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**NOTE**

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	11214/23
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 15 September 2023,  
delegations will find in Annex comments from Member States.

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## **CZECH REPUBLIC**

***WK 11155/23***

### **Article -12 + 12**

- In the spirit of compromise, we can accept the COM's compromise proposals along the suggested lines. That includes also the ban on profiling using special categories of data, limiting the scope only to the online environment as well as the conditions permitting the processing of personal data.
- However, we would like to raise a comment regarding the regime foreseen for processing special categories of data when this does not involve profiling.
- Our understanding is that the intention is to have the envisaged regime in Article 12 para 1 applicable for both the special categories and regular personal data. If this understanding is correct, we believe that, for the sake of clarity, the wording should be reformulated, even if the two Articles are potentially to merge into one (for instance, as follows: "... *processing of personal data in situations other than those defined in Article -12*").
- Otherwise, we would like to ask for more clarifications.
- When it comes to definitions, in line with our strong preference for the Council text over the EP proposals, we can agree with the proposed definitions as they build on the Council's approach.
- In terms of terminology, we would generally prefer sticking to "amplification techniques", but assuming the applicability only to online political advertising and taking into account the proposed wording, we could accept referring to "ad delivery".

***WK 11321/23***

### **Non-EU sponsors**

- As regards Article 3a, we agree with the compromise text, as proposed by the COM.
- Although we would prefer the time limitation to be 3 months, we can remain flexible in this direction.
- We also support the approach imposing an obligation to "declare" eligibility to use political advertising services.

- However, we have some comments on the modifications in Article 5.
- First, since the accompanying text on the ultimate control of the sponsor in recital 16 has been added to the Council’s general approach in relation to the obligation to disclose information on the identity of the entity controlling the sponsor in general, in the interests of consistency of the text, it might be appropriate to include in Article 5 an obligation to make a general declaration as regards this entity, while maintaining the new text relating to non-EU sponsors.
- Furthermore, we believe that the obligation to make declarations concerning the restrictions of non-EU sponsors should be limited to “where applicable”.
- Finally, we do not understand why the reference that sponsors or service providers acting on their behalf should be responsible for the accuracy of the declaration was not included in the COM proposal (in particular, taking into account that this principle has already been pre-agreed by both institutions in the 4column table).
- We continue to believe that the burden of responsibility for the accuracy of the facts in this case should not lie with the political advertising publisher.

#### Definition of political advertising publisher

- We can support the proposed definition as well as the accompanying recital.

## **GERMANY**

WK 11321/2023 (informal COM suggestions on third country ban, „political advertising publisher“)

DEU supports the informal COM suggestions on the “third country ban”:

DEU is open for the text proposals and comments concerning Art. 5, the new recital 3a and recital 16.

Concerning the suggestions on the definition of “political advertising publisher”:

DEU welcomes the aim to clarify the scope of “political advertising publisher”. DEU is open to add the verb “delivers” in Art. 2 (1) point 11 and to add a new recital 27a.

WK 11155/23 (informal COM suggestions on Art. -12, 12)

First of all, DEU supports the proposal on Art. -12 which is in line with the DSA and provides for a prohibition of profiling based on sensitive data. It is important that the same obligations apply to VLOPs/VLOSEs and other political advertising publishers. DEU would prefer to apply this prohibition to all political advertising by electronic means as previously suggested.

DEU is also open with regard to the proposal on the accompanying recital.

Concerning Art. -12 and 12:

DEU welcomes in principle a complete ban on targeting and ad delivery techniques that involve the processing of special categories of personal data in Art. -12, which is in line with Art. 26 (3) DSA.

Regarding non-sensitive data DEU welcomes that - as proposed in Art. 12 (1) a. and b. - these stricter rules than in the GDPR apply online to personal data in the context of political advertising.

However, organic content should not be covered to protect freedom of expression. DEU therefore also suggests to review the use of the word “controller” in Art. 12 as the entity addressed by the provision.

Regarding Art. 12 (4) we would like to ask the COM to further clarify the objections to the proposed limitation to five categories of personal data.

With regard to Art. 12 (5), DEU welcomes that the exception for internal communications of political parties and NGOs is to be maintained. However, DEU would prefer to generally exclude the internal communication of parties and civil society organisations with members from the scope of application of the Regulation as a whole and not merely provide for individual, narrow exceptions, as now foreseen with regard to Art. 12 and -12. It is essential to prevent the internal communication of these organisations from being impaired.

## **ESTONIA**

Please find below our comments in regards to the COM proposal for Article 12:

- In principle, this proposed solution seems to be acceptable for us. In particular, **Art 12** will help to ensure that microtargeting of political advertising is not possible, which addresses one of the main concerns we have expressed in the past.
- That being said, we do have one comment. According to **Art 12**, personal data may be used with the consent of the data subject or if the data controller has collected the data from the data subject. However, it is not clear here for what purpose the controller collected the data, but if this was done for the purpose of providing advertising, then this is fine for us.

However, if the purpose for which the data was collected/processed was something else and then the data is to be processed for another purpose (e.g., to provide advertising), then this is not in line with the GDPR Art 5(1)(b) - personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes (purpose limitation). Therefore, it would be necessary to specify the purposes for which the data is to be collected.

## **IRELAND**

### **Technical Observations of Ireland on Documents WK 1 1321/2023 and WK 11155/2023**

Ireland reiterates that the possible compromise outlined by the Commission represents a significant concession, further drafting work needs to be completed along the lines in the below and this should be viewed as a discrete solution. Further movement towards a complete ban cannot be accommodated by Ireland principally due to concerns shared by partners around the issue of freedom of expression. Ireland also notes that proposals to include email communications, which are not advertising within the scope of the measure are not acceptable to us and encourages in so far as is possible further drafting would not seek to clarify existing GRPR and DSA provisions which should stand on their own right and as interpreted by the Court.

### **Document WK 11321/2023**

- Ireland has no specific comments to make and is flexible on the compromise text on third country restrictions to be inserted into an amended Article 5(1) of the draft Regulation but is supportive of the comments of FR at GAG on 15 September in regard to maximising the scope of the ban where international agreements permit. Ireland notes the Commission explanation which clarified this restriction has no impact on national restrictions in regard to national elections.
- Ireland has no specific comments to make and is flexible on the proposed recital on Article 3a.
- Ireland has no specific comments to make and is flexible on the proposed revisions aimed at clarifying the meaning of “control” in recital 16.
- Ireland has no particular objections to, and is flexible on, the suggested compromise text for ‘political advertising publisher’ as set out on page 4 of the document.



- Ireland notes the informal suggestions proposed by the Commission in respect of Article - 12. While Ireland generally does not favour additional restrictions in the processing of personal data, beyond what is provided for in the General Data Protection Regulation, for the purposes targeting / delivering of political advertising, we could accept an alignment with the requirements of Article 26 of the Digital Services Act for political advertising prepared, placed, promoted, published or disseminated in the digital sphere, i.e. political advertising shall not be presented on the basis of profiling using special categories of personal data. This restriction would not apply to political advertising presented in other media such as newspapers, magazines, posters etc. subject to the processing of any personal data underpinning such advertising being compliant with the relevant requirements of the General Data Protection Regulation.
- In relation to the accompanying recital (page 3 refers), Ireland notes that use of profiling using personal data (that does not fall within the meaning of special categories of personal data) which is intended to infer a special category of personal data falls within the proposed prohibition. In this context, Ireland needs to see additional text which would clarify that the proposed ban concerns the use of actually inferred special categories of personal data for the purposes of political advertising and that it does not prevent nor prohibit the collection of personal data from which special categories of personal data could in theory be inferred, subject to the collection of any such data being compliant with the relevant requirements of the General Data Protection Regulation.

- Ireland wishes to reiterate its concerns on, and opposition to, the additional restrictions proposed by the Parliament on the processing of personal data (that does not fall within the meaning of special categories of personal data) for the purposes of political advertising. As stated previously, this is moving the proposal further away from its original intention which was to provide for enhanced transparency around political advertising during electoral periods while maintaining freedom of expression on the one hand and the right to be informed on the other notwithstanding supporting a plurality of political opinion in and around elections. It is considered that the proposals to restrict the processing of personal data (that does not fall within the meaning of special categories of personal data) to five categories may give rise to adverse effects in respect of political advertising across all forms of media. Furthermore, processing of personal data (that does not fall within the meaning of special categories of personal data) is already well-established in the General Data Protection Regulation. All processing of personal data is already subject to the data minimisation principle. Additional restrictions, over and above what is set out in the General Data Protection Regulation, could give rise to unintended consequences, such as the withdrawal of political advertising services from the marketplace and may result in a de facto ban. The data minimisation principle already applies and allows political advertising publishers to determine the number of categories of personal data needed to deliver a political advertisement in the most effective manner. In this context, Ireland does not support the inclusion of Article 12(4) on page 4 – this could be replaced with text requiring the provision of political advertising services to confirm that personal data used for ad delivery is necessary for the purposes of delivering political advertising.
- On the issue of explicit consent, Ireland is of the view that a single consent should be sufficient for all targeted advertising, including political advertising, once those who opt to receive such targeted advertising, including political advertising, users are explicitly notified and are informed that their consent covers that scope in accordance with the relevant requirements of General Data Protection Regulation.

- On the suggested text in respect of Article 12, Ireland would like to make the following comments –
  - the word “separately” should be removed from Article 12(1)(b) – as set out earlier, a single consent that complies with the requirements of the General Data Protection Regulation, should be sufficient,
  - it would be preferable if the text in Article 12(3) could be brought into line with the language used in Article 28(2) of the Digital Services Act,
  - we would welcome clarifications to ensure that the text in Article 12(5) would apply to “independents”, i.e. politicians / candidates that do not belong to a political party, when communicating internally with their staff / organisational support,
  - it would be preferable if the third paragraph in the accompanying recital could be revised to allow for a single form of explicit consent to be provided. As set out earlier, a single consent that complies with the requirements of the General Data Protection Regulation, should be sufficient. The issue of multiple consents in respect to receive targeted advertising, targeting political advertising as well as for each category of personal data collected will potentially create lead to user frustration and fatigue, and
  - it would also be preferable if the fifth paragraph in the accompanying recital could be revised to confirm that the data minimisation principle applies and that the personal data used for ad delivery shall be only that which is necessary for the purposes of delivering political advertising.
- Lastly, on the definitions of “targeting techniques” and “ad delivery techniques” set out on page 6, it is unclear as the purpose of the accompanying recital. Accordingly, Ireland would welcome greater clarification on the intent behind the recital.

## LATVIA

1. Regarding Article 12 of Commission proposal – we can live with this drafting of Article 12.
    - We will continue to follow possible discussion about applying article 12 only to online activities. We are not against it per se, but still scrutinizing this aspect.
  2. Regarding document WK11321
    - We have comments on reference towards third country national permanently residing in the Union (..) We need to understand rationale for including these third country nationals as possible sponsors
    - Taking into account the current global situation we believe there are risks if political advertising sponsors are from third countries.
    - Nationally political parties in Latvia cannot be sponsored by third countries. So we would like to understand the rationale and necessity for this regulation, as well as to listen to the position of other countries.
  3. Finally we have extra general comment on to the entry into force of the regulation.
    - This period must be long enough to be able to properly implement the requirements and develop regulatory acts.
    - So in cases where regulatory acts are necessary my capital is insisting on at least one year.
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