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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 November 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2021)575
Subject:	Regulatory scrutiny board opinion Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising

Delegations will find attached document SEC(2021)575.

Encl.: SEC(2021)575

EUROPEAN COMMISSION

Brussels, 1.10.2021
SEC(2021) 575 final

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising

{COM(2021) 731}
{SWD(2021) 355 }
{SWD(2021) 356 }

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Transparency of political advertising

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

This initiative concerns advertisements placed by or on behalf of political actors. Political advertisements are used in political campaigns. More generally, they shape opinion and contribute to the political debate. The initiative aims to increase transparency of political advertisements. It aims to support the functioning of the internal market for the provision of advertising services.

The Transparency of political advertising initiative was announced in the 2020 European Democracy Action Plan. It has clear links with the General Data Protection Regulation, the Digital Services Act and the Digital Markets Act, as political ads are often disseminated through digital platforms.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not sufficiently present the magnitude and evidence of the internal market and transparency problems. It does not clearly explain the specific problem of online targeting in the political advertisements market.

(2) The report does not clearly explain the link between the legal basis and the scope of this initiative. It does not clearly explain the legislative gap that it aims to fill.

(3) The report does not sufficiently quantify costs and benefits and highlight data limitations and assumptions. It is not clear on the impacts on SMEs. It does not sufficiently justify how the initiative is proportionate.

(C) What to improve

This opinion concerns a draft impact assessment which may differ from the final version.

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(1) The report should provide a clear understanding of exactly what problem this initiative aims to address. It should objectively define and analyse the problem rather than focussing on political commitments. It should provide in-depth analysis of the context relating to transparency and online targeting. It should better explain how and why targeting in this area is a problem (and not in others), outline the issues on targeting currently not regulated, and illustrate the differences between offline and online targeting. The problem section should describe better the exact nature, scope and scale of the internal market problems. It should demonstrate that this initiative tackles the most prominent obstacles to the internal market. It should also explain better how the identified problems fit in the context of the broader ads market and its regulation.

(2) The report should better explain how transparency and targeting issues are linked with the internal market legal basis. In addition, it needs to ensure the coherence between this initiative and current and proposed legislation. The report should clarify what legislative gap it aims to cover, especially in relation to the proposed Digital Services Act and the revision of the Regulation on the Statute and Funding of European Political Parties and Foundations (EUPP/F). It should explain how its focus on transparency and accountability is compatible with the proposed extension of membership and funding of EUPP/F to non-EU states that are identified as hostile actors.

(3) The report should strengthen the presentation of the options and provide a clear picture of the possible combinations. In particular, it should justify the specific selection of transparency measures, such as the information requirements and targeting measures. The options should include possible mitigation measures for SMEs. The report should not discard options because of earlier political orientations in the Democracy Action Plan.

(4) The report should quantify further the costs and benefits of the initiative to be able to assess its overall proportionality and net economic impact. When doing this, it should discuss relevant data limitations and assumptions and, in the case of lack of quantification, better justify the conclusion that the benefits will outweigh the costs. The analysis should pay due attention to costs for businesses, in particular SMEs. The report should also clearly explain the trade-off between the exemptions for SMEs and the effectiveness of the transparency measures, given the role played by SMEs like Cambridge Analytica.

(5) As the initiative only addresses selected barriers to the single market, the report should assess the impacts on the creation of a single market in a more nuanced way. It should clarify to what extent new obligations might deter actors from entering the political ads market.

(6) The report should present, in a balanced and nuanced way, the views of different stakeholder groups, including the political parties on the different problems and measures.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion **The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.** **If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**	
Full title	Transparency of political advertising - Proposal for an initiative on greater transparency in sponsored political content ('political advertising'), and other supporting measures
Reference number	PLAN/2020/8647
Submitted to RSB on	2 September 2021
Date of RSB meeting	29 September 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Reduced legal fragmentation costs	Removal of barriers and obstacles	
Increased legal certainty	Cost reductions of around 1 FTE per economic actor per cross-border campaign.	Applies to agencies and ad publishers when providing political ads across borders or in more than one Member State.
More transparency in political ads	Increased accountability and improved oversight. Reduced opportunities to mislead citizens Improved trust in political ads	
More uniform and effective monitoring and enforcement of regulation of political ads	Simplification of regulatory oversight Reduced circumvention of rules and reduced non-regulated political ads in circulation	
Reduced impact on fundamental rights and democratic processes of the use of targeting in political ads	Reduced opportunities to mislead citizens Improved trust in political ads Dissuades misuse of targeting and of personal data in targeting	
Increased transparency in the use of political ads by national political parties	Political parties have greater certainty and clarity about their use of political ads Improved opportunities for multinational campaigning on European issues Reduction of incentives for restrictive private sector policies	
Better regulation of campaigning organised by European political parties		

Indirect benefits		
Increased opportunities for cross-border political ads services		
Reduced opportunities for interference in elections		
Improved protection of democratic principles and more resilient democratic processes		

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Common framing of political ads	Direct costs	Adaptation of ad purchasing policies for political actors		Training and process adjustment to adapt to common framing		Training and capacity building	
	Indirect costs						
Passive obligation to retain information about political ads	Direct costs			Training and process adjustment to adapt to common framing			
	Indirect costs						
Obligation to provide adequate information	Direct costs			Data handling and process adaptation	Variable costs of data acquisition and publication. Repository adaptation costs		
	Indirect costs						

Obligation to cooperate with competent authorities	Direct costs				Provision against information requests, and upstream where not automated Costs would vary according to the number of requests – potentially 0.5-1 FTE per political ad campaign.		
	Indirect costs						
Conditional limits to targeting	Direct costs			Training and process adaptation. GDPR certification costs			
	Indirect costs						
Powers for national authorities to request information	Direct costs						
	Indirect costs						
Framework to enable exchange of information	Direct costs			Developing necessary APIs and other technical solutions			
	Indirect costs						
Further support for capacity building	Direct costs						
	Indirect costs						

Elaborated rules for EUPPS	Direct costs	Data handling and process adaptation	Additional audit requirements estimated at around EUR 75,000 to 150,000 annually			Training for EP staff to oversee additional audit	
	Indirect costs						
Empowering the Authority for EUPPS	Direct costs		1FTE per party for ~6 months campaign period to make disclosures			Staff training Disclosure platform design/procurement	1FTE additional permanent staff. Monitoring compliance transparency and targeting obligations
	Indirect costs						
Recommendations to Member States for their national political parties	Direct costs						
	Indirect costs						