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NOTE

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Following the meetings of the Working Party on General Affairs on 6, 14 and 20 July 2023,
delegations will find in Annex comments from Member States.

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CZECH REPUBLIC

WK 9179/2023 and WK 9643/2023

Row 124

- We can agree with the EP proposal.

Rows 129 + 129d

- It is not clear to us whether the intention is to eventually drop references to discrimination based on geographical grounds in rows 129 and 129b. Having said that, we maintain our reservations towards keeping such references in the enacting terms.
- On the other hand, we welcome the compromise initiatives in Row 129d. In this case, we agree with the principle and can be flexible on the final wording.

Row 129c

- In general, we share the perspective that there is no convincing argument why actors from third countries should participate in forming electoral attitudes and shaping political discourse within the EU. However, we maintain our position that service providers should not be responsible for factual verification as to whether the sponsor is subject to the ban.
- Thus, we can be flexible as long the responsibility for the accuracy of any provided proof of compliance with this provision lies on the sponsor and, for the sake of legal certainty, we would prefer this to be mentioned in the recitals.
- In any case, we would also welcome an explanation of how the concerns regarding interconnection with the international rules are addressed in the compromise text.

Rows 142, 160, 163q and 198

- We continue to consider the period of 10 years to be disproportionately long and prefer to stick to the mandate of the Council.

Article 12

- Regarding the time-limited ban, we refer to our previous comments, namely that we consider any period longer than one month to be unreasonably long.
- In the case of processing regular personal data, we continue to have serious reservations. At the same time, the EP's efforts to date have not contributed to reducing concerns about practical impacts. In this regard, we have reservations especially when combining "provided personal data" with the assumption that data based on the use of services or devices are not considered to be provided data.
- The EP proposal adds a new point to the recitals, in which anonymized information about the IP address is not considered personal data and can thus be used to determine the approximate location and language. However, it is problematic to imagine how this anonymized data will be combined with regular personal data.
- According to our understanding, two scenarios result from such a measure: the possibility of 1) targeting based on a combination of de facto explicitly provided data, or 2) targeting based on anonymized information. We do not consider either scenario effective or suitable.

Article 9

- Although we are generally optimistic about the compromise solutions, we would like to add more comments.
- In the case of a shortened time limit during the last month before the elections, we welcome the assumption that the information in the notification has to be sufficient for the complete processing of the notification.
- Reviewing the EP mandate (recitals 45b and 45c), however, it remains unclear whether there are any substantial differences between “address” and “process”. If so, to preserve legal certainty and also in light of the expected translations of the Regulation, we would welcome a recital explaining the differences between these two regimes.
- Moreover, if any action that requires prior contacting of the sponsor is expected to be taken within 48 hours, we believe this measure should also reflect the cooperation and swiftness of the sponsor's response to prevent massive content removal.

Rows 163t to 163ah

- We continue to support introducing an exemption for micro and small businesses. However, in the spirit of compromise, we can express eventual flexibility should there be agreement on establishing the repository between Member States.
- Regarding the deadline by which the COM should adopt delegated acts, we are of the opinion that it is necessary to find such a deadline that will be primarily in line with the capacities of the COM, and thus any decision in this direction should be informed by the COM's opinion.
- Last but not least, we are also leaning towards postponing the realisation of the repository.

Row 88a

- We can agree with the compromise proposal.

Rows 107 to 107e

- Our position remains the same as in the last written comments. In particular, we insist on adding "designed" to the definition of political advertising and in Row 107d.

Scope of Chapter III

- Regarding limiting the scope of the Regulation to services only, we are conscious of the potential risks associated with leaving a large area unregulated, as well as the arguments regarding the legal treatment of nexus to services. At the moment, however, we do not have a strong position, and we currently perceive as far more important the issue of the EP's approach to the protection of personal data, the effects of which we are concerned about.
- At the same time, we have a growing impression that the ratio of the required concessions of both institutions is not balanced in politically sensitive topics. And especially in Article 12, which is important for both institutions, we still feel that the presented compromises of the EP more significantly favour the approach of the EP, even though significant concessions are generally expected from the Council on a number of key points for the EP.

Rows 214a to 214b

- Although we have general reservations about deepening a multi-track application and creating additional rules beyond the scope of the GDPR, at the moment, we consider some of the proposed measures to be a more viable alternative than the original EP mandate.
- In principle, we can lean towards the default application of Article 66 in the limited period before the elections. Still, we do not consider it appropriate to explicitly link the application of Article 66 with the proposed risk assessment.
- The EP's formulation is too vague in this sense, and it is not entirely clear what should be the result, or rather, what should be the actual effects of the European risk assessment in terms of supervision. At the same time, we consider it problematic that such analysis at the EDPB level would represent an automatic trigger for executing competences at the national level.

Article 16

- We can be flexible with respect to the EP proposal.

Article 18

- We would prefer to keep the extended deadline for the first evaluation report.
- We would also like to recall that point d) on further restrictions on the processing of personal data was included in the evaluation report in connection with the fact that the restrictions in Article 12 will not be too strict and, therefore, that their adequacy or effectiveness should be analysed later on.
- Overall, however, we can be flexible as regards the evaluation report.

Article 20

- We perceive the ambition of adopting the Regulation in a way that it is applicable for the upcoming EP elections in 2024. However, with regard to the negotiation development to date and the election date, we fear that such a vision ceases to be realistic.
- Also, given that this Regulation is an entirely new piece of legislation, implementation at the national level in Czech conditions will primarily require establishing institutional framework and, therefore also legislative changes, which are subject to specific deadlines throughout the whole legislative process and which will also require the approval of both chambers of the Parliament.

- The Member States should therefore be given a rational time frame for the necessary adjustments, where the Czech Republic fully identifies with the mandate of the Council, which assumes a period of 12 months.
- Taking into account the ambitions of completing the negotiations during this autumn, when, however, reaching an agreement at the moment is not at all sure, or to start the application sufficiently in advance of the elections to effectively cover the election campaign period, we fear the risk that we will not be able to ensure the establishment of institutional framework on time, especially in the case of defining competencies across competent authorities.

DENMARK

General comments

Denmark thanks the opportunity to make further comments on the proposals in WK 9179/23 and 9643/23.

Denmark would like to use this opportunity to reiterate that we cannot support articles obliging Member States to impose administrative fines as such obligation raises constitutional concerns.

The Presidency is also invited to be aware of places in article -12 and 12 as well as in the rest of the text where EP wishes to determine a special period (120/90 days) immediately preceding an election where specific rules on, inter alia, the use of personal data are restricted. In Denmark, no national rules are in place on the length of the period between the issuing of an election and the day of the election. Therefore, situations may arise where the period immediately preceding an election will be less than 30 days.

Comments to WK 9179/2023

Article 2

Row 88a

The meaning of "Political opinions and other editorial content" is unclear.

Denmark has reservations about moving the negative delimitation of the definition of political advertising to article 1 regarding the scope instead of keeping the delimitation of the definition in article 2 (row 107b). We would like journalistic and editorial content to fall outside the scope of the regulation, which supports keeping the delimitation of political advertising in article 2.

Row 107

It is important to make sure that not all political behavior (i.e. political opinions) fall under the scope of the regulation but rather voting behavior in regards to a specific election or referendum. This could be clarified in row 107 or under the negative delimitation in art. 2(1), point (2)(ba).

Denmark support maintaining the wording "liable and designed to influence the outcome of an election..."

Row 107c

The text in Council's mandate is preferred as it is uncertain why EP chooses to exclude election candidacies from the scope of this row in their draft proposal. Denmark do not believe that it should be considered a political advertisement to inform the public who is running for an election or referendum.

Row 107d

Denmark can show flexibility and support EP's proposed draft if the following wording from Council's mandate is maintained: "(...) provided they are not designed to influence the outcome of an election (...)" in line with row 107.

Article 3a

Row 129b and 129c

Denmark has concerns about the proportionality of the proposal, as it could potentially prevent legitimate actors from using political advertising as part of an open and free democratic debate in the EU. We welcome the assessment of proportionality and compliance of the proposal with EU's trade obligations to third countries by the Council's Legal Service.

Row 129d

We can support the text proposed by the legal services for the three institutions on Article 3a(3) as well as the related recital if this is in line with the Services Directive (Directive 2006/123/EC).

Article 7b

Denmark is hesitant to support imposing advertising publishers who are not a VLOP or VLOSE an obligation to provide information to the European Agency for Online Political Ads within 48 hours, as proposed by the EP in row 163aa. As previously stated by Denmark, it is important that small and medium-sized enterprises are not subject to unnecessary administrative burdens, which is why we would like small and medium-sized enterprises to be exempted from this obligation to provide information.

Furthermore, it is noted that if the proposal is to be implemented, the Commission must bear the costs within the existing budgetary framework through possible re-prioritisation.

Article 9

Row 170c

Denmark can support stricter rules for responding to requests concerning possible illegal political advertisements in the month leading up to an election. However, we are concerned that it will impose disproportionate administrative burdens on the small and medium-sized enterprises covered.

Article -12(1)

[Row 193b in WK 8328/23]

As mentioned above under general comments, Denmark has reservations about determining a period immediately preceding an election in which processing of special categories of personal data is restricted. Situations may arise in Denmark where

there will be less than 30 days from the issuing of an election to the day of the election.

Article 12

In Denmark's view, the wording of Articles 12(2b) and 12(1c) may still rise doubts as to whether the provisions should be understood as a limitation of the other grounds for processing personal information in Articles 6 and 9 of the GDPR.

Denmark is skeptical of this change if that is the case. We would like to make it possible to clarify in a preamble provision that the other grounds for processing in the GDPR continue to apply.

We are not sure what is meant by: "The personal data collected from the data subject by virtue of using a service or device, including obtained content, shall not be considered as provided personal data" in Article 12(2)."

It would also be beneficial to clarify what is meant by "provided personal data". Is it the idea that the provision wishes to deviate from the general consent provisions of the GDPR?

[Row 195 in WK 8328/23]

We can support the extension of the scope of Article 12(1), after which Article 12(1) regulates targeting and amplification techniques involving special categories of personal data outside the period for 30 days preceding an election, as well as generally regulating targeting and amplification techniques based on non-sensitive personal data both within and outside the 30-day period preceding an election.

The issue regarding the 30-day (or longer) period preceding an election should also be taken into account.

Article 15(1)

Row 214a and 214b

Denmark has reservations about the proposed addition of Article 15(1a)-(1d). It is unclear what the content of a national risk assessment could contribute to, which does not already follow from GDPR Article 35 on impact assessments.

If the proposal is to be implemented, it should be further clarified what the purpose and content of the national risk assessment should be including whether it is of an indicative nature.

It should also be noted that the proposed regulation does not appear to indicate when the risk assessment is to be carried out by the controllers and therefore by the national data protection agency. This could have an impact on the feasibility of launching the urgency procedure under GDPR Article 66.

Finally, it is noted that the Danish Data Protection Agency has stated that the preparation of these risk assessments under Article 15 is likely to be associated with a significant use of resources for the Agency.

Scope of Chapter III

Reference to services

EP's reasoning behind the deletion of the reference to services in Chapter 3 is unclear. In general, we can support that the rules on targeting of political advertisements should only apply in the case of services, i.e. if the online platform has received payment for targeting.

If the rules on targeting would apply to unpaid content, it could raise issues regarding freedom of expression. The definition of political advertisement is broad in both the Council's approach and in the position of EP. If there is no requirement of a service, it would mean, for example, that the rules on targeting can apply to a Facebook post from a politician, even if there is not paid for targeting and ad delivery of the message.

Then online platforms could potentially be prevented from recommending content that can be defined as political advertising to specific individuals or groups, even if no payment was made to spread the message.

Definitions

Denmark can show flexibility and support keeping the EP mandate on the definition of "political advertising" and "political advertising service". Denmark prefers the Council mandate on the definition of "ad delivery techniques".

EP's draft proposal of the definition of "targeting techniques" with DK counter proposal:

"targeting ~~or amplification~~ techniques' means techniques that are made available by political advertising publishers or providers of political advertising services, used ~~either to address a tailored~~ by sponsors, political advertising publishers or providers of advertising services to ~~tailor~~ address a political advertisement, **usually with tailored content**, only to a specific person or group of persons or to ~~increase the circulation, reach or visibility of a political advertisement~~ exclude them by processing personal data, in particular through the collection of their data;"

Comments on WK 9643/23 regarding article 18

Row 246j (progress report for European public repository)

Denmark has reservations about the establishment of a European public repository, cf. see above under article 7b. We therefore support the position in the Council's mandate. However, if the establishment of a European public repository is agreed between the parties then Denmark can support that a progress report is included in the evaluation under article 18.

GERMANY

20 June 2023

DE maintains its scrutiny reservation and refers in full to its previous comments. Additionally, DE would like to address two aspects.

1. IE proposal on Art. -12:

This regulation can only be effective if it does not fall behind the prohibition of the DSA on advertising using special categories of personal data pursuant to Art. 9(1) GDPR for the purpose of personalising political advertisement. Against this background, DE is in general open to a compromise like the one suggested by IRL that advertising based on special categories of personal data should be excluded in the online sector. DE is in general open for such a compromise, as long as there is also a ban of the use of special categories of personal data in the non-online sector and in electronic communication, while limiting the use of non-special categories of data to a certain number of categories.

2. Entry into force and repository:

DE is in general open for a staggered entry into force of the regulation.

Whilst being generally flexible concerning the date of entry into force of the task of establishing a repository, DE would prefer that the repository already exists when the first evaluation report has to be prepared.

14 July 2023

On Document WK 9179/2023

a. Proposals on Art. 1 bis 5 (Zeilen 86 bis 134a und Zeilen 88a, 107 bis 107e und 126):

After an initial assessment DEU is in general open for the compromise text proposals.

In particular, DEU welcomes the clarification that public communications from official sources are excluded from the scope of this Regulation provided they are not designed to influence the outcome

of a democratic process (line 107d). However, DEU would suggest one amendment in line with the wording of the general approach of the Council and the COM proposal: instead of “they are not liable to influence”, we would prefer: “they are not designed to influence”. The criteria “is liable and designed to influence” should be part of the general definition of political advertising (row 107) in line with the wording of the general approach of the Council.

Further, DEU welcomes the aim to clarify the scope of political advertising in Art. 1 (2a) row 88a. In this regard, DEU likes to point out, that there should be no inappropriate limitation of expression of opinion by individuals. A deletion of “of a media service provider”, that is in line with the wording of the general approach of the Council and the COM proposal, could be an appropriate approach.

b. Proposals on Art. 6 (Zeilen 142, 160, 163q und 198):

DEU is in general open for the compromise proposals regarding the data retention period, as long as it will be a uniform period throughout the scope of the regulation.

c. Proposals on Art. 7 (Zeile 147):

DEU welcomes all provisions that expand transparency on political advertising and looks forward to the alternative compromise proposal of the EP.

e. Proposals on Art. 7a (Zeilen 153f und 163m):

DEU is in general open for the compromise text proposals.

f. Proposals on Art. 8 (Zeile 166a):

DEU is in general open for the text proposal of the EP.

g. Proposals on Art. 9 (Zeilen 170 und 170c):

DEU is in general flexible for the suggestions in Art. 9.

However, concerning the proposal of the EP in line 170 DEU has following remarks:

Firstly, DEU is against different obligations for VLOPs/VLOSEs in the one hand and other political advertising publishers on the other hand.

Secondly, DEU highlights that the proposed text would impose for the period beyond the last month preceding an election or a referendum less stricter rules to providers of hosting services that are not VLOPs/VLOSEs in comparison to the notice and action mechanism foreseen in the DSA.

Against this background, DEU wants to point out that the notice and action mechanism under this regulation should be coherent with the notice and action mechanism under the DSA.

h. Proposals on Art. -12

Regarding the compromise text proposal of the EP for Art. -12 DEU supports as stated in the joint protocol statement a complete ban of processing special categories of personal data pursuant to Art. 9(1) GDPR for the purpose of personalising political advertisement.

This regulation can only be effective if it does not fall behind the prohibition of the DSA on advertising using special categories of personal data.

As the DSA will be applicable without prejudice to this regulation the Council should position itself for a coherent framework between this regulation and the DSA like NLD and other MS argued in one of the last Working Party meetings.

Otherwise we would have diverging rules in the internal market, on the one hand for online platforms provided for in the DSA and on the other hand for all other addressees like websites provided for in this Regulation. This arises in particular with regard to the limited scope and timeframe of Art. 12 (only preceding an election or a referendum) in comparison to the general scope of the complete ban in the DSA.

Against this background, DEU favours a solution in the regulation that respects this position.

Irrespective of the fundamental rejection of the use of sensitive personal data, DEU wants to point out that the prohibition in Article -12 para 1 does not include any specification on the geographical scope of the prohibition and its application. The wording seems to allow for the understanding that every election or referendum on any level and within any member state would trigger the ban for all service providers within the general scope of the regulation.

DEU asks the ESP PCY to explain whether this is intended?

In the last session the council legal service and the Commission pointed out that restricting Art. 12 to “services” would create loopholes and that this limitation may be at odds with the principles of data protection law and therefore being in danger of being challenged by the ECJ. DEU asks the ESP PCY to explain whether it shares this assessment?

i. Proposals on Art. 12

After an initial assessment DEU is in general open for the compromise text proposals of the EP in Art. 12.

j. Proposal on limiting the scope to services in the definitions (Chapter III):

Regarding the suggestion to modify the definition of targeting techniques in order to limit the scope we would ask the PCY and the Commission for their assessment.

k. on Art. 15 (Zeile 215a):

DEU looks forward to the recital proposal.

l. on Art. 16 (Zeilen 230 bis 230c):

Since the DSA distinguishes in Article 52 para 3 between maximum sanctions for breach of information duties and other duties DEU is open to both suggestions.

m. on Art. 20 (Zeile 255):

Due to legislative implementing measures DEU will probably not be able to implement relevant supplementary law by June 2024.

n. Proposals on Art. 7b (Zeilen 163t bis 163ah):

DEU welcomes the inclusion of Article 7a regarding the implementation of a EU public repository and reiterates that the request of the EP for a European public repository for all political ads online is reasonable.

A neutral and independent body should ensure the management of a public repository for all online political ads.

If the Commission is willing to manage the public repository DEU would welcome this whilst being flexible for the date of entry into force of this task. Nevertheless, DEU would support a compromise between the deadline proposals by the Commission and the EP.

DEU welcomes that the repository shall be machine readable (row 163v), since this is not only important for the repository to add value to the practice of regulators, journalists and researchers but also for the repository to be barrier-free.

o. Proposals on Art. 15 (lines 200d [Art. 12] and 214 bis 214b [Art. 15]):

DEU is in general flexible for the suggestions.

Nevertheless, since the base for the text proposals is also Article -12, DEU reiterates the support of a complete ban of processing special categories of personal data pursuant to Art. 9(1) GDPR for the purpose of personalising political advertisement as stated in the joint protocol statement.

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DEU is in general flexible for the suggestions.

Nevertheless, whilst being generally flexible for the date of entry into force of the task of establishing a repository, DEU would prefer that the repository already exists when the first evaluation report has to be prepared (row 246j).

FRANCE

Article 1

- [row 86] : favorable à l'inclusion des parraineurs (« sponsor ») dans le champ d'application comme proposé dans le compromis de la présidence.
- [row 88a] : la rédaction proposée pour l'exclusion des contenus éditoriaux et journalistiques peut convenir. Les « political views » proposées par le PE pourraient être intégrées.

Article 2 :

- Soutien de l'ajout de « *designed to* » au sein de la définition, qui est un point majeur et prioritaire. Cet ajout permet de clarifier la définition des publicités politiques thématiques avec l'ajout d'un critère d'intention. Si le champ d'application du chapitre III n'était pas limité aux services, cet ajout serait alors d'autant plus nécessaire.
- Soutien possible de la proposition du PE de déplacer l'exclusion des contenus éditoriaux et journalistiques au sein du champ d'application plutôt que dans la définition des publicités politiques comme proposé par le Conseil.

Article 3a (clause de non-discrimination):

- Soutien du compromis proposé par les services juridiques des trois institutions pour l'article 3.a.3 et son considérant afférent. En revanche, opposition à la proposition du Parlement européen d'intégrer dans le texte les groupes politiques qui, contrairement aux partis politiques européens régis par le règlement 1141/2014, n'ont pas d'existence juridique en droit de l'Union (ils ne sont prévus que par le règlement intérieur du Parlement). L'inscription de tels groupes politiques au sein d'un article du règlement pourrait avoir pour conséquence de leur reconnaître une existence juridique, ce qui n'est pas souhaitable.

Article 3a (interdiction des parraineurs extra-communautaires)

La France rappelle que dans une logique de lutte contre les ingérences étrangères, l'interdiction des parraineurs hors-UE est un élément essentiel. Dans ce contexte, elle demande au Service juridique du Conseil de préciser les accords commerciaux et plus particulièrement quelles sont les dispositions contenues au sein de ces accords qui seraient de nature à empêcher l'adoption d'une interdiction des parraineurs hors-UE au sein du règlement.

La France rappelle également que le projet de règlement ne remet pas en cause les périodes électorales nationales au cours desquelles la publicité politique est interdite, ce qui est le cas en France (l'article L 52-1 du Code électoral interdit l'utilisation de tout procédé de publicité commerciale à des fins de propagande électorale dans les six mois qui précèdent un scrutin ; et la loi n°86-1067 du 30 septembre 1986 relative à la liberté de communication interdit « les émissions publicitaires à caractère politique » en tout temps, et non pas uniquement en période électorale, sur les services de communication audiovisuelle), ce qui a été précédemment confirmé par le Service juridique du Conseil.

Article 5

[row 134a] : favorable au compromis proposé par la présidence, malgré des doutes quant au renvoi aux articles 7 (1) et 7a(1) qui concernent les obligations des éditeurs de publicités politiques, qui ne sont pas nécessairement en lien avec le parraineur.

[row 135d] : la délégation n'est pas opposée à un rappel des obligations prévues dans le règlement DSA, si ce dernier est limité à un considérant afin de n'entraîner aucun effet de bord indésirable.

Article 6 (« data retention period »)

la délégation apporte une nouvelle fois son soutien à la période de 5 ans souhaitée par le Conseil et la Commission, qui tient compte des différents cycles électoraux des EM, et se montre défavorable à la période de 10 ans proposée par le PE.

Article 7a (liste des informations un sein de l'avis de transparence)

la délégation estime que la liste des informations à fournir au sein de l'avis de transparence prévue par le mandat du Conseil doit être préservée. Les ajouts du PE imposent un nombre d'informations bien supérieur à ce qui semble nécessaire pour atteindre les objectifs du règlement. D'une part, une notice de transparence aussi lourde s'avérerait particulièrement difficile à mettre en œuvre pour les éditeurs de publicité politique, du secteur de l'audiovisuel comme de la presse. D'autre part, il serait matériellement compliqué en termes de ressources pour ces acteurs d'être astreints à vérifier la complétude de l'ensemble des informations exigées (les groupes objets du ciblage éventuel de la publicité et la portée de la publicité politique –nombre de vues etc.).

Article 7b (répertoire)

Les autorités françaises signalent que le délai de 72 heures serait préférable à celui de 48 heures pour les autres éditeurs de publicité politique (qui ne sont pas des VLPS) comme le propose la présidence.

Article 8

[row 166a] : la délégation émet des doutes sur cette proposition du PE (communication régulière des montants perçus aux autorités compétentes) et interroge la présidence sur l'objectif recherché par cette proposition.

Article 9

[row 170 et 170c] : la délégation rappelle qu'elle n'est pas favorable aux trois nouvelles obligations qui s'appliquent à l'ensemble des éditeurs de publicités politiques par rapport à ce que prévoit le mandat du Conseil : (i) envoyer un accusé réception sans retard injustifié à la personne ayant notifié une publicité politique ; (ii) fournir des informations sur les possibilités de recours à la personne ayant notifié et (iii) informer sans délai injustifié les parraineurs et les prestataires de services de publicité politique des effets de la notification. Les paragraphes 3c et 3d devraient être supprimés. En effet, il ne semble pas que ce soit le rôle des éditeurs de publicité politique de transmettre les informations sur les possibilités de recours. La transmission des effets de la notification aux autres acteurs de la chaîne doit être prévue par les arrangements contractuels sans que cela n'ait besoin de figurer au sein du règlement. En outre, l'éditeur n'a pas toujours de relations avec les autres prestataires de services ou avec le parraineur.

Article 15

- Les autorités françaises sont défavorables à toute extension du rôle de l'EDPB.
- [row 215a] : Le Parlement européen pourrait être interrogé sur les dispositions exactes qu'il souhaite introduire dans ce considérant. La Commission européenne serait-elle in fine responsable de la supervision des très grands acteurs ?

Article 20

- La délégation souligne qu'elle est attachée à une entrée en vigueur du règlement pour les prochaines élections européennes. Une différenciation pour certaines dispositions notamment la mise en place du répertoire pourrait être envisageable.

Champ d'application et à la notion de services / « Article -12 » sur les exigences spécifiques relatives au traitement des données à caractère personnel pour les techniques de ciblage en ligne et de diffusion de publicités

S'agissant du champ d'application du chapitre III, la délégation française rappelle une nouvelle fois que les discussions sur les dispositions du PE venant restreindre les techniques de ciblage et d'amplification impliquant le traitement des données personnelles (hors données sensibles) dans le cadre de la publicité politique doivent se faire très en lien avec les discussions qui ont lieu sur la restriction du champ du chapitre III aux services. Dans l'hypothèse où l'on ne limiterait pas aux services le chapitre III et où l'on viendrait restreindre les techniques de ciblage impliquant le traitement des données personnelles, la délégation soulignera que cela pourrait avoir un impact considérable sur la diffusion des contenus.

La délégation rappelle que la non-limitation du chapitre III aux services soulèvent encore des difficultés :

La mise en œuvre des obligations de l'article 12 fait peser l'identification des publicités politiques sur les responsables de traitement (les plateformes en ligne dans la plupart des cas). Même si les responsables de traitement font preuve de bonne volonté pour repérer les publicités politiques (notamment thématiques), certains contenus risquent de ne pas être recensés comme étant de la publicité politique. Cela inciterait les plateformes à cesser toute activité de ciblage et de

recommandation de contenus politiques, afin de se prémunir contre toute situation où elles auraient effectué des traitements non autorisés pour le ciblage ou la recommandation de contenus qu'elles n'auraient pas identifiés comme étant des publicités politiques. De plus, dans l'hypothèse les propositions du PE (article -12 relatif aux données personnelles non sensibles) étaient maintenues, il importerait d'autant plus de limiter l'application –du chapitre III aux services de publicité politiques, qui doivent déjà être signaler aux éditeurs de publicité politique lorsque les contenus qu'ils publient sont des publicités politiques en application du chapitre II.

Par ailleurs, la Commission européenne propose d'exclure les messages à caractère purement personnel de la définition des publicités politiques afin de protéger la liberté d'expression, mais cela n'apparaît pas suffisant. Ces propositions présenteraient-elles des avantages pour lutter contre la désinformation et les usines à troll (provenant souvent d'expression individuelles sans rémunération) par rapport à la limitation aux services ?

MALTA

- **WK 9643/23**
- **Article 18**
- Malta has no adverse comments and can accept the compromise text.
- **WK 9179/23**
- **Article 1 - Row 86:**
- Malta can accept the Presidency's compromise text.
- **Article 1a - Row 101e:**
- Malta prefers the Presidency suggested proposal.
- **Article 2 - Row 124:**
- Malta can accept the EP suggested compromise on the political advertising publisher.
- **Article 3 - Row 129:**
- Malta can accept the text of the possible compromise proposal provisionally agreed between the co-legislators, subject to agreement on non-discrimination clause (Article 3a).
- **Article 3a - Row 129b-d:**
- Malta can accept the Presidency's compromise text for Rows 129b and 129c (Non-EU sponsors ban) and has no adverse comments on the EP's proposal in this respect. With regards to Row 129d (Non-discrimination clause), Malta prefers the text proposed by the legal services of the three institutions.
- **Article 5(1) - Row 134a:**
- Malta can accept the Council compromise proposal.
- **Article 5(2c) - Row 135d:**
- Malta agrees with the Council compromise proposal to recall the legal obligation and agrees with this being drafted in a Recital.
- **Article 6 - horizontal application - Row 142, 160, 163q and 198:**
- Malta prefers to retain the 5-year retention period, in order to reduce administrative burdens especially for SMEs.
- **Article 7(1), first subparagraph, point (b) - Row 147:**

- Malta agrees with the Presidency compromise.
- **Article 7a(1)(d) and (h) - Row 163f and 163m:**
- Malta can support the compromise; however, we would like to reiterate that these transparency obligations shall not amount to excessive administrative burdens on service providers and authorities.
- **Article 8(2) - Row 166a:**
- Malta again cautions against added administrative burdens on providers.
- **Article 9(3) - Row 170 and 170c:**
- Malta prefers the Presidency's previously suggested proposal.
- **Article -12 and 12:**
- Malta agrees with the EP compromise to remove a complete prohibition of targeting and ad delivery techniques involving the processing of special categories of personal data as long as explicit consent has been given. With regard to the prohibition concerning targeted advertising preceding an election or a referendum, Malta does not agree with the 90-day timeframe, as it should be shorter to take into consideration different electoral circumstances of Member States, as well as the possibility of snap elections.
- **Article 15(2) - Row 215a:**
- Malta agrees that this should be in a Recital.
- **Article 16(1) – Rows 230a – 230c:**
- Malta prefers to retain the Council Mandate, as excessive administrative burdens on service providers and authorities should be avoided.
- **Article 20 – Row 255:**
- Malta reiterates that it is essential to retain the 12-month timeframe for applicability of the Regulation, as anything less would lead to difficulties to implement effectively. Although we note that the intention was for the Regulation to be in place ahead of the 2024 MEP elections, unless there is agreement on a sound text, and enough time is given to authorities and to industry to become in line with the Regulation, it will lose its scope as it will not be implemented effectively. We are flexible on the idea of a staggered entry-into-force approach, we nevertheless call urge for caution to avoid haste.
- **Article 7b – Rows 163t-163ah:**
- With regard to Row 163aa, Malta would prefer to extend the time window for uploading as much as possible, therefore would push for the 72 rather than the 48 hours compromised from the part of the Council. On 163ac, Malta would prefer the Council's suggestion.

➤ **Chapter III**

➤ **Row 88a:**

➤ Malta agrees with the draft agreement.

➤ **Row 107:**

➤ Malta can accept the draft agreement but agrees with FR and DE and other MS in preferring “designed to” rather than “liable”.

➤ **Row 107c-e:**

➤ Malta can accept this compromise proposal.

➤ **Scope of application of Chapter III:**

➤ Malta can accept the compromise being suggested by the EP.

➤ **Article 15 – Rows 213-215a and Article 12 - Row 200d:**

➤ Malta can be flexible. However we prefer to retain the Council Mandate.

POLAND

Document No. WK 9179/2023 - definition of political advertising, the scope of services, repository, retention period, non-discrimination clause and the role of the EDPB

- Article 2, paragraph 1, point (2)(b), (line 107):

PL does not support the EP compromise proposal. The proposed definition is vague and open to interpretation which negatively impact the legal certainty - many different types of content can be considered as being liable to influence voting behaviour or the electoral process ("is **liable** to influence voting behaviour or the outcome of an election"). We prefer to maintain the definition contained in the Council's general approach.

- Article 2, (line 107c):

PL supports the proposal contained in the Council's general approach. We do not see the reason for including in the definition of political advertising information on persons standing for election (deletion of 'the candidacies'). Informing the public about who is standing for election should not be considered political advertising.

- Article 2, (line 107d):

PL supports the version contained in the Council's general approach, i.e. we oppose to deleting the word 'design' and replace it with the word 'liable' which is open to interpretation.

- Article 2, (line 107e):

We express flexibility to the proposed provisions

- Article 2, (line 124):

We express flexibility to the provisions proposed by the EP.

- Article 3a, lines 129b and 129c – Non-EU sponsors ban:

We express flexibility to the proposed provisions.

- Art. 3a, line 129d – Non-discrimination clause:

We generally see no added value in the EP proposal, but in the spirit of compromise we are ready to look at the new proposals that will be legally sound.

- Article 6 – horizontal application (lines 142, 160, 163q and 198):

We advocate for the 5-year retention period. A longer retention period can lead to increasing the financial burden for businesses.

- Article 7b – the EU public repository:

We do not see much added value of the proposal to create a new repository for political advertising. Regulation 2022/2065 foresees already the obligation for very large online platforms (VLOPs) to keep repository of all online advertising. Since VLOPs in practice control the majority of the online advertising market, the proposal does not seem to be proportional. However, in the spirit of seeking agreement with the EP, we can be flexible.

Line 163aa – regarding the European Public Repository for Political Ads, we oppose the specification of a short timeframe for the publisher to submit information to the repository. A short time period could result in a potential increase in financial burdens for businesses, especially microenterprises and SMEs. In case a specific time to submit information to the repository needs to be maintained in the text of the regulation, we prefer to extend this time to 72 hours.

- Proposals on pages 27-32: Article 15 – Role of the European Data Protection Board (EDBP):

As a general comment: we advocate for retaining the competences of national authorities and not transferring them to the EU level.

Other proposals set out in document No. WK9179/2023

- Article 1, (line 86):

We express flexibility to the proposed provisions.

- Article 1(2a), (line 88a):

PL supports the compromise proposal.

- Article 1a, line 101e (EP position in row 88):

We express flexibility to the proposed provisions.

- Article 3, (line 129):

We express flexibility to the proposed provisions.

- Article 5, line 134a – Council compromise proposal (in row 135):

We express flexibility to the proposed provisions.

- Article 5, (line 135d):

PL considers that the EP's proposal in Article 135d seems to be redundant in light of the obligations contained in Regulation 2022/2065 (Digital Services Act). Therefore we support the Presidency's compromise proposal ("to recall legal obligations contained in another legislative act in a recital").

- Article 7, (line 147):

We are awaiting proposals from the EP.

- Article 7a, (line 163f and line 163m):

PL maintains previous reservations concerning Article 7a (lines 163a-163o) - PL is not in favour of a significant expansion of the catalogue of issues included in the transparency information provided by publishers of political advertisements (as proposed by the EP). Article 7 already contains rules on transparency. Therefore, PL is against increasing unnecessary financial burdens on businesses - disadvantageous for microenterprises and SMEs.

- Proposals included on page 26: Scope of application of Chapter III:

PL supports the EP's approach of limiting the scope of the regulation to 'political advertising services'. This will limit possible risks to the respect of fundamental rights such as freedom of expression and access to information. Otherwise, a practical problem may arise for both service providers (or sponsors) and the competent regulatory authorities responsible for overseeing compliance with the Regulation, in terms of assessing what communications are to be treated as political advertising. It creates for example a risk that activities undertaken by third sector entities (e.g. educational or social campaigning, opinion polling, etc.), which could potentially influence electoral behaviour, could be considered political advertising and would be subject to the Regulation.

- Article 8, (line 166a):

PL does not see added value in this EP proposal. In addition, it increases the burden for both providers and national authorities.

- Article 9, (lines 170 and 170c):

With regard to the proposal in Article 9(3b), we suggest that the deadline of 48 hours for processing a notification should be limited to notifications from competent authorities only. In this respect, we need adequate safeguards against abuse of the notification system – otherwise, there is a risk that the system may be overloaded and used in bad faith.

Art. -12 Prohibition and restrictions regarding targeting and ad delivery amplification techniques involving the processing of special categories of personal data:

PL opposes the EP's amendments in Article 12, which significantly limit the possibilities of using personal data for the targeting of political advertising - compared to the original EC proposal and the Council's general approach. The EP's approach contradicts the Polish request that Article 12 paragraph 1 (i.e. the prohibition of the use of targeting or amplification techniques which involve the processing of special categories of personal data) should not apply to situations in which processing relates to personal data that reveals political opinions that have been manifestly, without any limitations made by mechanisms provided by a platform, made public by the data subject.

- Paragraph 1 - PL does not support the EP's proposed retention of the prohibition on the processing of special categories of personal data within the meaning of Article 9(1) GDPR for a limited period of time (90 days, as in the EP's proposal) before an election/referendum. Removing all grounds for exceptions to allow the processing of special categories of personal data for the targeting and delivery of political advertisements would have a significant impact on limiting political debate, especially in the final, crucial period before the elections.

- Paragraph 2 - PL opposes the EP's proposed provision: "The personal data collected from the data subject by virtue of using a service or device, including obtained content, shall not be considered as provided personal data."

- Paragraph 3 – we express flexibility to the proposed provisions.

- In addition, the Polish national data protection authority, draws attention to the necessity to analyse the impact of the adopted solutions, in this regulation, on the privacy of the persons whose data are to be processed - the privacy test and the analysis of whether the principle of data protection by design has been taken into account, i.e. whether, in justified cases, a data protection impact assessment has been carried out (Articles 25 and 35 GDPR).

- Article 12 Specific requirements related to the processing of personal data for online targeting and ad delivery amplification techniques:

Paragraph 2 - PL opposes the EP's proposed provision: "The personal data collected from the data subject by virtue of using a service or device, including obtained content, shall not be considered as provided personal data." - we find no justification for such a restriction of the use of personal data.

- Article 15, (line 215a):

We await the EP proposals.

- Article 16 – Maximum amount for sanctions:

PL agrees with the EP's approach – to align the maximum amount for sanctions with the provisions of Regulation 2022/2065 (Digital Services Act) and set the maximum amount at 6%.

- Article 20 – Entry into force:

PL would like to maintain the 12 months proposed in the Council's general approach for the entry into force of the Regulation.

With regard to the proposals contained in document No. WK 9643/2023 INIT, i.e. Article 18 - Evaluation and review:

We express flexibility to the provisions proposed by the EP.
