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NOTE

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Objet:	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 meeting of the Working Party on General Affairs on 27 September 2022, delegations will find attached comments from Austria, Denmark, France, Hungary, Lithuania, The Netherlands and Slovenia on the Presidency compromise text (ST 8647 2022 REV 3).

ANNEX I

Contents

AUSTRIA

- Our citizens have to be able to distinguish easily and immediately between paid „political advertising“ and „non-remunerated“ forms of expression of opinions.
- In the light of this justified goal of public interest, we are fully convinced that the text still does not pass the proportionality test. It does not comply with the requirement to take the „mildest means“ necessary to achieve its goal.
- We have made several attempts to focus the responsibilities with the sponsor.
- We have also put forward different suggestions for a more consistent legal framework and more precise definitions.
- In the REV-3 version of the document, we cannot identify substantial progress in this respect.
- We still need a clearer accentuation (apart from eliminating legal uncertainties in the definitions and reaching a stricter demarcation in the definition of a political advertising service provider).
- Due to the fundamental importance of free and fair elections, it is necessary to limit the risk of unfair manipulations in the democratic process. We therefore fully support the proposed restrictions on targeting and amplification techniques based on the processing of personal data for the purposes of political advertising (Chapter III).

DENMARK

1. **Regarding the definition of a "political actor".**

According to article 2 (4), litra g, a political actor includes "a political campaign organisation with or without legal personality, established to influence the outcome of elections".

It concerns Denmark that the current wording of this article might be so broad, that all interest groups will be considered to be political actors and be bound by the obligations in the Act. This could for example be The Danish Cancer Society, even though their ads might not at all be political. Considering all interests groups as political actors might not be desirable, as it would impose administrative burdens on a large number of actors.

2. **Regarding administrative fines**

Article 15 (5) c and Article 16 prescribe that national authorities of the Member State should have the power to impose administrative fines and that member states should lay down rules on such fines. It follows from the widely accepted interpretation of Section 3(3) of the Danish Constitutional Act that Danish administrative authorities cannot, with binding effect, impose fines or other sanctions characterized as punitive under Danish law. Thus, if Denmark were to introduce the possibility of applying administrative fines, understood as pecuniary penalties imposed by an administrative authority, as a means of sanctioning breaches of EU law, it is highly likely that Danish courts – ultimately the Supreme Court – would strike down such fines as unconstitutional. As a result, it would not be possible for Danish authorities to impose such fines. We have submitted a separate proposal to the Presidency on how the issue could be solved while still ensuring effective implementation.

3. **Regarding remedies for actors who get ads taken down or discontinued dissemination of ads**

It is positive that the preamble to the proposed regulation now specify that providers of political advertising services and publishers of political advertisers should have due regard to the freedom of expression and information, and other fundamental rights.

Denmark is concerned that legitimate political actors as a consequence of the regulation risk getting legal political ads taken down or that dissemination of legitimate ads is ceased, especially on large online platforms, without the access to remedy or complaint procedures. In that regard, Denmark would like to know if it has been considered to put in place a scheme similar to the complaint mechanism in the DSA for actors who has had taken content down from platforms.

4. **Various remarks concerning supervision and enforcement**

Article 15 (2): The third sentence of this article is drafted as follows:

"*The Digital Services Coordinator referred to in Article 38 of Regulation (EU) 2021/xxx in each Member State shall be responsible for ensuring coordination at national level in respect of providers of intermediary services as defined in Regulation (EU) 2021/xxx [Digital Services Act]*."

The role of the Digital Services Coordinator related to monitoring the compliance of this Regulation should perhaps be clarified. The wording in the third sentence – specifically "shall be responsible for" seems to imply, that the Digital Coordinator referred to in the DSA is also designated to monitor the compliance of this Regulation by default. Is this worded as intended?

Further, please note that the articles of the DSA have been renumbered and what was earlier article 38 is now article 49.

Article 15 (3): It is unclear what is meant by "the aspects of this Regulation not referred to in paragraphs 1 and 2". Specifically, it would become clearer by specifying whether it for example refers to articles or actors.

The second and third sentences in Article 15(3) provide general requirements for the independence of the competent authorities.

Article 50 in the DSA describes in much more detail the requirements to ensure the independence of the Digital Services Coordinator. As the wording of Article 15(3) paragraphs 2 and 3 is different to Article 50 in the DSA, it gives rise to considerations as to whether the substance of the requirements is different. For the sake of legal certainty and to ensure a harmonised supervision regime across the

Union, it could be considered to align the wording of the provisions with Article 50 of the DSA if the substance is the same.

Article 15 (4): If the substance of this provision is to be similar to the power of Digital Services Coordinators to obtain access to data from providers of Very Large Online Platforms and Very Large Online Search Engines, it could be considered to align the wording with Article 40 of the DSA. Article 40 of the DSA stipulates in detail the power of the competent authorities to access data that are necessary to monitor and assess compliance with this DSA.

Article 15 (5): This provision contains enforcement powers of the competent authority designated in accordance with this Regulation. We are wondering why the competent authorities do not have the power to order the cessation of infringements of this Regulation as is the case for Digital Services Coordinators when monitoring the compliance with the DSA, cf. Article 51(2), b, of the DSA.

Article 15(7): It could be considered to add to this provision that after the Member State has designated one competent authority as a contact point at Union level for the purposes of this Regulation, the Member State shall also be obliged to make that information publicly available and communicate the information to the Commission, in the same way as it is regulated in the DSA article 49(3) (previous article 38) in order to make it easier for competent authorities from other Member States to contact them:

Article 49(3) of the DSA:

"*Member States shall designate the Digital Services Coordinators by [15 months from [the date of entry into force of this Regulation]*.

Member States shall make publicly available, and communicate to the Commission and the Board, the name of their competent authority designated as Digital Services Coordinator and information on how it can be contacted. The Member State concerned shall communicate to the Commission and the Board the name of the other competent authorities referred to in paragraph 2, as well as their respective tasks."

FRANCE

En complément des réponses formulées au questionnaire transmis par la présidence tchèque le 26 août 2022, les autorités françaises transmettent les commentaires ci-après, sur les chapitres III à V, en se concentrant principalement sur les articles 12, 15 et 16 ainsi que les suggestions d'amendements suivantes.

Justifications :

1/S'agissant de l'Article 12, les autorités françaises sont favorables à l'interdiction des techniques de ciblage et d'amplification impliquant le traitement des données sensibles prévue à l'article 12.1 à l'exception des deux dérogations prévues à l'article 12.2 dans les situations visées à l'article 9, paragraphe 2, point a) et d) du RGPD.

Ces deux dérogations apparaissent comme permettant de trouver un équilibre délicat entre deux éléments essentiels du débat démocratique, l'accès de tous les citoyens à l'information politique, en particulier à travers l'action des partis politiques, et la protection de la capacité des citoyens à exercer leur liberté de manière éclairée.

Cela étant, dans la mise en œuvre de ces dispositions, il conviendra de ne pas remettre en cause à l'égard des opérateurs de plateforme en ligne, l'interdiction prévue par l'article 24 (3) du DSA (Digital Services Act – législation sur les services numériques).

Par ailleurs, les autorités françaises seraient prêtes à encadrer l'utilisation des données non sensibles, en plus des dispositions existantes à ce stade dans le texte avec , une restriction des données non-sensibles pouvant être traitées aux fins de ciblage et d'amplification..

2/S'agissant de l'Article 15, plusieurs suggestions d'amendements sont proposées. Tout d'abord, les autorités françaises estiment que les compétences des autorités de contrôle compétentes pour contrôler l'application de l'article 12, visées au paragraphe 1 de l'article 15, sont explicitées au sein du RGPD, sans qu'il soit nécessaire d'ajouter des dispositions spécifiques. De la même manière, les compétences des autorités de contrôle du respect du règlement par les prestataires de services intermédiaires sont précisées par la législation sur les services numériques (DSA).

En revanche, il est prévu au paragraphe 3 de désigner d'autres autorités compétentes en dehors de celles visées aux paragraphes 1 et 2. Il pourrait être utile de préciser que ces autorités peuvent être différentes de celles visées par le RGPD et le DSA, et que le contrôle puisse être opéré par le juge judiciaire, compte tenu de la situation particulière des éditeurs de presse et des médias. Les autorités françaises suggèrent donc un amendement à l'Article 15.3 et par cohérence, une référence à l'autorité judiciaire nationale compétente à l'Article 15.5.

Par ailleurs, les autorités françaises souhaitent que les responsabilités entre les différents acteurs de la chaine restent équilibrées et suggèrent d'ajouter une référence au parrainneur (« sponsor ») à l'Article 15.4, puisque les prestataires de services de publicités à caractère politique ne disposent pas nécessairement des informations qui leur seront demandées. A cet effet, les autorités compétentes devraient être en mesure de contacter l'ensemble des acteurs impliqués dans la chaine de valeur, le parrainneur en faisant partie intégrante. Elles proposent ainsi l'ajout de « parrainneur » au paragraphe 4.

De plus, les autorités françaises suggèrent d'ajouter une compétence additionnelle aux autorités compétentes notamment dans le cas où la violation du règlement est non intentionnelle. Il s'agit de couvrir les cas par exemple où une information erronnée a été transmise à l'éditeur de publicité à caractère politique sans qu'il n'ait été en mesure, malgré ses efforts raisonnables, de la rectifier. Les autorités françaises suggèrent ainsi l'ajout d'un nouveau paragraphe 5 (a).

Enfin, les autorités françaises estiment que la coopération entre les points de contact désignés par les Etats membres pourraient également s'effectuer dans le cadre du Groupe des régulateurs européens des services de médias audiovisuels (ERGA) compte tenu du fait que la plupart des régulateurs nationaux de services de médias audiovisuels seront une des autorités compétentes en vertu du présent Règlement. Elles suggèrent donc un amendement à l'article 15.9.

3/ S'agissant de l'article 16, les autorités françaises estiment que les sanctions pourraient être précisées pour prendre en compte la responsabilité du parraineur, à la fois en intégrant une disposition au paragraphe 1 de l'Article 16, mais également par l'introduction d'une clause d'exemption des sanctions au bénéfice des prestataires de services quand ceux-ci se sont conformés à leurs obligations en vertu du présent Règlement. Elles proposent ainsi l'introduction du nouveau paragraphe 5 bis.

De plus, les autorités françaises sont favorables à l'introduction d'un montant maximum, à l'instar du mécanisme prévu à l'article 83, paragraphe 5, du RGPD et à l'article 66, paragraphe 3, du RPDUE. Elles proposent ainsi un nouveau paragraphe 1 bis ainsi que des amendements aux paragraphes 6 et 7.

Par ailleurs, les autorités françaises souhaitent ajouter un point e bis au paragraphe 3 de l'Article 15, afin qu'il soit pris en compte, dans la décision du type de sanctions, la taille et les capacités économiques du prestataire de service de publicité politique. En effet, les petites et moyennes entreprises ne disposent pas toujours de ressources suffisantes pour se conformer aussi facilement à leurs obligations que les prestataires de services intermédiaires par exemple.

Les autorités françaises proposent également d'ajouter une référence aux articles 5 à 7 au sein du paragraphe 4 de l'article 16, étant donné que les violations du règlement peuvent intervenir en amont de la chaine de valeur en particulier lors de la transmission d'informations et non pas uniquement au moment de la publication de la publicité à caractère politique.

Enfin, afin d'équilibrer au mieux les responsabilités entre les différents acteurs tout au long de chaine, les autorités françaises suggèrent d'ajouter une référence au parrainneur (« sponsor ») au paragraphe 5 de l'Article 16.

Les suggestions d'amendements sont les suivantes :

CHAPTER IV – SUPERVISION AND ENFORCEMENT

Article 14

Legal representative

1. Service providers that provide political advertising services in the Union but do not have an establishment in the Union shall designate, in writing, a natural or legal person as their legal representative in one of the Member States where the provider offers its services.

2. The legal representative shall be responsible for ensuring compliance with the represented service provider's obligations pursuant to this Regulation and shall be the addressee for all communications with the relevant service provider provided for in this Regulation. Any communication to that legal representative shall be deemed to be a communication to the represented service provider.

Article 15

Competent authorities and contact points

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 Article 12 of this Regulation in their respective field of competence. Article 58 of Regulation (EU) 2016/679 and Article 58 of Regulation (EU) 2018/1725 shall apply *mutatis mutandis.* Chapter VII of Regulation (EU) 2016/679 shall apply for activities covered by Article 12 of this Regulation.

2. Member States shall designate competent authorities to monitor the compliance of providers of intermediary services within the meaning of Regulation (EU) 2021/xxx [DSA] with the obligations laid down in Articles 5 to 11 and 14 of this Regulation, where applicable. The competent authorities designated under Regulation (EU) 2021/xxx [Digital Services Act] may also be one of the competent authorities designated to monitor the compliance of online intermediaries with the obligations laid down in Articles 5 to 11 and 14 of this Regulation. The Digital Services Coordinator referred to in Article 38 of Regulation (EU) 2021/xxx in each Member State shall be responsible for ensuring coordination at national level in respect of providers of intermediary services as defined by Regulation (EU) 2021/xxx [Digital Services Act]. Article 45(1) to (4) and Article 46(1) of Regulation (EU) 2021/xxx [Digital Services Act] shall be applicable for matters related to the application of this Regulation as regards providers of intermediary services.

3. Each Member State shall designate one or more competent authorities to be responsible for the application and enforcement of the aspects of this Regulation not referred to in paragraphs 1 and 2. **These competent authorities may be different from those referred to in paragraphs 1 and 2 such as a competent national judicial authority**. Each competent authority designated under this paragraph shall structurally enjoy full independence both from the sector and from any external intervention or political pressure. It shall in full independence effectively monitor and take the measures necessary and proportionate to ensure compliance with this Regulation.

4. Competent authorities referred to in paragraph 3, where exercising their supervisory tasks in relation to this Regulation, shall have the power to request to access data, documents or any necessary information from **sponsor or** providers of political advertising services **concerned** for the performance of their supervisory tasks.

5. Competent authorities **or competent national judicial authority** referred to in paragraph 3, where exercising their enforcement powers in relation to this Regulation, shall have the power to :

   (a) order the cessation of infringements to the sponsor or provider of political advertising service and, where appropriate, to impose remedies proportionate and necessary to bring the infringement effectively to an end

   (b) issue warnings addressed to **the sponsors or** providers of political advertising services regarding their non-compliance with the obligations under this Regulation;

   (c) publish a statement which identifies the legal and natural person(s) responsible for the infringement of an obligation laid down in this Regulations and the nature of that infringement;

   (d) impose administrative fines and financial penalties.

6. Member States shall ensure **effective and structured** cooperation among **all revelant** competent authorities **designated under paragraphs 1 to 3** in particular in the framework of national elections networks **and in the European Regulators Group for Audiovisual Media Services**, to facilitate the swift and secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks pursuant to this Regulation, including by jointly identifying infringements, sharing findings and expertise, and liaising on the application and enforcement of relevant rules.

7. Each Member State shall designate one competent authority as a contact point at Union level for the purposes of this Regulation.

8. Where a provider of political advertising services is providing services in more than one Member State, or has its main establishment or a representative in a Member State but provides its main activities in another Member State, the competent authority of the Member State of the main establishment or other establishment or of the representative, and the competent authorities of those other Member States shall cooperate with and assist each other as necessary. Unless already regulated by Union law, that cooperation shall entail, at least, the following:

(a) the competent authorities applying supervisory or enforcement measures in a Member State shall, via the contact point referred to in paragraph 7, inform and consult the competent authorities in the other Member State(s) concerned on the supervisory and enforcement measures taken and their follow-up;

(b) a competent authority may request, via the contact point referred to in paragraph 7, in a substantiated, justified and proportionate manner, another competent authority, where it is better placed, to take the supervisory or enforcement measures referred to in paragraphs 4 and 5; and

(c) a competent authority shall, upon receipt of a justified request from another competent authority, provide the other competent authority with assistance so that the supervision or enforcement measures referred to in paragraphs 4 and 5 can be implemented in an effective, efficient and consistent manner. The relevant competent authority so requested shall, via the contact points referred to in paragraph 7 and within a timeframe proportionate to the urgency of the request provide a response communicating the information requested, or informing that it does not consider that the conditions for requesting assistance under this Regulation have been met. Any information exchanged in the context of assistance requested and provided under this Article shall be used only in respect of the matter for which it was requested.

9. Contact points shall meet periodically at Union level in the framework of the European Cooperation Network on Elections **or of the European Regulators Group for Audiovisual Media Services** to facilitate the swift and secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks pursuant to this Regulation.

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 and financial penalties applicable to providers of political advertising services under their jurisdiction for infringements of the present Regulation, which shall in each individual case be effective, proportionate and dissuasive. **Member States shall also lay down rules on sanctions including administrative fines, financial penalties and rectifications applicable to sponsors for infrigements in relation to Articles 5 and 7 of the present Regulation.**

1a. Member States shall ensure that the maximum amount of the fine that may be imposed shall be 4 % of the annual income or worldwide turnover of the sponsor or the provider of political advertising services in the preceding financial year.

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.

3. When deciding on the type of sanctions 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;

(e a) the size and economic capacity of the political advertising service provider.

4. Infringements of Article**s 5 to** 7 shall be considered to be particularly serious where they concern political advertising published or disseminated during an electoral period and directed to citizens in the Member State in which the relevant election is being organised.

5. If **a sponsor or 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. Sanctions should not apply to providers of political advertising services where they have complied with their obligations under this Regulation.

6. For infringements of the obligations laid down in Article 12, 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**, but no higher than** the amount referred to in Article 83(5) of that Regulation.

7. For infringements of the obligations laid down in Article 12, 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**, but no higher than** the amount referred to in Article 66 (3) of that egulation.

Article 17

Publication of electoral periods

Member States shall publish the dates of their national electoral periods in an easily accessible place, with an appropriate reference to this Regulation.

CHAPTER V –FINAL PROVISIONS

Article 18

Evaluation and review

Within two years after each election to the European Parliament and for the first time by 31 December 2026 at the latest, the Commission shall submit a report on the evaluation and review of this Regulation. This report shall assess the need for amendment to this Regulation. The report shall be made public.

Article 19

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 7(8) and Article 12(8) shall be conferred on the Commission for a period of [until the application of this regulation is evaluated, two years after the next European Parliamentary elections].

3. The delegation of power referred to in Article 7(8) and Article 12(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or

at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify that act simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 7(8) or Article 12(8) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 20

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 1 April 2023.

3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

HUNGARY

In view of the discussions and negotiations on the Commission's proposal regarding the transparency and targeting of political advertising that have taken place since the beginning of this year, Hungary believes that although significant progress has been achieved in the Presidency's compromise text, some significant issues still remain that are indispensable to be addressed before agreeing on a Council mandate.

Legal base

Hungary's position remains solid that one of the main obstacles to progress in this dossier is the ambiguous choice of the Commission regarding the legal base. Indeed, **we seriously doubt that Article 114 TFEU constitutes the right legal base for this proposal,** as we do not consider the extent of the linkage to the internal market or the justifications for it to be sufficient. This issue has been raised several times before by other Member States as well, however, the CLS has still not issued a written legal opinion that would be the only proper way to handle this issue. In order to clarify this fundamental question, we still consider it **necessary** to have the **legal opinion of the CLS in a written form as well.**

Level of harmonisation

As for the level of harmonisation, we have to reiterate our position that **we do not see the form of regulation justified**. In fact, we believe that the **form of directive is sufficient** to achieve the intended purpose. Furthermore, **since the proposed changes already aim to set out the primacy of national regulations in several areas, it would be sensible to reflect this in the legal form.**

Scope

Besides that Hungary fully agrees with and supports the objective of the proposal, we are convinced that it is worth consideration to **limit the scope of the proposal either to the EP elections or to the online sphere**. Indeed, if the provisions applied only to the EP elections, there would be no questions regarding subsidiarity and the division of competences, which would give a significant impetus to the negotiations. Furthermore, regulating only the online sphere would also serve the purpose of the proposal better, as large online platforms are the most crucial actors in this regard.

Definition of political advertisements

Although the **definitions** have been refined in the compromise text (REV3), they **still lack some clarity**. It is an especially sensitive question as **it cannot be defined objectively what is considered to be an advertisement with political purpose**, and if **responsibility and sanctions** are somehow **derived from the fact that an advertisement is of political nature**, **the regulation would go beyond its original purpose**, and have the **potential for disproportionate restriction on the freedom of expression.**

Hungary is convinced that **transparency rules should only apply to advertisements published for remuneration during campaign periods in the Member States**. Indeed, we find it necessary to reinforce in the text that **advertisement published for free does not fall under the scope of the proposal**. Furthermore, we believe that the proposal should make it clear that the **provision of information to citizens on matters of general public interest**, not only regarding participation in elections, **is excluded from its scope.**

Delegated acts

We find that the proposal would authorise the Commission to adopt an overly broad scope of delegated acts. For this reason, **we should define the scope of the implementing rules in a clear and unambiguous way.** In fact, Member States should have the greatest possible say in the adoption of delegated acts and the Commission should only be empowered to adopt such acts for the shortest possible duration.

GDPR/DSA

Hungary maintains its position that the **proposal should be fully in line with the provisions of the GDPR and the DSA**, in which regard we are very much looking forward to the Commission's analysis.

LITHUANIA

CHAPTER III

1. Article 12 – Specific requirements to targeting and amplification.

1.1 Distinguishing various types of data (provided data vs observes or inferred data)

1.1 a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

No. It seems that the purpose of Article 12(1) is to safeguard different groups of voters or individuals that can be segmented, and their characteristics or vulnerabilities exploited by processing sensitive personal data. Which is the object of protection granted by Article 12(1). This protection would be hindered if such techniques were allowed.

1.2. Complete prohibition of targeting and amplification techniques using sensitive data

1.2a If you support completely prohibiting the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2. (d) of Regulation 2016/679 and Article 10.2 (d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former member)?

We would support such an exception, especially when, for example, a political party diverts its political advertising to its own members who are members of that organization, and they may receive the information that the organization is disseminating.

1.2 b If you do not support such a complete prohibition, do you think that targeting and amplification techniques using sensitive data should be specifically prohibited during electoral periods?

We agree with the current version of the Article 12(1), which be applied at any time.

1.2 c Are there other categories of technique involving the processing of personal data that should be addressed specifically?

We are not aware of such techniques.

1.3. Obligations for data controllers and political advertising publishers

1.3 a Do you think the provisions laid out in paragraphs 3 to 6, as proposed by the French Presidency, need to be further reviser (e. g. clarification of obligations; scope of information to be included in the transparency notice etc.)?

In the meantime, we do not see any need for the revision.

CHAPTER IV

2. Article 14 – Legal representative

2.1 Should the Member States establish a publicly available register of all legal representatives referred to in Article 14.1?

A publicly available register of all legal representatives is, in our opinion, necessary and can be very useful. It is worth considering whether it would not be more appropriate to create an EU register supervised by the European Commission. This would achieve a higher level of harmonization, make it more convenient for users to obtain information about representatives, and reduce the burden on Member States.

3. Article 15 – Competent authorities and possibilities/provisions outlined below.

3.1 Clarification of competencies – Article 15.1 -15.5

3.1 a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

We are not against, if in the Article 15 further roles and powers of respected competent national authorities are specified. Except for data protection authority, since powers of data protection authority are already enshrined in the General Data Protection Regulation, no further specifications are needed in this regard.

3.1 b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

In Article 15(4) is provided: Competent authorities referred to in paragraph 3, where exercising their supervisory tasks in relation to this Regulation, shall have the power to request to access data, documents any necessary information from providers of political advertising services for the performance of their supervisory tasks. This provision is sufficient to request the information that is needed.

3.2 Clarification cooperation at the national or EU level – Article 15.6-15.9

3.2 a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

The proposed framework for cooperation within and between Member States and at EU level is suitable.

3.2 b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

We do not mind further clarification, but we do not have specific proposals on this matter.

4. Article 16 – Sanctions

4.1 Consideration of responsibilities that apply to sponsors in the provisions of Article 16 (e. g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

Such an exception could be expressly included. However, there may be questions about unfair agreements between sponsors and service providers.

4.2 Harmonizing the level of sanctions (e. g. by introducing minimum and/ or maximum amount) – Article 16.3

We support the harmonization of the level of sanctions.

4.3 Reinforcing/ changing scope of infringements to be considered particularly serious during an electoral period (e. g. by also referring to other Articles of the Regulation) – Article 16.4

We don't have proposals, but if someone presents this question, it can be considered.

4.4 Introduction of an obligation for the Member States to annually report on the type and amount of sanctions imposed

We do not oppose the introduction of such an obligation.

CHAPTER V

5. Article 18 – Evaluation and review

5.1 Do you think the content of the report should be specified?

The content could be optional. But basic guidelines can be indicated.

6. Article 19 – Exercise of the delegation

6.2 Do you think the power to adopt delegated acts should be supported by other criteria (e. g. obligation to consult the Member States in advance)?

We would support an obligation to consult Member States in advance.

6.3 What is your position on the period for which the Commission is empowered to adopt delegated acts?

The period seems appropriate.

6.4 Do you think that a process is needed to make codes and standards binding (cf. Article 40GDPR)?

We support the obligation of codes of conduct or standards, since political advertisements using targeting and amplification techniques are aimed at influencing the behavior of voters and can have a significant impact on their choices, the application of such codes of conduct or standards would seem to be an appropriate and necessary safeguard to ensure the transparency of political advertising using targeting and amplification techniques.

THE NETHERLANDS

*Please find below a text suggestion for the regulation on political ads. It pertains to the point on electoral periods, something also mentioned in the GAG meeting on 27 September 2022. In reply, the Commission stated that in their proposal they did not intend to oblige Member States to define electoral periods if they do not yet have them. To make this unambiguously clear in the text, we propose the text below. Changes we propose are **in bold**.*

Recital:

(25) The definition of political advertising should not affect national definitions of political party, political aims or ~~campaign~~ **electoral** periods at national level. **Member States that do not have nationally defined electoral periods shall not be obliged to define them.**

Publication of electoral periods

Article 17

Member States shall publish the dates of their national electoral periods, **if they have them,** in an easily accessible place, with an appropriate reference to this Regulation.

SLOVENIA

The Slovenian **national legislation regarding election and referendum campaign** and foresees the obligation of municipalities to provide free poster places to election campaign organizers under the equal terms and free of charge. The allocation of poster spaces is transparent and follows the principle of equality. The purpose of this obligation of a local community is **to provide basic information to voters** about all the candidates (in case of elections) or in case of referendum, about the referendum question. We believe the provision of such information to the voters **should not be regarded as political advertising activity**.

We would like to propose to amend the **paragraph 12 of Article 2** in a way that such activity of local community will be exempted under the proposed regulation. We are also open for other possible solutions (maybe in Article 1.a).

*»For the purposes of the first paragraph, point (2) messages **through** official sources exclusively related to the organisation and modalities for participation in elections or referendums or for promoting participation in elections or referendums **or for basic presentation of the candidates or the subject of the referendum** shall not constitute political advertising.«*