malta*, no. 7333/06, § 53, 24 April 2007; and *Lewandowska-Malec v. Poland*, no. 39660/07, § 60, 18 September 2012)".<sup>243</sup>

Although, again, it might be argued that Article 10 is predominantly addressed at States, this position of the Court might be taken into account by social networks in establishing their policies regarding content that is posted by political actors and whether or not to remove it even when it violates their terms of service.

At the same time, it may be mentioned that judge Wojtyczek (Poland), in the recent case of *Monica Macovei v. Romania*, stated in his concurring opinion that: "In a democracy ruled by law, all citizens are equally entitled to be involved in politics or – in other words – to participate in working for the common good, and should therefore enjoy the same protection for their freedom of speech".<sup>244</sup>

### **Belgian Constitution**

In Belgium (federal level), everyone enjoys a constitutionally guaranteed (yet not absolute) right to freedom of expression (Article 19 Belgian Constitution). Members of Parliaments<sup>245</sup> in Belgium, moreover, enjoy special protection with regard to their freedom of expression.

<sup>243</sup> ECtHR July 28, 2020, App. No(s). 53028/14, *Monica Macovei v. Romania*, § 78.

<sup>244</sup> ECtHR July 28, 2020, App. No(s). 53028/14, *Monica Macovei v. Romania*, Concurring opinion Judge Wojtyczek, § 4.

<sup>245</sup> The protection is granted to all members of every parliament in Belgium (so next to the Federal parliament, also the Regional parliaments). See articles 58, 59 and 120 Belgian Constitution.

Article 58 of the Belgian Constitution determines that while performing duties as a member of parliament, that member cannot be prosecuted or be subjected to any investigation related to opinions expressed or votes cast.<sup>246</sup> This is called *parliamentary unaccountability* (parlementaire onverantwoordelijkheid).<sup>247</sup> The *ratio legis* of this provision is that members of parliament must, while performing their duties, be able to speak freely in all independence and without fear of prosecution or sanction.<sup>248</sup>

When considering prosecution or investigations regarding expressions by MPs, it must accordingly be examined whether the impugned opinion was or was not expressed during their parliamentary duties. If it was, the opinion of the MP will be protected under Article 58 of the Belgian Constitution. It is important to emphasise that the parliamentary unaccountability specifically relates to the exercise of a parliamentary mandate, and not merely a political mandate or political activities in general.<sup>249</sup>

To determine which online content falls within the parliamentary unaccountability, one must examine the type of content and the place of publication on the internet. Official documents posted on official website - presumably also including official pages on social media - of the parliament fall under the protection of Article 58 Belgian Constitution. With regard to a personal website - presumably also including personal pages on social media -, this could be different. Reproduction of speeches on a personal website does not fall under the scope of Article 58 Belgian Constitution. A reference or link to the official documents on the official website of the parliament, can on the other hand fall under its scope.<sup>250</sup>

To conclude, although it demonstrates extra protection that is attributed to the expressions of MPs, Article 58 of the Belgian Constitution seeks to protect MPs from prosecution by the Belgian authorities rather than content restrictions imposed by social networks.

In addition to the protection granted under Art. 58 of the Belgian Constitution, a member of parliament still enjoys the right to freedom for expression as established in Article 10 ECHR and Article 19 of the Belgian Constitution for any opinion expressed outside the exercise of their parliamentary function.<sup>251</sup> Thus, a member of parliament can, just like any other citizen, invoke their right to freedom of expression outside the scope of their parliamentary duties.

## Bosnia and Herzegovina

In case national law is violated by content from political actors on platforms (for example criminal law provisions on inciting ethnic, racial or religious hatred, discord and intolerance, etc.), general provisions

<sup>246</sup> Article 58 Belgian Constitution, available via: [https://www.senate.be/doc/const\\_nl.html](https://www.senate.be/doc/const_nl.html)

<sup>247</sup> Article 58 of the Belgian Constitution must be distinguished from the so-called parliamentary immunity (parlementaire onschendbaarheid) as established in Article 59 of the Belgian Constitution. Article 59 is only applicable in criminal proceedings and protects members of parliament against an arrest and a further referral to court. This right is not absolute, since the immunity can be lifted under certain circumstances. An example of criminal proceedings related to the freedom of expression concerns incitement to hatred, violence and discrimination because of race, colour of skin, descent, nationality or ethnic origin as criminalised by the anti-racism legislation.<sup>247</sup> The latter is, in any case, prohibited, also for members of parliament.

<sup>248</sup> Kamer van Volksvertegenwoordigers, "Parlementair recht in kort bestek, De parlementaire onverantwoordelijkheid (freedom of speech)", Juridische dienst 2015, 18, [https://www.dekamer.be/kvvcr/pdf\\_sections/jurid/responsaN.pdf](https://www.dekamer.be/kvvcr/pdf_sections/jurid/responsaN.pdf).

<sup>249</sup> Kamer van Volksvertegenwoordigers, "Parlementair recht in kort bestek, De parlementaire onverantwoordelijkheid (freedom of speech)", Juridische dienst 2015, 13, [https://www.dekamer.be/kvvcr/pdf\\_sections/jurid/responsaN.pdf](https://www.dekamer.be/kvvcr/pdf_sections/jurid/responsaN.pdf).

<sup>250</sup> Kamer van Volksvertegenwoordigers, "Parlementair recht in kort bestek, De parlementaire onverantwoordelijkheid (freedom of speech)", Juridische dienst 2015, 14, [https://www.dekamer.be/kvvcr/pdf\\_sections/jurid/responsaN.pdf](https://www.dekamer.be/kvvcr/pdf_sections/jurid/responsaN.pdf).

<sup>251</sup> Kamer van Volksvertegenwoordigers, "Parlementair recht in kort bestek, De parlementaire onverantwoordelijkheid (freedom of speech)", Juridische dienst 2015, 18, [https://www.dekamer.be/kvvcr/pdf\\_sections/jurid/responsaN.pdf](https://www.dekamer.be/kvvcr/pdf_sections/jurid/responsaN.pdf).

on criminal prosecution can be applied. However, there are no specific provisions on the removal of such content. Furthermore, BiH Regulatory Communications Agency has the authority to sanction electronic media (radio and TV) for violation of their Code on audiovisual media services and radio media services, but its competence does not extend to the Internet.<sup>252</sup> The Press Council of BiH, a self-regulatory body which monitors the enjoyment of freedom of expression for print and online media identifies violations of its Code for print and online media (not social media) in BiH without the possibility to impose sanctions or removal of problematic content.<sup>253</sup>

If the content violates the Terms of Service of a platform, there appears to be no grounds to impose the removal. Individual user could hypothetically challenge the decision to remove or keep the content visible, but the courts in BiH have not decided on the issue yet.

## Cyprus

Given the fact that there is no specific regulatory framework on that issue, it is a common belief that restrictions to the freedom of expression can be imposed only by law and with respect to the principles of the necessity and proportionality in a democratic society. However, regulating internet corresponds to a parallel responsibility on behalf of any body, institution and factor, both public and private, which should lead to the prevention (or restriction) of any illegal and harmful content. Certainly, defining the terms “illegal” and “harmful” is very difficult and include a subjective dimension. Nevertheless, I believe that depending on the facts of each case, platforms should play a decisive role on the promotion of democracy and the protection of fundamental rights in two ways: not only by abstaining from adopting any restrictive measure regarding the freedom of expression but also by adopting an explicit code of conduct and appropriate policy in order to ban the dissemination of disinformation and any illegal content.

## Finland

Yes, it is. Political (societal) debate is in the core of freedom of speech in Finnish doctrine. At least in theory.

## France

In my opinion, that would require a clear identification of the account as an institutional one. Otherwise, equal treatment should apply.

## Germany

If content by a political actor violates the ToS \*and\* German law, it has to be removed. If it \*only\* violates the ToS, there is hardly a legal argument to force a platform to take the content down, even if its ToS says so. Rather, a user could make the case that a removal of his/her content due to ToS violates his/her freedom of expression and must remain online, as long as it does not inflict with German law. There are different legal opinions among the courts of appeal as to whether this is feasible or not, a final decision (by the Federal Supreme Court or even the Constitutional Court) has yet to be taken. Again, the weighing of the

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<sup>252</sup> The Code can be accessed here. <https://rak.ba/en/articles/108>

<sup>253</sup> <https://www.vzs.ba/index.php/vijece-za-stampu/kodeks-za-stampu-i-online-medije>

user's rights against the platform's rights can include the political role of the individual in question (see answer to question 5).

## Greece

Yes. Firstly, we have to consider, that the majority of young people get their information mainly by digital platforms. In addition, we have to take into account, that the existing digital platforms act as -de facto- monopoly in their field. Consequently, in my point of view, legal/regulatory initiatives over this field are essential in order to secure the freedom of speech and the direct communication between the political actors and the voters. As there is a regulatory framework for the operation of the public and private traditional media, that organizes, among others, the fair and equal promotion of political parties through media, we should also think of establishing a corresponding legal framework for the digital platforms.

## Hungary

As the example of János Lázár in Question 2 shows that some of Facebook's decisions can be interpreted, at least, to be more permissive or inconsistent towards politicians. Moreover, the decision to restore the anti-migrant video after a short time, suggests that the complaint about the deletion of the video was not investigated by Facebook in the normal way.

The 444.hu news portal published an interview with a moderator of Facebook after the incident. The moderator stated: "After we took down Lazarus' video and it was put back over our heads, there was an instruction that we could no longer touch his posts and Origo.hu articles. They should be sent immediately to the headquarters in Ireland and decided there."<sup>254</sup>

## Iceland

If the content in question is only in violation of the social media companies' terms of service, and not Icelandic law, it would probably be difficult to argue that the content should be taken down only because it was contrary to the terms of service. This of course is one of the problems today as the status and effect of these terms do not bind the companies in other way than just between them and the individual user. If, on the other hand, a content is clearly unlawful according to applicable law, there should of course be possible to force a platform to take the content down or make other arrangements.

## Ireland

In the absence of any specific legal provisions, under Irish law it will generally be open to platforms to act at their discretion in choosing to leave up or take down particular forms of content, whether or not the person posting the content is a political actor.

## Italy

It is debatable.

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<sup>254</sup> For the interview see: <https://tldr.444.hu/2018/08/09/szoltak-a-facebook-kozpontbol-hogy-mostantol-lazar-janos-es-az-origo-posztjait-nem-moderalhatjuk>.



It might be opposed that the content is not pertinent to his/her political role (imagine a situation in which a politician insults a private citizen who disagreed with him/her). Moreover, we have to consider that the activity may fall within the crimes of incitement to racial hatred or apology of fascism, which are criminal offences prosecuted *ex officio*.

From a strictly legal perspective, it is dangerous for the social media platform to tolerate ambiguous or *prima facie* resentful content. Indeed, according to the Article 68 of the Italian Constitution, political representatives are immune from legal consequences regarding the expression of their ideas. It is arguable, that this privilege, though, is limited to members of Parliament and Regional assembly. It does not extend to lower-level politicians (i.e. members of council of municipality). Moreover, the fact that the author of illicit content cannot be criminally prosecuted as an individual, does not confer immunity to those who contributed to the circulation of the content. In other words, the platform could still be held responsible under the civil law, so potentially being subject to fines, penalties and restorations. The constitutional privilege saves only the politician.

## **Latvia**

As far as we know there have been no cases on this topic yet. However, if we express our own opinion, the best option would be the one developed by Twitter – to keep the information online, however, with a cover-up, which points out its illegality and allows the users to choose whether they want to get acquitted with it. In such a way, society's interest in knowing what the politicians write (which would therefore allow individuals to make their political decisions) would be balanced with the need to delete the violating item. At the same time, such cover-ups should be limited to cases in which the specific speech only breaches the terms of service, but is not obviously illegal and dangerous, for example, by inciting to violence.

## **Lithuania**

If the terms of service of platforms are in line with other legal requirements (notably, those stemming from public law), failure to abide by these terms should, based on the law of contracts, result in removing the content and/or banning the user. However, leaving such content online could serve a legitimate aim of ensuring the diversity of information provided to the public and, more generally, the right of the public to receive information, as required by public law. Where platforms do not perform the function of providing the information to the public comparable to that performed by traditional journalists and mass media, they are not bound by the same public law requirements either.

## **Norway**

From a legal point of view, a platform may choose to leave content from political actors by establishing an exception from their own guidelines, or it may simply refrain from enforcing them, provided the content is not against the law. If so, it will have to be removed. Likewise, if the owner of the content, the politician themselves, require it to be removed, the platform will have to comply.

## **Portugal**

Platforms do not want to be accused of interfering with politics. Political speech is privileged. However, the media regulations guarantee political speech and guarantee certain rights such as the right to airtime

(*direito de antena*) or the rights of reply and of rectification. The remedies provided therein should also be available to political actors either in traditional or in social media.

## **Serbia**

That must not be an excuse. It is possible to intervene in terms of freedom of expression, but only in line with the restrictions defined by the laws, and not according to the decision of the management of any company that owns a social network.

**Question 7: How to make better rules: Some have suggested the creation of "platform councils" (advisory councils or quasi-courts staffed by representative citizens or experts) to help platforms decide (like Facebook's Oversight Board). Do you know of such an example in your country? Has this been discussed in media?**

**Austria**

The only instance in which Austrian media reported on platform councils that we are aware of is when Bernhard Pörksen took part in the 2018 media enquête.<sup>255</sup>

**Belgium**

The decision to suspend the Facebook account of Trump has recently been referred to Facebook's Oversight Board. The Board, consisting of 20 members, will give a permanent decision on whether Trump may or may not return to the platform. Flemish media (HLN, Knack, De Tijd) reported on the creation and mandate of Facebook's Oversight Board.<sup>256</sup>

However, to our knowledge, there is no example of such a national initiative nor has this been discussed in Belgium.

**Bosnia and Herzegovina**

Apart from the BiH Press Council which is a self-regulatory body for print and online media and which reviews appeals and instances of potential violations of its Code (see under 6), there is no specific council that would deal exclusively with social media. There has been no discussion or proposal for the establishment of such a council in BiH. Prior to establishing a council about these issues, a set of pending laws that would regulate media law and the Internet would required to be adopted.

**Cyprus**

Same as question 4 (s.a.).

**Finland**

No. However, The Council for Mass Media could theoretically be such a national actor. if only platforms recognize its competence and accede to the Council's Basic Agreement.<sup>257</sup>

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<sup>255</sup> <https://www.pressreader.com/austria/die-presse-am-sonntag/20181104/282432760162100>

<sup>256</sup> X, "Hooggerechtshof van Facebook kiest eerste zaken", Datanews December 1, 2020, <https://datanews.knack.be/ict/nieuws/hooggerechtshof-van-facebook-kiest-eerste-zaken/article-news-1672015.html>; X, "Facebook richt eigen hooggerechtshof op", De Tijd, <https://www.tijd.be/tablet/newspaper/ondernemen/facebook-richt-eigen-hooggerechtshof-op/10163749.html>; J. VLEMINGS, "Kransje van 20 dikbetaalde juryleden beslist over Trumps eventuele comeback op Facebook", Het Laatste Nieuws January 25, 2021, <https://www.hln.be/buitenland/kransje-van-20-dikbetaalde-juryleden-beslist-over-trumps-eventuele-comeback-op-facebook-aec57067/>.

<sup>257</sup> Council for mass media, <https://www.jsn.fi/en/>.

## France

Not really, complaints are directed to the judicial system. See answer to question 8.

## Germany

The suggestion has been discussed, e.g. by media scholar Bernhard Pörksen<sup>258</sup> and by legal scholar Matthias Kettemann<sup>259</sup>. Besides institutions with global scope like Facebook's OSB, there is no such council for platforms in Germany.

## Greece

No there is no such example or discussion in Greece.

## Hungary

Such boards do exist at national level in Hungary. The government does not want to improve this kind of soft regulation, but it prepares the legal regulation of the platforms. Facebook's Oversight Board was discussed in Hungarian media mainly because of the fact, that the former judge of ECHR, András Sajó, is Hungarian.

## Iceland

There are no such councils in Iceland and the idea doesn't seem to have been discussed to a great extent.

## Ireland

There do not appear to be any platform councils or similar initiatives in Ireland at the moment. However, the civil rights organisation ARTICLE 19 has proposed the establishment of an Irish Social Media Council (similar to the existing Press Council of Ireland), arguing that forthcoming Irish legislation (the Online Safety and Media Regulation Bill) should incorporate provisions to facilitate this and expressing its willingness to run such a body on a pilot basis.<sup>260</sup>

## Italy

Graziella Romeo: "I'm aware of the political debate concerning the creation of the task force within the Department of Press and Information, which is within the Presidency of the Council of Minister as well as concerning the enhancement of the control powers of independent authorities (such as Privacy and the

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<sup>258</sup> Barenberg, Jasper "Wir brauchen eine Art Plattform-Rat". Deutschlandfunk, 12.01.2021. [https://www.deutschlandfunk.de/regulation-von-sozialen-netzwerken-wir-brauchen-eine-art.694.de.html?dram:article\\_id=490663](https://www.deutschlandfunk.de/regulation-von-sozialen-netzwerken-wir-brauchen-eine-art.694.de.html?dram:article_id=490663).

<sup>259</sup> Köster, Bettina "Medienunternehmen als 'Internetpolizei'". Deutschlandfunk, 12.01.2021. [https://www.deutschlandfunk.de/debatte-um-twitter-und-facebook-medienunternehmen-als.2907.de.html?dram:article\\_id=490688](https://www.deutschlandfunk.de/debatte-um-twitter-und-facebook-medienunternehmen-als.2907.de.html?dram:article_id=490688).

<sup>260</sup> Aaron Rogan, "Plans for World's First 'Social Media Council' in Ireland", Business Post, 12 April 2020, <https://www.businesspost.ie/business/plans-for-worlds-first-social-media-council-in-ireland-d04bb1e9>; Ronan McGreevy, "New Campaign to Combat Fake News Targeted at Young People in Ireland", The Irish Times, 4 December 2020, <https://www.irishtimes.com/news/ireland/irish-news/new-campaign-to-combat-fake-news-targeted-at-young-people-in-ireland-1.4427694>.

Independent Authority for Communication). The discussion concerning the responsibility of social media platforms is intensified in the media and the creation of oversight boards or rather platform councils is put forward.

My impression is that scholarly attention focused on that point as well as on the assumption that there is a more general trend worldwide to entrust those private oversight bodies with those competences.<sup>261</sup>

## Latvia

To our best knowledge, no such suggestions have been discussed in Latvia.

However, it seems that some platforms ask for advice of the local experts on how specific content should be evaluated. Additionally, Facebook has created its Fact-checking program in Latvia, where the representatives of media (Delfi and Re:Baltica) proofread and rebuke presumably fake news. The involvement of local experts helps the social network to understand the content and context of the publication better. At the same time, these types of cooperation clearly do not have the equivalent competences like a court, but rather provide preliminary assistance.

## Lithuania

The Inspector of Journalist Ethics is a state official appointed by the Parliament who supervises the application of the Law on the Provision of Information to the Public and the Law on the Protection of Minors against the Detrimental Impact of Public Information. As of 2010, the Inspector has a mandate to evaluate, following the conclusions of expert groups (experts), whether public information released in the media may be inciting discord based on gender, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or opinions. This function was transferred to the Inspector from the self-regulatory body, the Journalists and Publishers Ethics Commission<sup>262</sup>, the predecessor to the currently existing Association of Ethics in the Provision of Information to the Public. In monitoring public information published on Internet portals and social networks the Inspector mainly follows the *notice & take down* approach.<sup>263</sup> The legal position of the Inspector within the Lithuanian legal system is similar to that of Ombudspersons.

The Association of Internet Media, which is open to all news portals (and is currently made up of Delfi.lt, 15min.lt, Lrytas.lt, VE.lt, madeinvilnius.lt), represents producers and disseminators of public information disseminated via the Internet and indicates protection of the freedom of speech on the Internet as one of its aims.<sup>264</sup> Potentially, it could play some advisory role.

<sup>261</sup> As an example of this: *Ruotolo*, "A little Hate, Worldwide! Di libertà d'opinione e discorsi politici d'odio on-line nel diritto internazionale ed europeo", *Diritti umani e diritto internazionale*, 2020, no. 2 pp. 549 - 582.

<sup>262</sup> The status of this commission as a self-regulatory authority, which does not perform public administration, was confirmed in the case law of Lithuanian courts. See, e.g., Supreme Administrative Court of Lithuania, ruling of 21/03/2011, administrative case no. A444-777/2011.

<sup>263</sup> „Žurnalistų etikos inspektorius tarnyba“, <http://www.zeit.lt/veiklos-sritys/viesosios-informacijos-stebesena-monitoringas/376>.

<sup>264</sup> Interneto žiniasklaidos asociacija, [https://lietuvai.lt/wiki/Interneto\\_%C5%BEiniasklaidos\\_asociacija](https://lietuvai.lt/wiki/Interneto_%C5%BEiniasklaidos_asociacija); Interneto žiniasklaidos asociaciją papildė nauji nariai, 28/08/2020, <https://www.lrytas.lt/lietuvsdiena/aktualijos/2020/08/28/news/interneto-ziniasklaidos-asociacija-papilde-nauji-nariai-16136302/>.

## **Norway**

We are not familiar with such an example within Norway, and there does not seem to have been any discussion of this in the Norwegian media.

## **Portugal**

There is no specific council for platforms. An independent government agency supervises media, the so-called “Entidade Reguladora da Comunicação” (ERC). Radio or TV webcasting, as well as edited content as a whole made available online are subject to the intervention of ERC. However, social media networks are still much in a situation of self-regulation and statutory vacuum.

It would be interesting to see social media networks being obliged to comply with obligations already applicable to video sharing platforms, like the obligation to create mechanisms to identify hateful, racist and other illegal content, as well as providing users with options for alternative dispute resolutions (Article 69-F of the Television Act).

## **Serbia**

Except for the bodies that perform globally, like Facebook’s Oversight Board mentioned above, in the Republic of Serbia does not operate any particular body, such as “platform council” which helps platforms decide how to make better rules. This topic has not been discussed in the Serbian media so far.

## Question 8: Does your country have a public broadcasting council (an advisory council, often multi-stakeholder-based) for your public broadcaster?

### Austria

Austria's public broadcaster (ORF) is bound by a dedicated law (ORF Act/ORF-Gesetz). Herein, two entities perform the tasks of a broadcasting council together: the ORF Foundation Board ("Stiftungsrat") and the ORF Viewers' and Listeners' Council ("Publikumsrat").

The Foundation Board has far-reaching competences with regards to TV and radio broadcasting of the public broadcaster, including the monitoring of the executive board's performance, the authorisation of long-term plans on content provided by the public broadcaster, financial decisions and oversight, personnel-related decisions, the authorisation of collective bargaining agreements for public broadcasting staff, quality assurance, advertising regulations, etc. (see §21 ORF Act).

The Viewers' and Listeners' Council shall represent the interests of the Austrian public. It consists, inter alia, of persons nominated by the chamber of commerce, the catholic and protestant churches, and parties' educational institutions ("Parteiakademien"). This council mainly serves as an advisory institution that provides recommendations to the Foundation Board, e.g. on content to be produced by the public broadcaster, quality assurance schemes, or the provision of content specifically tailored to the needs of persons with disabilities ("Angebot von Sendungen für gehörlose und gehörbehinderte Menschen"). Some of the Board's decisions need confirmation of the Council, e.g. regarding broadcasting fees. The Council also nominates members of the Foundation Board, hence influencing the decision-making of the Board content-wise (with its recommendations) as well as personnel-wise (with the appointments of members). (see §§28ff ORF Act).

### Belgium

Belgium has three public broadcasters (one for each official language community) with their own "Board of Directors". The composition and tasks thereof differ according to the respective media decrees.

The **Flemish** public broadcaster (*Vlaamse Radio- en Televisieomroeporganisatie*, **VRT**) has a Board of Directors with representatives from politics, academia and media.<sup>265</sup> The Board has between 12 and 15 members<sup>266</sup> and its competences range from taking strategic decisions, deciding on the general strategy of the VRT, to supervising the CEO and approving the business plan.<sup>267</sup>

<sup>265</sup> VRT, "Samenstelling Raad van Bestuur", VRT, <https://www.vrt.be/nl/over-de-vrt/organisatie/raad-van-bestuur/raad-van-bestuur-en-mandaten/>.

<sup>266</sup> Article 12 Mediadecreet, available for consultation on: [https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet\\_27\\_maart\\_2009\\_18b.pdf](https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_18b.pdf).

<sup>267</sup> Article 13 Mediadecreet; VRT, "Bevoegdheden Raad van Bestuur", VRT, <https://www.vrt.be/nl/over-de-vrt/organisatie/raad-van-bestuur/bevoegdheden-raad-van-bestuur/>.

The Board of Directors of the French public broadcaster (*Radio-Télévision belge de la Communauté française*, **RTBF**) is composed of 13 members (all politicians<sup>268</sup>),<sup>269</sup> plus 2 government commissioners.<sup>270</sup> These 2 commissioners, if appointed,<sup>271</sup> are responsible for ensuring compliance with the general interest, laws, decrees, ordinances and orders, the public service mission, the management contract and the company's financial equilibrium.<sup>272</sup>

The Board has the power to carry out all political and budgetary acts that are necessary or useful to the company.<sup>273</sup> From among its members it appoints a chairman and three vice-chairmen (belonging to different political groups)<sup>274</sup> who - together with the managing director - form its permanent committee. The permanent committee is in particular responsible for examining the dossiers to be presented to the Board and for carrying out the tasks delegated by the latter.<sup>275</sup>

Finally, the members of the Board of Directors ('*Verwaltungsrat*') of the **German** public broadcaster (Belgischer Rundfunk, **BRF**), the highest decision-making body of the BRF, are elected by the Parliament of the German-speaking Community (Deutschsprachigen Gemeinschaft, DG). Each recognised parliamentary group is entitled to at least one voting member. The Parliament determines the number of members of the Board of Directors with voting rights. In addition to BRF representatives and representatives of the trade unions, the Board of Directors also includes the Government Commissioner of the DG and the Financial Delegate of the DG.<sup>276</sup>

The Board's responsibilities include finance, human resources and programme guidelines as well as approving the management contract (which lays down the obligations to be fulfilled by the BRF and is negotiated between the Government of the German-speaking community and the BRF).<sup>277</sup>

## Bosnia and Herzegovina

The three public broadcasters in BiH have the so-called programmatic councils - advisory bodies that provide opinions on the programmatic and editorial policies as representatives of the public, without decision-making power:

<sup>268</sup> Article 11, §1 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF); RTBF, "*Le conseil d'Administration*", RTBF Entreprise, <https://www.rtbf.be/entreprise/a-propos/gouvernance>.

<sup>269</sup> Article 11, §1 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF), available for consultation on: <https://ds1.static.rtbf.be/article/pdf/2018-11-09-decret-portant-statut-de-la-rtbf-coordination-officieuse-de-justel-1548073211.pdf>.

<sup>270</sup> Article 6, §7 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF).

<sup>271</sup> There is no obligation to appoint two government commissioners. See the wording of article 6, §7 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF).

<sup>272</sup> RTBF, "*Le conseil d'Administration*", RTBF Entreprise, <https://www.rtbf.be/entreprise/a-propos/gouvernance>.

<sup>273</sup> Article 10, §2 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF).

<sup>274</sup> Article 15 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF).

<sup>275</sup> Article 16, §1 Décret portant statut de la Radio-Télévision belge de la Communauté française (RTBF); RTBF, "*Le conseil d'Administration*", RTBF Entreprise, <https://www.rtbf.be/entreprise/a-propos/gouvernance>.

<sup>276</sup> Dekret über das Belgische Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft (27. Juni 1986); <https://u.brf.be/organisation/struktur/>.

<sup>277</sup> <https://u.brf.be/organisation/struktur/>.



State – level broadcasting company BHRT Programmatic Council<sup>278</sup>

Entity- level broadcasting company – RTVFBiH Programmatic Council<sup>279</sup>

Entity – level broadcaster company – RTRS Programmatic Council<sup>280</sup>

The members of these councils have to reflect the ethnic composition of the BiH society in accordance with the existing constitutional framework. They are selected based on the results of a public call and are usually members of the academia, representatives of labour unions, national minorities, journalists' associations, youth representatives, etc.

Public broadcasters are often criticized for the evident influence of leading political parties on their programmatic and editorial policies which influences the work and the public perception of the advisory councils at times.

## Cyprus

There is the Cyprus Broadcasting Authority. It is an Administrative Body appointed by the Executive, conforming to the Law 10/1998.<sup>281</sup>

## Finland

YLE has an Administrative Council. Yle's Administrative Council has 21 members. Administrative Council assembles 6–7 times during a calendar year.

The advisory board is elected by the Parliament for 4 years. According to the Act the Yle's Administrative Council includes representatives from the fields of science, art, education, business and economics, as well as representatives of different social and language groups (The Act on Yleisradio Oy). Yle's personnel have two staff representatives in the Administrative Council. Staff representatives have the right to attend and speak at the meetings, but do not have the right to vote. The current Advisory Council is composed of Members of Parliament.

The Board of YLE has members that are not connected to YLE, for example, media researchers, professors.<sup>282</sup>

## France

Yes. The French public broadcasting council is the 'Conseil supérieur de l'audiovisuel' (CSA).<sup>283</sup> It is not a multi-stakeholder body, but an independent administrative authority whose composition and mission are defined by law (Freedom of communication Act, Loi n°86-1067 of 30 September 1986). So far, its

<sup>278</sup> <https://bhrt.ba/wp-content/uploads/2020/08/Clanovi-Programskog-vijeca.pdf>.

<https://bhrt.ba/wp-content/uploads/2019/10/Statut-BHRT.pdf>.

<sup>279</sup> [http://www.rtvfbih.ba/loc/template.wbsp?wbf\\_id=206](http://www.rtvfbih.ba/loc/template.wbsp?wbf_id=206).

<sup>280</sup> <https://lat.rtrs.tv/comp/psavjet.php>.

<sup>281</sup> The Law on the Cyprus Broadcasting Corporation (KEF.300A),

[https://europam.eu/data/mechanisms/PF/PF%20Laws/Cyprus/Cyprus\\_Law%20on%20the%20Cyprus%20broadcasting%20corporation\\_1959\\_ended2010.pdf](https://europam.eu/data/mechanisms/PF/PF%20Laws/Cyprus/Cyprus_Law%20on%20the%20Cyprus%20broadcasting%20corporation_1959_ended2010.pdf).

<sup>282</sup> About YLE, <https://yle.fi/aihe/about-yle/organisation>.

<sup>283</sup> See here: <https://www.csa.fr/>.

competence doesn't extend to the Internet, but one of the few provisions of the 'Avia Law' that weren't found unconstitutional created a multistakeholder 'observatory of online hate', set up by the CSA in October 2020.<sup>284</sup> This observatory has no regulation power, though.

## Germany

The German public broadcasters each have one such council. ZDF: Fernsehrat<sup>285</sup> (Television Council); Deutschlandradio: Hörfunkrat<sup>286</sup> (Radio Council); regional broadcasters composing the ARD: Rundfunkrat<sup>287</sup> (Broadcasting Council).

The councils serve as a representative body of the general public and the highest supervisory body charged with monitoring programming. They determine and install – in cooperation with other committees – the management of the broadcasters and ensure that they fulfill their broadcasting mandate.

The modes of appointment and the spectrum of organizations, groups and associations considered in the appointment process also vary. For the most part, those entitled to make appointments are listed individually in the respective broadcasting laws. In general, the Broadcasting Councils include members of the two major religious denominations, the Jewish religious communities, labor unions and employer associations, representatives of parliament or, more recently, political parties, and government representatives.

## Greece

Yes, see answer to question number 3.<sup>288</sup>

## Hungary

Basically, there is one, namely the Public Service Board.<sup>289</sup> It consists of representatives of organizations and interest groups defined in the Media Act. According to the law, neither journalists' organizations nor human rights organizations can delegate a member to the Board. However, the Board does not have a real advisory or consultative function, its operation is fundamentally formal. It hears the CEO of the public service media once a year. Neither his professional background nor the regulations that apply to him make him suitable to perform real tasks.

## Iceland

The Icelandic public broadcaster, Ríkisútvarpið, is managed by an executive board made up of nine members, nominated by the Parliament and elected during a General Assembly in January each year, and by a management board chaired by the director-general. The board exercises supreme authority in its affairs

<sup>284</sup> <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Observatoire-de-la-haine-en-ligne-analyser-pour-mieux-lutter>.

<sup>285</sup> <https://www.zdf.de/zdfunternehmen/zdf-fernsehrat-funktion-vorsitz-und-mitglieder-100.html>.

<sup>286</sup> <https://www.deutschlandradio.de/hoerfunkrat.2088.de.html>.

<sup>287</sup> E.g. the Rundfunkrat of WDR, one of the regional public broadcasters: <https://www1.wdr.de/unternehmen/rundfunkrat/index.html>.

<sup>288</sup> For more information see: <https://www.esr.gr/>.

<sup>289</sup> See: <http://www.kszt.hu/>

between Annual General Meetings. The Board is responsible for the operation of the RÚV and for complying with the law on Ríkisútvarpið, that its articles of association and the provisions of the agreement on public service media are complied with.

## Ireland

Section 96 of the Broadcasting Act 2009 requires the two Irish public broadcasters, RTE and TG4 (an Irish language broadcaster), to establish audience councils. Each council is composed of 15 members nominated by the broadcaster itself. Section 96 provides as follows:

- (1) A corporation shall establish for the purposes of this section, a committee, which committee shall be known, and is in this section referred to, as an audience council.
- (2) An audience council shall consist of 15 members appointed by its corporation.
- (3) The members of the board of a corporation shall appoint one of their number to serve as a member of its audience council.
- (4) In appointing the members of its audience council, a corporation shall endeavour to ensure that the audience council is representative of the viewing and listening public and, in particular, of Gaeltacht communities and persons with a sight or hearing disability.
- (5) In appointing the members of its audience council TG4 shall endeavour to ensure that the members of the audience council are able to communicate proficiently in the Irish language.
- (6) A corporation shall from time to time appoint, as occasion requires, a member of its audience council to be chairperson of it.
- (7) The membership of an audience council shall be appointed for such periods, not exceeding 5 years, as the corporation may think fit and a member of the audience council appointed for a period of less than 5 years shall be eligible for re-appointment for the remainder of the period of 5 years from the beginning of his or her appointment, or for any shorter period.
- (8) A member of an audience council may at any time, by notice in writing to the corporation, resign his or her membership. The membership of any member of the audience council may at any time be terminated by notice in writing given to him or her by the corporation.
- (9) A corporation shall give to its audience council the use of such resources and information as the council requires for the proper performance of its functions.
- (10) The principal function of an audience council shall be to represent to the board of its corporation the views and interests of the general public with regard to public service broadcasting by the corporation.
- (11) An audience council may require its corporation to conduct, or arrange to be conducted, as far as is reasonably practicable, a survey of children and young persons, for the purpose of ascertaining the views and interests of children and young persons in respect of public service broadcasting by the corporation.
- (12) An audience council may require its corporation to conduct, or arrange to be conducted, as far as is reasonably practicable, a survey of elderly persons, for the purpose of ascertaining the views and interests of elderly persons in respect of public service broadcasting by the corporation.

(13) In order to exercise its function under subsection (10), an audience council may—

(a) hold public meetings, and

(b) require that its corporation provide the equivalent of up to one hour of television programme material and in respect of RTÉ one hour of sound broadcasting programme material in each year, and that the corporation shall broadcast same, at such times as are agreed between the corporation and the audience council.

(14) The quorum for a meeting of an audience council shall be 8.

(15) Subject to this section an audience council shall have the power to regulate its own procedure and practice by rules made under this section.

(16) An audience council shall, not later than 30 June in each year, make an annual report to the Minister, the board of its corporation and the Authority, of its proceedings during the preceding financial year. An audience council may, and if requested to do so by the Minister shall, make special reports to the Minister during any year.

(17) At least once in each year the director general of the corporation concerned shall meet with the audience council of the corporation.

(18) At least once in each year an audience council shall meet with the board of its corporation.

(19) A corporation may pay to each member of its audience council such out-of-pocket expenses as such member may reasonably incur in the performance of his or her functions.

## Italy

The answer is articulated.

RAI – Radiotelevisione italiana is the national public broadcasting company of Italy, owned by the Ministry of Economy and Finance. The RAI is governed by a nine-member Administrative Council. Seven of nine members are elected by a committee of the Italian Parliament. The other two (one is the President) are nominated by the largest shareholder: the Ministry of Economic Development. The Council appoints the Director-General. The Director-General and the members of the Administrative Council are appointed for a renewable three-year term.

The company is entitled to provide broadcasting services (radio, TV) based on a contract stipulated with the Ministry.<sup>290</sup>

Then, there is the Communications Authority (Autorità per le garanzie nelle comunicazioni - Agcom), which is an independent Authority, established by law no. 249 of 1997. The instituting law entrusts the Authority with the dual task of ensuring the correct competition of operators on the market and of protecting the users' fundamental freedoms. The President of Agcom is appointed upon proposal of the

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<sup>290</sup> Information available at: <http://www.rai.it/trasparenza/Contratto-di-servizio-e6731507-23ae-41bf-83dd-bf99b44b66ec.html>.

President of the Council of Ministers, in agreement with the Minister of Communications and with the advice of the competent parliamentary committees.<sup>291</sup>

## Latvia

Several institutions provide an oversight on the media.

The National Electronic Mass Media Council (NEMMC) is an independent, autonomous institution that represents the public interest in the field of electronic mass media. The Council supervises the compliance of the operations of general electronic mass media with the Constitution of the Republic of Latvia, Electronic Mass Media Law and other regulations. This Council is composed of five members, elected by the Parliament. The candidates cannot be officials of political parties or owners of capital shares of the electronic mass medium and also cannot be punished for intentional crimes.<sup>292</sup>

The Public Advisory Council is an advisory institution established by the National Electronic Mass Media Council with the intention to ensure the participation of the public in the drafting of the public service remit and the national strategy for the development of the electronic mass media sector. Decisions of the Public Advisory Council have recommendatory nature. Representatives of associations, foundations, professional institutions and other organisations acting in the field of the mass media, education, culture, science and human rights, are included in the composition of the Public Advisory Council.<sup>293</sup>

Previously the NEMMC also had the competences over the public mass media; however, since the Law on Public Electronic Media and Their Management came in force, these competences are taken over by the Public Electronic Media Council (PEMC). It consists of three members, who are nominated by the President of the State; the Council for the Implementation of the Memorandum of Cooperation between Non-Governmental Organisations and the Cabinet of Ministers and the Parliament and are approved by the Parliament.

The competences and duties of the PEMC are the following:

- to fulfil the functions of the holder of capital shares and the highest decision-making body in public electronic media;
- to guarantee the editorial independence of the public electronic media, including without interfering in the creation of the content of the programs;
- in consultation with the public electronic media, to develop and approve public procurement, including the medium-term operational strategy of the public electronic media and the annual public procurement plan;
- in consultation with the public electronic media, to prepare proposals for the draft annual state budget law regarding the financial resources necessary for the performance of public electronic media public orders, as well as after the adoption of the annual state budget law and its amendments decide on the distribution of allocated funds in accordance with approved public electronic media public procurement of funds;

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<sup>291</sup> Reference at: <https://www.agcom.it/>.

<sup>292</sup> Section 56 of the EMLL, <https://likumi.lv/ta/en/en/id/214039-electronic-mass-media-law>.

<sup>293</sup> Section 63 of the EMLL.

- to approve the codes of ethics for public electronic media;
- to elect and dismiss members of the boards of public electronic media, editors-in-chief and the ombudsman for public electronic media;
- to supervise the operation of public electronic media, controlling its compliance with the basic principles of operation of public electronic media specified in this Law, the compliance of public electronic media programs and services with public procurement and the compliance of the use of financial resources with the approved budget;
- to inform the public regarding the work of public electronic media, as well as involve the public in the development and evaluation of the public order and others.

In performing these tasks, the Public Electronic Media Council defends the interests of the public and does not request or accept instructions from any other institution.

It must be noted that the PEMC has not been practically created (elected) yet; therefore the “old system” applies until now.

Additionally, the public electronic media also is going to have their own ombudsman, elected by the PEMC.

Following the Law on Public Electronic Media and Their Management, Chapter V<sup>294</sup>, the Ombudsman for public electronic media monitors the compliance of services provided by public electronic media with the objectives and the basic principles of operation of public electronic media as specified in the law, codes of ethics and editorial guidelines of public electronic media, and on his or her own initiative or on the basis of submissions of individuals provides opinions regarding the compliance of public electronic media programs and services with the abovementioned documents. Any person may apply to the Ombudsman with a submission, requesting to assess the compliance of the public electronic media program. The decision of the Ombudsman is not binding on the submitter of the application and is neither contestable nor appealable, however, the public electronic media must consider it. In specific cases, the media may disregard these findings by giving written reasons for the refusal.

The Ombudsman is entitled to address the Saeima with a reasoned submission, urging the removal of a member of the Public Electronic Media Council or the entire Council, if the Ombudsman has established that the actions or missions of the members of the Council endanger the editorial independence of public media. The Ombudsman also acts as a conciliator in disputes between the Public Electronic Media Council and the public electronic media regarding the compliance of public electronic media programs and services with its code of ethics and editorial guidelines, promotes public media literacy and maintains personal contact with the public and upon the request of the public electronic media, provides consultations on issues related to their codes of ethics and editorial guidelines.

Finally, on 12 December 2018 a total of fifteen media industry associations and companies founded the Latvian Media Ethics Council.<sup>295</sup> 27 members have joined the association by now. Members of the association represent all forms and genres of media, media associations and organisations that are active in media research. Any legal person or partnership whose main activity is in the field of media or is actively supporting and interested in the successful activity of the association, as well as any natural person who has

<sup>294</sup> See: <https://likumi.lv/ta/id/319096-sabiedrisko-elektronisko-plasazinas-lidzeklu-un-to-parvaldibas-likums>.

<sup>295</sup> See: <https://www.lmepadome.lv/par-mums/>.

the capacity and rights to act, and who agrees with the Statutes of the association, may become an associate member.

On 27 February 2019, the Ethics Council was appointed at the general meeting of the members of the “Latvian Media Ethics Council”. The competence of the Ethics Council includes:

- consideration of complaints submitted by natural and legal persons and the delivery of an opinion on ethical offences committed by the media;
- handling complaints from media, media companies, and journalists and issuing an opinion in the event of a violation of the code of ethics, or a restriction on the media’s freedom of expression;
- expressing views on issues related to the threat or influence of the media, the deterioration of the state of the media sector, and the editorial autonomy or independence, or other circumstances in which the media can pursue its objectives
- organisation of public conferences presenting the Ethics Board’s expertise, and expert reports on various issues of media ethics, activity and environmental research and survey results.

## Lithuania

The Lithuanian public broadcaster is Lithuanian Radio and Television (LRT). The Law on National Radio and Television provides that the Council is the highest governing institution of LRT.<sup>296</sup> The Council supervises the implementation of the LRT mission, approves the annual income and spending by LRT administration. The Council comprises twelve members prominent in social, scientific and cultural fields, appointed for six-year terms. Four members are appointed by the President, four by the Parliament (Seimas) (two are chosen from the candidates put forth by the opposition in the Parliament), while the Lithuanian Science Council, the Lithuanian Education Council, the Lithuanian Creative Artists Association and the Lithuanian Bishops’ Conference delegate one member each.<sup>297</sup>

## Norway

The public broadcasting council (kringskastningsrådet) was established in Norway in 1933 and is an advisory, publicly appointed body.<sup>298</sup> The mandate of the public broadcasting council is to monitor the Norwegian Broadcasting Corporation closely and assess the offer to the public, i.e. the totality of radio and TV programs offered by the corporation.<sup>299</sup> Anyone who is unhappy about a program offered by the Norwegian Broadcasting Corporation (NRK) can make a complaint to the council. In addition to advising on the programs offered by NRK, the public broadcasting council can also offer advice on economic and administrative issues.<sup>300</sup>

<sup>296</sup> Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymas (Žin., 1996, Nr. 102-2319; 2000, Nr. 58-1712; 2005, Nr. 153-5639; TAR, 2020-05-22, Nr. 2020-10874),

<https://www.e-tar.lt/portal/lt/legalAct/TAR.1559303036A8/asr>.

<sup>297</sup> See: <https://apie.lrt.lt/en/lrt-council>.

<sup>298</sup> <https://www.regjeringen.no/no/dep/kud/org/styrer-rad-og-utvalg/rad-kringkastingsradet/id2508417/>

<sup>299</sup> <https://info.nrk.no/kontakt/kringkastingsradet/>

<sup>300</sup> <https://www.regjeringen.no/no/dep/kud/org/styrer-rad-og-utvalg/rad-kringkastingsradet/id2508417/>

In keeping with § 7-2 of the Broadcasting Act, the advisory council consists of fourteen members. The Parliament of Norway appoints ten members. The Government appoints four members, including the chair and vice-chair. Each member sits on the advisory council for four years and may only be re-appointed once.

<sup>301</sup> As a group, the members shall represent all age groups and all regions of the country (§ 7-2 (3)).

The advisory council meets six to eight times per year. The leaders of the Norwegian Broadcasting Corporation (NRK) attend all the advisory council meetings. Recordings (including both written minutes and video recordings) are available on the NRK webpage of the meetings of the advisory council dating back to 2013.<sup>302</sup>

In addition to the main body, there are separate councils advising the district offices of the National Broadcasting Corporation (§ 7-3). These have regional competences, and the five members of each are appointed by the pertinent County Parliament (Fylkestinget).

## Portugal

There is no specific council for platforms. An independent government agency supervises media, the so-called “Entidade Reguladora da Comunicação” (ERC). Radio or TV webcasting, as well as edited content as a whole made available online are subject to the intervention of ERC. However, social media networks are still much in a situation of self-regulation and statutory vacuum.

It would be interesting to see how social media networks would fare when obligations already applicable to video sharing platforms were extended to cover them, such as the obligation to make mechanisms to identify hateful, racist and other illegal content available, as well as to make available users mechanisms of alternative dispute resolution (Article 69-F of the Television Act).

## Serbia

Yes, it has. According to the Law on Public Service Broadcasting<sup>303</sup>, bodies of the public media service are the Management Board, Director-General and the Program Council.

As Serbia has two public broadcasters – Radio-television Serbia (RTS) and Radio-television of Vojvodina (RTV), each of them has the Program Council.

It is an advisory body and has 15 members- media experts and representatives, scientists, creators in the field of culture and representatives of associations whose goal is the protection of human rights and democracy.

The members of the RTS/RTV Program Council are elected by the RTS/RTV Management Board, proposed by the National Assembly Committee/ the Committee of the Assembly of the Autonomous Province of Vojvodina on public information. The mandate is four years, they can not be re-elected and members can't be among politicians and public office holders.

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<sup>301</sup> <https://info.nrk.no/kontakt/kringkastingsradet/>

<sup>302</sup> Ibid.

<sup>303</sup> Law on Public Service Broadcasting (*Official Gazette of the Republic of Serbia* No. 83/2014, 103/2015, 108/2016 and 161/2020);

[https://www.paragraf.rs/propisi/zakon\\_o\\_javnim\\_medijskim\\_servisima.html](https://www.paragraf.rs/propisi/zakon_o_javnim_medijskim_servisima.html).



The Council takes care of the quality of program and audience's interests and at least once per year communicates with the citizens by organizing public debates and submits the reports along with recommendations and suggestions to the management.

## Question 9: Is there any other information you can share that may help us understand how a private internet company restricting a holder of a public office (such as in the case of Trump) would play out in your country?

### Austria

In case of content deletion by Communication Platforms, the newly enacted Austrian Communication Platforms Act (KoPl-G - exempt: Audiovisual Content Platforms, hence not applicable in the above Kickl/FPÖ-YouTube-conflict mentioned above) provides for internal redress mechanisms for all users. Platforms must act in accordance with the KoPl-G from 31 March 2021 (§14 KoPl-G). In parallel, civil law proceedings could be initiated by the person whose content was deleted.

### Belgium

#### Criticism by political parties / figures

In this context, we refer to our answer to Question 2. As mentioned above, Facebook did impose content restrictions in respect of the account of a Belgian politician of *Vlaams Belang*, *Vandendriessche*. *Vandendriessche* heavily criticized the measures taken by the social network. As such, in the context of the restrictions imposed in relation to his post related to Samuel Paty, he said that “freedom of expression, the possibility to appeal against a decision [on the basis of which content is being restricted] and equal treatment (non-discrimination) are basic principles. Facebook violates all these basic principles when silencing a representative of the people, especially in case where fundamental democratic rights are defended against terrorism”. He demanded Facebook to lift the ban immediately and to review their policy, after which he argued that he would use “all legal and political means available to enforce his demands”.<sup>304</sup> According to *Vandendriessche*, *tech giants* are an outright threat to our democracy.<sup>305</sup> In addition, *Vlaams Belang*, in relation to the discussions concerning the figure of “Zwarte Piet”, announced that it would urge the federal and especially the Flemish Parliament to address Facebook on this matter.<sup>306</sup>

Whereas criticism concerning the content restrictions experienced by (members of) *Vlaams Belang* was, until recently, only coming from within the party itself, it appears from the discussion in the plenary of the Flemish Parliament of 13 January 2021 (“freedom of expression and censorship on social media”, see Question 1) that, since the banning of Donald Trump from social media, such criticism is now coming from across the whole political spectrum. Accordingly, it seems as though there is a political momentum, at least in Flanders, to indeed denounce content restrictions by private entities imposed vis-à-vis political figures and holders of a public office.

<sup>304</sup> *Vlaams Belang*, “Alweer Facebook-pagina van Vlaams Belang geblokkeerd: “Censuur moet stoppen””, *Vlaams Belang Nieuws*, October 18, 2020, <https://www.vlaamsbelang.org/alweer-facebook-pagina-van-vlaams-belang-geblokkeerd-censuur-moet-stoppen/>.

<sup>305</sup> P. Van Berkel, “Facebookpagina Tom Vandendriessche (Vlaams Belang) opnieuw geblokkeerd”, *Palnws*, February 21, 2021, <https://palnws.be/2021/02/facebookpagina-tom-vandendriessche-vlaams-belang-opnieuw-geblokkeerd/>.

<sup>306</sup> A. V. H., “Facebook speurt ook naar oude Zwarte Piet-foto's: Vlaams Belang kreeg al verschillende waarschuwingen”, *Het Laatste Nieuws* August 28, 2020, <https://www.hln.be/binnenland/facebook-speurt-ook-naar-oude-zwarte-piet-foto-s-vlaams-belang-kreeg-al-verschillende-waarschuwingen~ade25a44/>.

### **Opposability of terms of service**

In Belgium, the inclusion of the terms of service by one party in a contract requires their effective knowledge by the other party or at least the *possibility* for the other party to *become effectively acquainted with them*, as well as their *acceptance*.<sup>307</sup> Accordingly, a social media user (including political figures) could, in case they would face content restrictions, in theory go to court and, where appropriate, argue that one or both of the aforementioned conditions concerning the inclusion of the terms of service in a contract is not fulfilled. If such would, in respect of a particular social network, indeed appear to be the case, the latter's terms of service may be considered as non-applicable. This might affect content restrictions and/or temporary or permanent suspensions of accounts based on these terms of service.

### **Cyprus**

See question 6.

### **Finland**

Reactions depend entirely on the case. In the case of Ano Turtiainen it was quite clear because he is well known for his inappropriate comments. In a legal sense, it is hard to imagine that there would be any kind of process.

### **Germany**

See question 5.

### **Greece**

There are no relative examples or specific legal provisions.

### **Hungary**

The ruling party's relationship with Facebook and other platforms is highly controversial and fits well into the pattern of populist media policy. The ruling party uses social media most effectively to spread its own messages, it spends the most on Facebook ads, it maintains an organized troll army. An organization affiliated with the ruling party was formed last year with the goal of training influencers and social media communicators to support the ruling party. In parallel, as soon as the ruling party noticed that Facebook was taking global action against the hateful and lying content that the Hungarian ruling party's propaganda was also spreading in large numbers, the government immediately launched a communications attack against the platforms. Currently, the so-called Digital Freedom Committee is working on the preparation of the Hungarian Facebook Act. The committee has only members representing government and organizations close to the government.

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<sup>307</sup> A. De Boeck, "De tegenstelbaarheid van algemene voorwaarden", *Tijdschrift voor Belgisch Burgerlijk Recht* 2019, 63-72.

## Ireland

In the absence of any domestic legislation or litigation in this area it is impossible to predict the outcome of such a case.

## Italy

Graziella Romeo: My impression is that a situation like the one occurred in the case of Trump is not easy to replicate for MPs for the reasons explained above (meaning the current protection of parliamentary prerogatives and their broad interpretation). Concerning the position of President of the Council of Ministers, a private internet company may have more space to act (assuming that he/she may is not also an MP, covered by parliamentary prerogatives). My overall impression is, however, that this would happen only in cases of extreme political speech.

Federico Costantini: It has to be considered that the Italian market of traditional mass media (press, Radio, TV) is very fragmented. The fact that there are so many operators at regional and local level creates a very hard competition. As far as I can see, operators tend to avoid conflicts in order to maintain the status quo, which is based on personal relations (among journalists / institutional press offices / press agencies / PR agencies and so on). It is very unlikely that an internet company could “censor” a politician, fearing that this could lead to a loss of advertisers. However, is more plausible that it could censor its critics. The idea is that “follow the money” works as a golden rule even in this field.

## Latvia

There are no legal regulations or case law on those issues yet, however, such an action would initiate a societal debate and presumably also political actions.

## Lithuania

The Law on Equal Opportunities<sup>308</sup> (Article 8) protects the rights of consumers and, notably, sets out an obligation of the provider of services to ensure equal conditions for consumers to get access to the services irrespective of their sex, race, citizenship, language, origin, social status, belief, convictions or opinions, age, sexual orientation, disability, ethnicity, or religion.

## Norway

The simple legal answer is that the rules would be followed. The starting point would be the terms of service provided by the platform. If the holder of a public office was in breach of them, it must be assessed what the correct reaction should be, as laid out in the terms of service. An overreaction (permanent deletion of all content and blocked for life in response to a minor **infraction**) would most likely be checked by § 36 of the Contracts Act (Avtaleloven), which states that unreasonable contracts may be rescinded or amended in whole or in part. The unreasonableness must be qualified, but excessive reactions would most likely meet the criteria. Reactions which appear proportionate to the infraction would be accepted by the courts, although considering ECHR art. 10 and § 100 of our Constitution, it would most likely take a considerable

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<sup>308</sup> Lietuvos Respublikos lygių galimybių įstatymas (Žin., 2003, Nr. 114-5115; 2008, Nr. 76-2998; TAR, 2016-11-17, Nr. 2016-26967).

infraction to accept permanent denial of service, as holders of public offices are wanted participants in the public debate.

## Portugal

Political speech raises sensitive issues. Media, as the “fourth power”, are expected to be impartial and independent. Suspending or deleting a social media account of a political actor will probably be labelled as censorship and interference in the political game. However, privileged, political speech cannot advocate the contrary of the very basis, which makes it possible and the basic values underlying a democratic, free and human rights compliant society.

## Serbia

The practice on social networks is the rare cancellation of profiles and a complete ban, but mostly a ban on a certain post with the explanation that it contains false information<sup>309</sup>. However, it is very difficult to understand who and in what way determines what false information is. Thus, such a practice is almost tantamount to a total ban, if posts posted by a particular person are banned.<sup>310</sup>

On the professional network, LinkedIn, for example, the deletion of the profile of a person who was very active and popular on those networks, with somewhat harsh comments on posts, is currently taking place. This is where the discussion started about how much freedom of speech is really endangered. Can the cause be found in human nature itself, where freedoms and opposing views are generally supported, but when the discussion descends to a personal level or a level we are not personally up to, then we even initiate and support prohibitions ourselves.<sup>311</sup>

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<sup>309</sup> <https://www.bbc.com/serbian/lat/svet-55188333>

<sup>310</sup> <https://www.facebook.com/help/1952307158131536?helpref=related>

<sup>311</sup> [https://www.linkedin.com/posts/milisav-lekovic-47423126\\_danas-on-sutra-ti-ili-ja-pitanje-je-dana-ugcPost-6774798815061958656-sh\\_3](https://www.linkedin.com/posts/milisav-lekovic-47423126_danas-on-sutra-ti-ili-ja-pitanje-je-dana-ugcPost-6774798815061958656-sh_3)

## **EU COST Action – CA19143: Global Digital Human Rights Network**

The GDHRNet COST Action will systematically explore the theoretical and practical challenges posed by the online context to the protection of human rights. The network will address whether international human rights law is sufficiently detailed to enable governments and private online companies to understand their respective obligations vis-à-vis human rights protection online. It will evaluate how national governments have responded to the task of providing a regulatory framework for online companies and how these companies have transposed the obligation to protect human rights and combat hate speech online into their community standards. The matters of transparency and accountability will be explored, through the lens of corporate social responsibility.

The Action will propose a comprehensive system of human rights protection online, in the form of recommendations of the content assessment obligation by online companies, directed to the companies themselves, European and international policy organs, governments and the general public. The Action will also develop a model which minimises the risk of arbitrary assessment of online content and instead solidifies standards which are used during content assessment; and maximises the transparency of the outcome.

The Action will achieve scientific breakthroughs (a) by means of a quantitative and qualitative assessment of whether private Internet companies' provide comparable protection of human rights online in comparison with judicial institutions, and (b) in the form of a novel holistic theoretical approach to the potential role of artificial intelligence in protecting human rights online, and (c) by providing policy suggestions for private balancing of fundamental rights online.

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