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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	14752/22
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising - Comments from delegations

Following the meetings of the Working Party on General Affairs on 18 November 2022, delegations will find in Annex comments from Member States on the Presidency compromise text as contained in document 14752/22.

ANNEX

DENMARK

Please note that a government has not yet been formed after the Danish election on 1 November , and that our remarks have to be viewed in that light.

Regarding access to appeal in case of removal of advertisements
Denmark understands the relationship between the proposal and the DSA such that to the extent political advertisements are published by an online intermediary service covered by the DSA, the rules in the DSA concerning notification of illegal content and right to appeal will apply in regards to political advertisements that do not comply with the proposed regulation. According to the DSA, online intermediary services shall establish mechanisms for notification of illegal content (Article 16) and users have access to appeal if they believe their content has been unfairly removed or users that have notified about content they believe to be illegal but has not been removed by the online intermediary service (Article 20). Could the Presidency please confirm whether this understanding is correct?
Furthermore it is our understanding that there is not a similar requirement for offline political advertising publishers to provide such mechanisms for appeal in cases of illegal content. What considerations lie behind this?

Regarding the transmission of information to other interested entities (article 11 and article 13(1))
Denmark proposes to use the term "free of charge" in article 11(1) and 13(1) instead of the term "without costs" which is also used in article 9(1). This way it is clearer that the intent of the provision is that providers of political advertising services, as a starting point, should not charge a fee for the transmission of information to interested entities.

Regarding prohibition of targeting and amplification techniques (article 12(2))
We would kindly request a clarification of what is understood by the addition to article 12(2) point 1 (”provided that the data subject has made a specific request to receive political advertising”). Especially in light of recital 48 including how "a specific request" is different from consent which will be covered by article 9(2)a of the GDPR.
Furthermore, we would appreciate clarification on what is understood by the addition to article 12(2) point 2 (“The use of manipulative practices that distort or impair the ability of individuals to make informed decisions in this respect shall be prohibited.”). Especially in light of recital 48 including what is understood by "manipulative practices" which is not defined in article 2 of the Regulation. It is also unclear what the prohibition in article 12(2) point 2 adds to the Regulation that is not already covered by article 12(1).

Supervision by national supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679
Denmark has previously stated that it is unclear how the obligation of supervision for data protection agencies according to article 15(1) relates to the general provisions of the GDPR. We request that it be clarified whether the national supervisory authorities should process a complaint received according to article 77 of GDPR *both* according to the rules set out in the GDPR *and* according to the rules set out in this Regulation. Furthermore, we would request confirmation that the national supervisory authorities, in case they process a complaint according to article 15(1) of the proposal, should (based on lex specialis considerations) process the complaint according to the provisions in the GDPR to the extent that an issue is not regulated in the proposal.

Regarding the clarification of administrative fines (article 15(5)c and 16(1)b)

In light of recital 63, it is our understanding that article 15(5)c stipulates that supervisory authorities either should have the authority to impose fines directly *or* to request national courts to do so. With the change in the wording of article 15 (5) c, it is unclear if the provision requires supervisory authorities to impose fines directly (without the involvement of the national courts). The Presidency is therefore asked to confirm the understanding of the provision that there is freedom of choice in that regard.

The Presidency is furthermore asked to confirm that recital 63 regards all provisions in chapter 4, especially article 15 and 16.

In relation to the proposed article 16(1)b, Denmark can support the amendment proposed by Estonia. In case the current wording in article 16(1)b is maintained, the word "also" should be omitted.

Regarding cross-border cooperation (article 15a)
The presidency is asked to please explain the rationale behind article 15a (1), and furthermore explain how the provision is supposed to be applied in the situations where a provider of political advertisements is established in another member state than the member state where the political advertisements is published.

Regarding establishments of supervision (article 20(2))
To ensure that it is possible to establish an effective supervision, Denmark proposes that it is specified in article 20 (2) that the regulation shall apply from 9 months after its publication in Official Journal of the European Union.

GERMANY

- We thank the Presidency for the **short-term revision** of the compromise text and we support the Presidency's overall aim to reach a general approach.
- It also makes sense to schedule today's special meeting at short notice in order to have **enough time for any adjustments in view of the Coreper meeting.** Given that this is the **last meeting before the positioning in Coreper** we will **focus on what we consider to be the points that are crucial** for us.
- First of all, we would like to thank the presidency for the **adjustments on some of these points**.
- At the same time, we have to note that **despite this apparent efforts, some points still require substantial improvements.** This concerns in particular the regulation in Art. 12 for data processing for targeting and amplification of political advertising, but not only.

a. Chapter I "General Provisions"

- In the last meeting, we asked some **questions** regarding the amendments to Article 1 and recitals 14 and 49, which provide that

the regulation applies **regardless of whether services are involved**.

- **Neither the feedback** from the **COM** and the **Presidency** in the last meeting, **nor the new compromise text** could **help to clarify** the situation regarding the concerns of civil society organisations, but also of intermediary service providers. We still need a clear assessment by the COM and the Presidency regarding their concerns.
- In view of the serious practical consequences, there should be **legal clarity here.**

- **We appreciate that communication of a politcal party** with its members is excluded from chapter III in **Rec. 48a**. This is a **very important point** for us! From our point of view, however, it would have been **consistent to refer the exclusion not only to the use of targeting techniques**, but to **clarify overall that internal party communications does not constitute political advertising**.
- In addition, we are grateful for the **clarification in Art. 2**(2)(iii) that **official communcation** by, for or on behalf of **public authorities of Member states,** including members of government, **do not fall under the definition of "political advertising"**, provided it is not designed to influence the outcome of an election or referendum or voting behavior. We assume that "official communication" also includes public communications such as messages and information campaigns on govermental activities, plans and goals published via governmental social media channels. Otherwise we would ask the Council Legal Service for a note and suggest the use of the term "public communication" instead of "official communication".
- Concerning Art. 2(2) 7. (sponsor) we propose to slightly change the new wording: "…legal person **on whose request or behalf** …".

b. Chapter II ("Transparency obligations for Political Advertising Services")

- It is still regrettable that there has been no significant progress on **ad repositories** under the CZE Presidency either. The **postponement to an evaluation report** by the COM (Art. 18(1) (b)) is **not sufficient** in our view.
- All political advertising should be made accessible to public debate. Therefore, we see the **need for all political adds to be available in a repository**, not only those published by VLOPs.
- The need for ad repositories becomes **even more significant** due to the **Presidency's consideration to remove the parts on political advertising from the EUPPF Regulation**.
    - So far, the proposal on Art. 5(2) of the EUPPF Regulation provides that EUPPs report their advertising to the responsible Authority, which then maintains a repository for this information (Art. 8(1)). Furthermore, the Authority should report annually on the political advertising of EUPPs (Art. 13).
    - If the rules on political advertising in the EUPPF Regulation were deleted, only the rules of the TTPA would apply to EUPPs.
    - Also, to **preserve the general ad repositories obligation for EUPPs**, it would be important to create such an **obligation in the TTPA.**

c. Chapter III ("Targeting and Amplification of Political Advertising")

- With regard to the crucial point of Art. 12, we also see basically an **attempt by the presidency to accommodate us** to some extent. However, this proposal is not sufficient to meet our demands and further substantial improvements are required here. In deviation from our previous position, we would then propose as a compromise that not all processing of any personal data should be

excluded, but only the processing of special categories of personal data, as in the DSA. Regarding the new Presidency-Proposal this would mean in the end, that the opposite has been achieved: the new proposal provides **more questions than answers** and, at least, **leads to more ambiguities than to more protection for citizens.**

- In principle, we **welcome the newly inserted sentence 2 in Art. 12(2)**, which prevents the use of manipulative design techniques ("dark patterns") and is in line with Art. 25 of the Digital Services Act. However, this does not help over the **problems associated with Art. 12(2)** and which **get worse by the new sentence 1** of Art. 12(2).
    - The reference to the "**specific request to receive political advertising**" that is newly introduced creates **legal uncertainties**.
    - It **mixes up provisions** concerning the **consent to receive communications**, as we know them from the regulation for unsolicited communication in the ePrivacy Directive, with the **consent to the processing of personal data** (GDPR).
    - At least, **this does not better protect citizens when special categories of personal data are processed**, especially since this **request to receive political advertising remains completely unspecific** (who requests the consent? Is the consent generic or to specific political actors or service providers? Is the request to receive political advertising not required for the processing of only-personal, non-sensitive data?).
    - The amended Art. 12 (2) also still falls behind the level of protection in the DSA and – most importantly – does not address the issue that the integrity of the electoral process is a **fundamental pillar of European democracy and therefore beyond what can be subject to individual choice by giving consent** to the very data processing that

endangers the integrity of the electoral process.

- Once again, it becomes apparent that there are too many **risks associated with consent under Article 9(2)(a) of Regulation (EU) 2016/679** in the context of targeted and amplified **political advertising**. We therefore strongly **promote our compromise proposal to delete Article 12(2)** and therefore restrict only the use of special categories of personal data **and thus bring the TTPA in line with the provisions of the DSA**.
    - The DSA not only prohibits advertising based on profiling under Article 4(4) of the GDPR using personal data of the minor (Art. 28(2) DSA).
    - In addition, users may not be shown advertisements based on profiling using special categories of personal data pursuant to Article 9(1) of the GDPR – even with consent.
- If using special categories of personal data is **not possible for commercial advertising**, then it must **apply all the more to political advertising.**
- As already explained, online platforms are not allowed to process special categories of personal data based on profiling for all advertising under the DSA. Therefore, it is still not understandable for us to **place the same data processing under the TTPA subject to consent**.

d. Chapter IV ("Supervision and Enforcement")

- With regard to Chapter 4, we **refer to our earlier written comments.**

ESTONIA

General comments

We cannot accept any reference to the „administrative" nature of the proceedings. Member States must be free to choose which ever sanctioning system their respective national law foresees to attain the goals of the Regulation. The amendment in 1b reflects a common wording in many other EU acts that regulate the imposition of fines.

The regulation in para 5a was too specific and therefore we can support its exclusion from the text. The principle of guilt is a fundamental aspect of sanctioning systems. Member States must be free to assess guilt in accordance with their national law. We do have an additional question here – does this also apply to related recitals?

In recital 63 and in article 15.5.c we still see references to administrative fines and for the sake of consistency we would appreciate it very much if the necessary adjustments are also done here.

Article 16

Sanctions

1. ~~In relation to Articles 5 to 11, 13 and 14,~~ Member States shall lay down rules on sanctions~~,~~ including ~~administrative~~ fines ***or*** ~~and~~ financial penalties~~,~~ ***and*** ~~***or***~~, ***as appropriate other remedies***, applicable to providers of political advertising services ~~under their jurisdiction~~ for infringements of ***Articles 5 to 11, 13 and 14 and to sponsors for infringements of Article 5 and 6a.*** ~~the present Regulation.~~ ***The sanctions*** ~~which~~ shall in each individual case be effective, proportionate and dissuasive. ***In setting the applicable sanctions, the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession shall be taken into account***. ~~***Member States shall also lay down rules on sanctions including administrative fines, financial penalties, or other remedies applicable to sponsors for infrigements of Article 5***~~.

1a. The maximum amount of the financial sanction that may be imposed shall be based on the economic capacity of the entity subject to sanctions, which shall be:

a) 4% of the annual income or budget of the sponsor or of the provider of political advertising services as applicable and whichever is the highest, or

b) 4% of the annual worldwide turnover of the sponsor or the provider of political advertising services in the preceding financial year.

~~***1b. Member States shall also ensure that their national rules laid down pursuant to paragraph 1 include either the possibility to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, such as by courts in accordance with national rules and procedures.***~~

1b. Member States shall also ensure that their national rules laid down pursuant to paragraph 1 include either the possibility to impose fines directly by supervisory authorities, in collaboration with other authorities or by application to the competent judicial authorities.

2. Member States shall notify the Commission of those rules within twelve months of the entry into force of this Regulation and shall notify it, without delay, of any subsequent amendments affecting them.

When deciding on the type of sanction~~s~~ and its level, due regard shall be given in each individual case, among others, to the following:

(a) the nature, gravity and duration of the infringement;

(b) the intentional or negligent character of the infringement;

(c) any action taken to mitigate any damage;

(d) any relevant previous infringements and any other aggravating or mitigating factor applicable to the circumstances of the case; and

(e) the degree of cooperation with the competent authority.

(ea) the size and economic capacity of the entity subject to sanctions, where applicable.

4. Infringements of Article***s 7, 9, and 10*** shall be considered to be particularly serious where they concern political advertising published or disseminated during ***the last month preceding an election or referendum*** ~~an electoral period~~ and directed to citizens in the Member State in which the relevant election ***or referendum*** is being organised.

~~5. If a service provider intentionally or negligently infringes the provisions of this regulation, for the same or linked political advertising, the total amount of the administrative fine shall be sufficiently adjustable in order to take into account all the relevant factors, the fact that the Regulation has been violated in multiple respects shall be reflected in the amount of the total fine, in compliance with the principle of proportionality.~~

~~***5a. For the avoidance of doubt, infringements of Articles 6 and 7 shall not be sanctioned where a provider of political advertising services acted on the basis of inaccurate or false information received from the sponsor, which was not manifestly erroneous, provided that he did not become aware of the error at a later stage.***~~

6. For infringements of the obligations laid down in Article**s** 12 ***and 12a***, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose ~~administrative~~ fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.

7. For infringements of the obligations laid down in Article**s** 12 ***and 12a***, the supervisory authority referred to in Article 52 of Regulation (EU) 2018/1725 may impose within its scope of competence ~~administrative~~ fines in line with Article 66 of Regulation (EU) 2018/1725 up to the amount referred to in Article 66 (3) of that Regulation.

FRANCE

- **Article 1 a (2) [Champ d'application]**

La proposition de reformulation maintenue par la présidence tchèque n'offre pas la même portée juridique au respect du droit des États membres en matière de périodes électorales. Surtout, elle manque de cohérence de par : i) le maintien de deux mentions relatives aux périodes électorales dans les considérants 6 et 17 ; ii) l'introduction d'une mention relative aux périodes de réserve électorales dans le considérant 13. Au surplus, la notion de période de réserve électorale n'est pas définie dans le projet de règlement et n'a pas de traduction légale en droit français.

Pour ces raisons, les autorités françaises sont favorables au maintien du compromis élaboré sous présidence française, et notamment au maintien des notions de périodes électorales dans les considérants 6, 13 et 17 ainsi que dans la partie opérative au sein de l'article 1a, paragraphe 2 et de l'article 2 paragraphe 9, afin de lever toute ambiguïté sur le champ d'application du règlement.

- **Article 2.2 (b) [Définition de la publicité politique « *thématique* » (« *issue based ad* »)]**

Les autorités françaises s'interrogent sur les raisons de l'introduction de « *at Union, national, regional or local level* » au sein de la définition des publicités politiques thématiques.

- **Article 2.2 [Exemptions]**

Les autorités françaises s'interrogent sur l'introduction de deux nouvelles exemptions. Elles considèrent que l'exception (iii) pourrait être un moyen de contourner le règlement alors qu'il existe déjà une exemption pour les messages des sources officielles portant exclusivement sur l'organisation et les modalités de participation à des élections ou à des référendums.

- **Article 2.4 (g) [Définition de l'organisation de campagne politique]**

Les autorités françaises s'interrogent sur la suppression de la définition d'une organisation de campagne politique.

- **Article 2.7 [Définition du parraineur]**

Les autorités françaises s'interrogent sur l'introduction de « *which requests for* » afin de savoir si cela permet de couvrir « l'entité qui contrôle le parraineur », ces termes ayant été supprimés par rapport à la dernière version de compromis de la présidence française.

- **Article 7.2 bis [Format des avis de transparence]**

Les autorités françaises souhaiteraient que la présidence apporte des précisions sur la notion de « *a common publicly available application programming interface* ».

- **Article 12 [Interdiction des techniques de ciblage et de l'amplification]**

(i) Concernant l'introduction d'une disposition prévoyant que la personne concernée doit faire une demande spécifique pour recevoir de la publicité politique et l'articulation de cette disposition avec les exceptions de l'article 12.2 (« *provided that the data subject has made a specific request to receive political advertising* ») :

Les autorités françaises souhaiteraient comprendre l'articulation de cette nouvelle disposition avec la notion de consentement définie par le RGPD. L'introduction d'une disposition prévoyant que la personne concernée a effectué une demande spécifique est une disposition additionnelle vide, si conformément à l'article 9.2 a) du RGPD, la personne concernée a déjà consenti de manière générale au traitement de ses données sensibles, y compris à des fins de ciblage politique.

Par ailleurs, si cette disposition additionnelle exige, en plus du consentement de la personne concernée, le recueil d'une demande spécifique pour chaque ciblage politique les autorités françaises s'interrogent sur les modalités de mise en œuvre concrète d'une telle obligation (qui recueillera ces demandes spécifiques ? quelle chaine de responsabilité entre les différents acteurs ? quelle information des personnes concernées et par qui ?).

Les autorités françaises se demandent également comment cette nouvelle disposition s'articule avec l'exception de l'article 9 (2) (d) du RGPD, puisque cela vient ajouter une condition supplémentaire non prévue par le RGPD. En effet, l'article 9 (2) (d) du RGPD n'est pas conditionné à l'obtention d'une « demande spécifique » de la personne concernée pour recevoir de la publicité politique.

(ii) Concernant l'introduction d'une interdiction des pratiques manipulatrices au contentment ou « dark patterns » (« *The use of manipulative practices that distort or impair the ability of individuals to make informed decisions in this respect shall be prohibited.* ») :

Les autorités françaises souhaiteraient que la présidence précise l'objet de l'interdiction des « manipulative practices that distort or impair the ability of individuals to make informed decisions » (dark patterns) : cette interdiction concerne-t-elle les « specific request » telles qu'introduites par la Présidence ou concerne-t-elle bien les modalités de recueil du consentement conformément au RGPD ?

Dans le cas où l'interdiction prévue par cette nouvelle disposition (« dark patterns ») viserait les modalités de consentement, les autorités françaises s'interrogent sur l'opportunité d'un tel ajout dans la mesure où le RGPD et l'EDPB interdisent déjà les pratiques faussant l'obtention du consentement des personnes.

Les autorités françaises soutiennent l'objectif poursuivi par la présidence puisque la mise en œuvre des modalités et de la validité du consentement tels que prévus par le RGPD pose des difficultés en pratique. Elles souhaitent toutefois faire part de leurs craintes de voir cette nouvelle disposition poser davantage de difficultés dans la mise en œuvre des règles relatives au consentement prévues par le RGPD.

(iii) Concernant les communications des partis politiques vers leurs membres (considérant 48a) :

Les autorités françaises souhaitent des précisions de la présidence tchèque sur la justification et la valeur ajoutée de l'ajout d'un tel considérant et son l'articulation avec l'exception prévue par l'article 12.2 renvoyant à l'article 9(2)(d) du RGPD. Elles saluent le maintien par la présidence tchèque au sein de sa REV 5 des dérogations prévues à l'article 12.2 auxquelles elles sont attachées.

(iv) Concernant l'interdiction spécifique pour les mineurs (article 12.3) :

Les autorités françaises saluent l'ajout par la Présidence tchèque d'un paragraphe spécifique sur la question des mineurs ; les autorités françaises soutiennent une interdiction des techniques de ciblage ou d'amplification impliquant le traitement des données personnelles dans le cadre de la publicité politique pour tous les mineurs, conformément à ce qui est déjà établi dans le DSA. La

proposition de la Présidence ne règle pas le problème de fragmentation juridique. Il apparait nécessaire d'harmoniser cette disposition avec l'article 28 du DSA.

- **Article 14. 1 bis [Représentant légal]**

Les autorités françaises prennent bonne note du remplacement de la notion de « *prohibiting* » par « *discontinuing* » mais sont toutefois favorables à la suppression de la fin du paragraphe qui autorise un État membre à mettre fin à la publication ou la diffusion d'une publicité politique.

- **Article 15.3 [Autorité compétente]**

Les autorités françaises saluent l'introduction par la présidence de l'une de nos propositions. Elles souhaitent tout de même souligner leur attachement à ce qu'il soit fait référence au juge judiciaire, à titre d'exemple, compte tenu de la spécificité de la presse. Elles rappellent que la presse en France ne dispose pas d'autorité de régulation, comme c'est le cas également dans d'autres pays.

- **Article 15.5 [Pouvoirs des autorités compétentes]**

Les autorités françaises sont attachées à l'introduction au sein de ce paragraphe de la notion de « *or competent national judicial authority* » comme déjà proposé dans leurs commentaires écrits du 30 septembre. Elles saluent l'introduction des principes fondamentaux que sont la liberté d'expression et d'information.

- **Article 15 bis [Coopération transfrontière]**

Les autorités françaises accueillent favorablement le principe de la coopération transfrontière entre autorités compétentes et prennent bonne note des précisions de la présidence, dont l'analyse doit encore être approfondie (du fait de l'absence de désignation de l'autorité compétente en France à ce stade).

- **Concernant l'article 16 [Sanctions]**

Les autorités françaises s'interrogent sur la suppression du paragraphe 5 bis – déplacé au considérant 63 bis - auquel les autorités françaises étaient fortement attachées. Elles se réjouissent de la prise en compte du rôle du parraineur dans l'établissement des sanctions ainsi que de l'introduction de la prise en compte lors de la fixation des sanctions applicables, des règles régissant la liberté de la presse et la liberté d'expression dans les autres médias, ainsi que des règles ou codes régissant la profession de journaliste.

CROATIA

I General remark

Given the fact that our competent institutions didn't have sufficient time for systemic analysis and thorough assessment of the latest compromise text, contained in the document No. 14752/22, we will present our positions only toward the main changes from the Presidency's compromise text.

We might present our positions for the other changes in the compromise text, as well as its accompanying recitals, in the written form in the days to come.

II The main changes in the latest Presidency compromise text on PolAds

Article 2(4)(g): Political campaign organisation

We accept the proposed deletion of political campaign organisation from the context of description for political actor and the proposed interpretation of political campaign organisation within political advertising in paragraph 2 points (a) and (b).

In the context of point (a), we would like to reiterate our view toward one part of the definition of political advertising in the Paragraph 2, point (a) – it stipulates that " 'political advertising' means the preparation, placement, promotion, publication or dissemination, by any means, of a message:

(a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or …"

The stipulation: "unless it is of a purely private or a purely commercial nature". This stipulation is not clear enough ad it might lead to confusion in the oversight of this Regulation – if some activity is defined as advertising, then it is also commercial.

Article 2(7): Definition of sponsor

We accept the amendment and the rationale behind the wording "which requests or" in this paragraph.

Article 9: Notification mechanism

We accept the approach in this whole Article.

Article 12: Prohibition of targeting and amplification

From the very beginning, our principled position with regard to the Article 12 was that the envisaged scope of the prohibition is too narrow, because the initial Proposal did not cover a wide range of (micro) targeting or amplification techniques that can be used for political advertising. We were advocating – and we still do – complete prohibition on micro-targeting for political purposes

and introduction of additional restrictions on the categories of data that may be processed for the purpose of political advertising, including targeting or amplification techniques, and in particular the prohibition of targeted advertising based on active monitoring.

The latest proposal by the Presidency still contains the exceptions to the prohibited targeting or amplification techniques, but now with the additional safeguards. For that reason, although we strongly advocate the complete prohibition on micro-targeting, and in the name of compromise we can show flexibility for this latest version of Article 12.

Article 15/15a: Cross-border cooperation

We accept the latest amendments regarding the Article 15 and the separation of its content from the Article 15a, as well as we support new wording in paragraph 5 (a): "while respecting the fundamental right of freedom of expression and information" in paragraph 5 (a).

With regard to the Article 15a – we need to conduct further consultations with our competent bodies.

One more remark: According to the Article 15 paragraph 1 "The supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 or Article 52 of Regulation (EU) 2018/1725 shall be competent to monitor the application of Articles 12 and 12a of this Regulation in their respective field of competence".

Although there is now wording "***all relevant*** competent authorities" we recommend, since the Article 15 of the Proposal of Regulation applies to both "supervisory authorities" and "competent authorities", to have explicit reference to the "supervisory authorities" in the paragraph 6 of this Article in order to avoid any legal uncertainty.

Article 16: Sanctions

We can accept this final text for the sanctions.

MALTA

Recital 65 and Article 17 – The updated text in the latest compromise text may be accepted, as it is considered an improvement on what had been stipulated in the original proposal, as long as it remains in this generic form, and does not include any more specific wording which may clash with the provisions of Maltese electoral law.

Article 6a – Transmission of information to the political advertising publisher – Malta requires a clarification in terms of implementation of this provision. How will this be possible if the provider of the service might not be the same entity procuring the publishing, whereby the actor contracts the service provider and publisher independently. It is felt that in practice, this might give rise to challenges at the implementation stage, in instances where the service provider submits the prepared political advert to the political actor/sponsor, and not to the publisher directly.

Article 7 – Transparency requirements for each political advertisement – Malta reiterates that it is not clear what difference there is between the requirements in para 1 and para 2. The requirements outlined in both paragraphs appear to overlap and duplicate, as the transparency notice is already provided for in para 1. Para 2 seems to be superfluous or elements from it can be incorporated into para 1 for a clearer and better-structured text. Further clarity in the text is required to avoid misinterpretations in implementation stage, also especially how the application of sanctions require legal certainty and unambiguous interpretation of the proposed regulation's obligations.

Also, with regard to the new text in para 2 (c) of this Article:

> *information on the aggregated amounts or other benefits received **by the providers of political advertising services including those received by the publisher** in part or full exchange for the **political advertising services for** the relevant advertisement, and **for** the political advertising campaign where relevant, and their sources;*

Malta still has some reservations on this article, and would like a clarification on the new text which was inserted as part of the latest compromise proposal.

Article 10 – Transmission of information to competent authorities – Malta would like para 3 to be amended to reflect clearly that such provision is enacted WHEN there is a request for information. Para 1 and 2 deal with a request from competent authorities to verify compliance with Articles 6, 7 and 8. Therefore para 3 should also be further clarified to reflect that service providers will need to provide a contact point, once a request for information is sent by the competent authority. This is to avoid misinterpretations and to avoid any unnecessary burdens on service providers.

Article 12 (2) and Recital 48 – the introduction of the term "manipulative practices" is not defined. Malta recommends that a clearer definition of what such manipulative practices could be is introduced.

Article 14 (2a) – Malta is concerned that this provision places a considerable administrative burden on national authorities.

Malta re-submits the following comments on other provisions:

Article 2 – definitions

Para 5 – Malta would like a clarification on the amendments to this definition. What is intended with the term "without specific remuneration"?

Article 20 – entry into force and application

It is important that a generous timeframe is ensured in order to enable both national authorities and the private sector to make the necessary preparations before the Regulation becomes applicable to ensure compliance. A minimum of 24 months would be recommended.

AUSTRIA

- AT scrutiny reserve regarding the revised compromise text.
- We reiterate our previous position that sufficient time for an in-depth examination of the text in advance of the GAG-meeting is indispensable, also in view of the efficiency of negotiations.
- We take note of the fact that the following requests have not been reflected sufficiently in the latest proposal:
  - to reinforce the duties, obligations and responsibilities of the „sponsors“ and at the same time
  - to reduce the manifold duties and the administrative burden of the various „service providers“ and „publishers“ to the minimum necessary.

Further preliminary remarks:
Due to the extremely short deadline, a reservation is also made from a data protection perspective, in particular with regard to the amendments in Articles 12 to 13.
In addition, reference is made to the data protection comments on the EC questionnaire (doc. no. 1200/22 ADD 1 REV 1) and in the "Additional comments" of 28.10.2022.

Art. 12: As noted in our previous comments, in light of the ECJ ruling C-184/20, in particular para 127, it remains unclear how the restrictions proposed in Art. 12 are practically relevant. We therefore ask the EC for clarification and suggest that reference should be made to the ECJ ruling in the recitals. For the sake of legal certainty, however, the regulation of both the use of special categories of personal data according to Art. 9 GDPR (Article 12) and of other personal data (Article 12a) should be retained.

Art. 12(2): The further restriction of the permitted processing of special categories of personal data pursuant to Art. 9 of the GDPR in Art. 12 (2) is welcomed and considered sensible in order to avoid attempts at extensive consent practices on the part of providers of political advertising.

- Art. 12a: The amended wording seems to go in the right direction at first glance, but needs to be examined in more detail.

- On Art. 15a we reiterate our previous position: As the proposal foresees that more several authorities in different Member States are competent to enforce the Regulation, it is highly recommended to provide a dispute settlement mechanism for cases with conflicting views on competence (see for example Article 65 (1) (b) of the GDPR).

Recital 59c and Art. 15a para 8-10: It should be clarified whether „joint investigations” also include “join operations” in which members or staff of authorities of other Member States are involved. If this is the case, it is recommended to add specific provisions about the transfer of/conferring powers to members or staff of seconding authorities and about liability for damages caused (see e.g. Article 62 GDPR).

FINLAND

The latest compromise proposal doesn't take into account the situation of small non-profit CSOs, amateur sport and leisure clubs and small religious communities as political advertising publishers. These actors use publishing of advertising, also political advertising, as a source of funding. Single candidates and awareness-raising NGOs often support these CSOs by purchasing an advertisement of limited value (eg. 50 or 80 euros) in their catalogues or leaflets. This would constitute an advertising service.

However, these small and micro actors are often volunteer-based and would not have realistic opportunities to meet all demands of political advertising service providers or publishers as described in the current proposal. They don't have the technical means to show transparency notices online or graphic design capabilities to include Many times the agreements between the sponsor and the publisher are oral and very ad hoc.

The influence of these advertisements in politics can be considered minor. This same challenge concerns very small newspapers that are already struggling with challenges.

We suggest adding a derogation to article 7 (transparency notice) as follows: "The political advertising publishers that are micro, small and medium-sized enterprises, within the meaning of Article 3 of Directive 2013/34/EU, and that publish advertisements only on newspapers, leaflets or brochures, should make reasonable efforts to make available information referred to in 7(1)." Secondarily, we suggest this derogation could cover only small and micro enterprises. This amendment should be noted in recital 39 as well.

Alternatively, if there is a possibility to interpret that some smaller actors are not considered political advertising publishers according to the current proposal, we would welcome that interpretation. We hope that could be elaborated in the recitals as well.

SWEDEN

Article 7(3)

"….. If the political advertising publisher becomes aware by any means that information referred to in paragraph 2 is incomplete or inaccurate, it shall make reasonable efforts including, as relevant, by contacting the sponsor or the service providers concerned, to complete or correct the information. ~~and~~ *W*here *the information cannot be completed or corrected without undue delay, other adequate measures can be taken, provided that the purpose of the regulation can be fulfilled in that manner, including that the publisher shall not make available or shall discontinue the publication or dissemination of* ~~they find this is not the case they shall not make available~~ the political advertisement…"

Article 16 (6)

For infringements of the obligations laid down in Articles 12 ***and 12a***, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose administrative fines in line with ~~**Article 83 of**~~ Regulation (EU) 2016/679 ~~**and up to the amount referred to in Article 83(5) of that Regulation**~~.