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2021/0381 (COD)

Proposal for a

# REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

## on the transparency and targeting of political advertising

(Text with EEA relevance)

{SEC(2021) 575 final} - {SWD(2021) 355 final} - {SWD(2021) 356 final}

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### • Reasons for and objectives of the proposal

This proposal aims first and foremost to contribute to the proper functioning of the **internal market for political advertising** by laying down harmonised rules for **a high level of transparency of political advertising and related services**. These rules **will apply to providers of political advertising services**.

It also aims to protect natural persons with regard to the processing of personal data by laying down rules on the use of **targeting and amplification** techniques in the context of political advertising. These rules **will apply to all controllers -i.e., beyond providers of political advertising services,** making use of such targeting and amplification techniques.

Given that it is normally provided against remuneration, advertising, including political advertising, constitutes a service activity under Article 57 of the Treaty on the Functioning of the European Union ('TFEU'). This also applies to different activities related to political advertising, including the preparation of content and campaigns, its placement with a distribution medium and its publication and dissemination. As a result, EU natural and legal persons providing those services across borders enjoy the fundamental freedoms, in particular the freedom of establishment and the free movement of services, which are among the fundamental principles of the EU legal order. The cross-border provision of services entails the freedom to offer and provide the services into another Member State than the Member State of establishment. It also entails the freedom to receive services across borders. Free movement of service encompasses not only situations where the provider or the recipient moves across borders, but also situations where the service is provided across borders. The provision of advertising services is regulated in different ways in the various Member States according to the media used to publish or disseminate an advertisement (e.g. print, audiovisual, online platforms, etc.) and the purposes pursued by the applicable rules (e.g. consumer protection). Political advertising services are subject to additional specific rules imposing obligations on the sponsors – in particular political actors – and service providers.

**Political advertising services in the EU are developing**. The overall growth and particularly significant increase in relevant online services, in a context of unevenly enforced and fragmented regulation, has prompted concerns that the internal market is not currently equipped to provide political advertising to a high standard of transparency to ensure a fair and open democratic process in all Member States. Such concerns at regulatory gaps and insufficient transparency have already prompted some Member States to intervene with measures, and others are planning to intervene, but action at national level cannot close gaps in cross-border enforcement.

National regulation of political advertising imposes obligations on providers of political advertising services which condition the availability of political advertising and determine elements of its content to provide specific transparency. Such national rules aim, inter alia, to ensure accountability and the overall organisation of a fair and open political process, including by supporting the monitoring of the compliance of political actors with relevant obligations. These **national rules are significantly fragmented**, including as regards relevant definitions and the nature of obligations.

Fragmented definitions of political advertising across Member States pose challenges when it comes to establishing whether advertising qualifies as political. There are substantial differences in the scope and substance of the transparency obligations applicable to service providers providing services connected to political advertising within Member States and between Member States, depending on the means and the national political traditions, leading to fragmentation. Some Member States only forbid anonymous political advertising, others require specific information on funding or on the identity of the sponsor to be displayed on the advertisement and some Member States have requirements on the labelling of political advertisements or for there to be a clear separation between advertising and editorial content.

**Technological changes** – in particular in the online environment, which has enabled a proliferation of different new media and methods of funding, preparation, placement, promotion, publishing and dissemination of political advertising – **have made the fragmented situation, and the issues connected to monitoring and enforcement, more complex**. Sometimes it is not clear if requirements, which may be established by general rules contained in electoral laws, apply to all media including in the online environment, which is a source of further legal uncertainty for providers of political advertising services.

**This fragmentation will increase** as Member States develop new rules to address the need to ensure transparency of political advertisements, in particular in the context of technological developments. New ad hoc national rules will likely increase the fragmentation of the essential transparency elements, such as on the information needed to be published and its format, and of the scope of application these requirements. This is also likely to further decrease legal certainty, both for providers of political advertising services and the sponsors of the advertisements.

This **fragmentation** of transparency requirements creates barriers to the provision of services. It **entails specific compliance costs** for service providers which need to invest in determining the applicable standards and adapting advertising to the different jurisdictions while also being a source of legal uncertainty on the transparency requirements that apply to political advertising. This fragmentation also **limits the possibility** for service providers who could offer their political-advertising-related services in different Member States from entering the market in other Member States or to develop new services. It thus also **restricts the possibilities for the recipients of services** in the internal market and restricts the possibilities and choice for cross-border campaigning. Small and Medium-Sized Enterprises ('SMEs') in particular may lack the capacity to cope with determining and adapting to all the different national requirements and procedures. Concerns about to these barriers have been expressed by providers of political advertising services during the consultation carried out in preparation of this proposal.

This also has an impact on citizens and competent authorities, as the political advertising publishers and related services providers can be located in other Member State from those where citizens encountering the political advertising are, with specific oversight related issues.

The rapid technological change, increasingly fragmented and problematic regulatory context, and the increasing amounts being spent on political advertising **demonstrate the need to act** at the EU level to ensure the free movement of political advertising services across the Union while ensuring the high standard of transparency which makes electoral processes in the EU more open and fair.

The measures proposed are based on the analysis of existing or planned legislation of Member States in the field of political advertising.

In light of the context just described, this proposal should provide for harmonised transparency requirement applicable to economic actors providing political advertising and related services (that is activities that are normally provided for remuneration), related to the preparation, placement, promotion, publication and dissemination of political advertising, or to advertising directed to citizens in a Member State.

This proposal also aims to protect natural persons with regard to the processing of personal data by laying down rules on the use of targeting in the context of the dissemination of political advertising.

**Personal data** collected directly from citizens or derived through their online activity and behavioural profiling and other analysis **are used to target political messages** to citizens by directing advertisements to groups and to **amplify their impact and circulation** by tailoring the content and its dissemination on the basis of characteristics determined through the processing of these personal data and their analysis. The processing of personal data for such purposes, particularly data considered sensitive under Regulation (EU) 2016/679 and Regulation (EU) 2018/1725, has been observed to have **specific negative effects on citizens' rights** including their freedoms of opinion and of information, to make political decisions and exercise their voting rights. Some Member States have also attempted or are considering intervention with respect to targeting. In a context where rules on the protection of natural persons with regard to the processing of their personal data and on the free movement of such data is harmonised, action at the Union level is needed and appropriate to ensure specific additional protection of personal data when it is used in the context of targeting political advertising.

Therefore, this proposal should also address the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the processing of personal data by all controllers -i.e., beyond providers of political advertising services.

The need to deal with these issues was announced in the political guidelines of the President of the Commission and is in line with the European Democracy Action Plan[1] ('EDAP') presented by the Commission in December 2020. The Action Plan recognised the need for more transparency in political advertising and communication, and the commercial activities surrounding it, in order for citizens, civil society and responsible authorities to clearly see the source and purpose of such advertising.

It is necessary to put these measures in place in 2023 in order for them to be effective ahead of the 2024 elections to the European Parliament.

- **Consistency with existing policy provisions in the policy area**

This proposal complements the proposal for the Digital Services Act ('DSA')[2], which includes certain general transparency obligations for online intermediaries as regards the transparency of online advertising, and the wider EU framework for the digital services

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423

[2] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers and https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services

market[3]. It will cover both online and offline activities. Compared to the DSA, it expands the categories of information to be disclosed in the context of political advertising, as well as the scope of the relevant service providers concerned. While the DSA imposes transparency requirements on online platforms, this initiative covers the entire spectrum of political advertising publishers, as well as other relevant service providers involved in the preparation, placement, promotion, publication and dissemination of political advertising. There is complementarity and synergies with the requirement under the DSA to have assessments of systemic risks by very large online platforms stemming from the functioning and use of systems for selecting and displaying advertisement, with actual or foreseeable effects related to electoral processes.

The proposal is in line with the election package presented in September 2018 including the Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns[4] which promotes cooperation among competent authorities at national and Union level to protect election and contains specific recommendations aiming at fostering the transparency of political communication as well as the guidance on the application of Union data protection law supporting compliance with Regulation (EU) 2016/679.

Regulation (EU) 2016/679 and other Union rules on protection of personal data and privacy of communications (including Regulation (EU) 2018/1725 and Directive 2002/58/EC) already apply to the processing of personal data in the context of political advertising. This proposed Regulation builds upon and complements the provisions applicable to the processing of personal data in the context of political advertising contained in Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. It codifies elements of the guidance provided by the European Data Protection Board by making mandatory in the context of political advertising information to be provided to the data subject (source of the data and logic involved)[5].

It also builds upon the EU Code of Practice on Disinformation, which sets out commitments by online platforms with respect to the transparency of political advertising and issue-based advertising and which is presently under revision by the Code's existing signatories and prospective signatories, in line with the Commission's Guidance on Strengthening the Code of Practice[6]. Commitments and actions taken under the Code of Practice should build a bridge towards the present legislation with industry-led practical solutions. Once the present legislation is adopted, the Code's signatories should implement and complement its rules also within the framework of the Code of Practice.

To the extent that such obligations fall within the remit of regulators designated within these existing frameworks, they should be monitored and enforced by the same bodies, and coordinated among the relevant existing and envisaged European cooperation structures, including the European Data Protection Board. The European Cooperation Network on Elections established in 2018 and bringing together the contact points of national elections networks composed of different authorities with competence in the subject area should

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3 This includes non-binding https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online; as well as a voluntary https://ec.europa.eu/newsroom/just/document.cfm?doc_id=42985

4 https://ec.europa.eu/info/sites/default/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf

5 https://edpb.europa.eu/system/files/2021-04/edpb_guidelines_082020_on_the_targeting_of_social_media_users_en.pdf

6 European Commission Guidance on Strengthening the Code of Practice on Disinformation (COM(2021) 262 final) https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation

provide a framework to support enhanced coordination and exchange of best practice between competent authorities in the context of political advertisement.

- **Consistency with other Union policy**

This proposal is also closely related to the work being done on the other initiatives in the transparency and democracy package of the Commission Work Programme.[7]

The European Democracy Action Plan includes a number of initiatives to help protect election integrity and promote democratic participation. It builds among others upon the experience gathered in the context of the implementation Commission's 2018 Electoral Package[8] and the work of the European Cooperation Network on Elections.

This proposal is also complementary to the proposal to amend Regulation (EU) 1141/2014 on the statute and funding of European Political Parties and Foundations. The amendment to this Regulation presented by the Commission contains specific rules aiming at guaranteeing that European Political Parties comply with high transparency standards when disseminating political advertisements.

Finally, this proposal is in synergy with the efforts led by the EU externally, in the field of election observation (EU Election Observation Missions and their follow-up). Election observation missions (EOMs) assess online political advertising during election campaigns and may recommend measures to improve their regulatory framework during an electoral process. The European Union then advises and supports partner countries in implementing these recommendations, together with international partners. Common guidelines on observation of the online campaign have been developed in the context of the Declaration of Principles (DoP) for International Election Observation endorsed by the UN.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is in the first place Article 114 of the Treaty on the Functioning of the European Union ('TFEU'), which provides for the adoption of measures to ensure the establishment and functioning of the internal market. This provision enables measures for the approximation of the provisions laid down by law, regulation or administrative action in the Member States which have as their object the establishment and functioning of the internal market. It is the appropriate legal basis for an intervention covering service providers in the internal market and addressing differences between Member States' provisions which obstruct the fundamental freedoms and have a direct effect on the functioning of the internal market.

Differences in national laws exist and are developing, given that some Member States have legislated or intend to legislate on transparency requirements applicable to political advertisement services. This situation creates regulatory fragmentation insofar as the rules addressing transparency of political advertising services diverge in the specific elements of transparency that they require (the information to be disclosed with an advertisement and its format) and their scope (the types of advertisement considered political and the media addressed) and increase compliance costs for service providers operating in the internal

[7] https://ec.europa.eu/info/sites/info/files/2021_commission_work_programme_annexes_en.pdf

[8] See https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights_en

market. Without action at Union level, this will be further aggravated with the adoption of new initiatives in some Member States, whereas in other Member States the transparency of political advertising services remain unaddressed. Harmonisation at EU level is thus necessary and Article 114 TFEU is the relevant legal basis for this initiative. This initiative will remove certain existing obstacles related to transparency and genuinely enhance the functioning of the internal market. It is not necessary to the functioning of the internal market nor appropriate in light of the competences of the Union to intervene by way of national rules which limit the availability of political advertising services to certain categories of sponsor or period, or which cap the funding or medium which may be used. Such rules are intrinsic to national electoral law and do not form part of the functioning of the internal market.

In addition, considering that this proposal contains certain specific rules on the protection of individuals with regard to the processing of personal data, notably restrictions of targeting techniques considered to negatively affect rights when used in the context of political advertising, it is appropriate to base this regulation, in as far as those specific rules are concerned, on Article 16 TFEU.

- **Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity laid down in Article 5(3) of the Treaty on European Union (TEU), action at EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU.

Several Member States have legislated or intend to legislate in the field of transparency of political advertising. As these rules diverge in their scope, content and effect, a patchy framework of national rules is appearing and risks becoming more fragmented. This undermines the effective exercise of the freedom of establishment and the freedom to provide services in the Union.

Furthermore, the cross-border nature of some of the activities, including in the online environment, creates significant challenges to purely national regulation in this domain. It is unlikely that Member States acting independently would be able to effectively address the identified problems. Moreover, the distinction between purely domestic and potentially cross-border situations is in practice difficult.

The need for EU action was also demonstrated by the action of certain providers of political advertising services and of the political actors making use of them. During the last European elections, some large online platforms took steps to address the challenge presented by legal uncertainty and fragmentation of the internal market which resulted in partitioning it. This proved a significant issue for sponsors of political advertising i.e. political parties seeking to publish and disseminate political advertising EU-wide.

EU common high transparency standards for political advertising and related services would bring enhanced legal certainty especially for service providers. The incremental compliance costs of delivering a service across borders would be removed, and the non-compliance risk reduced. This in turn would remove the incentive for providers of political advertising services to partition the internal market, provide a fresh incentive for the provision of cross-border services and for the development of new ones.

In contrast, the effects of any action taken under national law would be limited to a single Member State and would risk being circumvented or difficult to oversee in relation to service providers from other Member States, and could conflict with the free movement within the

internal market. This would also not address the EU-wide problems identified and can also exacerbate the effects of fragmentation. An EU system would also help competent authorities in their oversight functions, other stakeholders to exercise their role in the democratic process and increase the overall resilience of the EU to information manipulation and interference in electoral processes, including disinformation.

The proposed Regulation does not go beyond what is necessary and in particular does not address other issues related to political advertising beyond transparency and the use of targeting techniques. It does not interfere with other aspects regulated at national level like the legality of the content of political advertisement and the periods during which advertisements are permitted, or the nature of participants in the democratic process.

This proposed Regulation does not necessarily provide for the creation of any additional authorities or bodies at Member State level. It entrusts the supervision and enforcement of its provisions to relevant competent national authorities, including those with designated tasks under existing related Union legislation. Member States may therefore appoint and draw upon the expertise of existing sectorial authorities who will also be entrusted with the powers to monitor and enforce the provisions of this Regulation. Member States will be responsible to ensure that these authorities have the necessary capacity to ensure the protection of citizens' rights in the context of transparent political advertising.

Member States will rely on cooperation structure designated at Union level. They will have to designate the authorities under the Regulation (EU) 2016/679 to monitor compliance with the provisions on targeting established by this regulation. The European Data Protection Board and the consistency mechanism established under that Regulation will apply accordingly.

This regulation will support national competent authorities to perform their tasks more efficiently, especially regarding online and cross-border advertising, by requiring the provision of information about political advertising services.

Cooperation between competent authorities to perform their tasks will be essential. National elections networks established on the basis of Recommendation C(2018) 5949 final provide for a structure for such a cooperation between authorities at national level while respecting the competence of each authority part of this network.

The Commission will support cooperation among authorities at Union level including in the frame of the European Cooperation Network on Elections.

This will support the emergence of a European regulated and innovative market for political adverting services which is trusted by citizens and which supports the integrity of the democratic process.

- **Proportionality**

Regarding proportionality, the content and form of the proposed action does not exceed what is necessary to achieve the goal of ensuring the proper functioning of the internal market.

The proposal builds on existing and upcoming EU legal frameworks, including Regulation (EU) 2016/679 and the Digital Services Act, and is proportionate and necessary to achieve its objectives. The envisaged measures are necessary to tackle the fragmentation of the relevant regulatory framework.

The proportionality of the transparency obligations has been carefully considered and is reflected for example in the establishment of asymmetric obligations to different types of providers of political advertising services. Other options, such as banning the provision of cross border political advertising services or the targeting for political advertising purposes in all situations, were discarded as they appeared disproportionate to attain the objectives pursued with this Regulation.

The proposal establishes limited transparency obligations for all providers of political advertising services involved in the preparation, placement, promotion, publication and dissemination of political advertising, including the keeping of records of their involvement in the specific political advertisement. Advertising publishers, which are in direct contact with the citizens, must in turn comply with specific transparency obligations, including the preparation and publication of a transparency notice for each advertisement published. SMEs are exempted from periodic reporting on political advertising and are allowed to appoint an external person as contact point for interaction with competent national authorities. The Commission intends to foster compliance efforts resulting from this Regulation by supporting training, awareness raising and other measures.

The costs incurred by operators are proportionate to the objectives achieved and the economic and reputational benefits that operators can expect from this proposal. The removal of the obstacles resulting from legal uncertainty and fragmentation will foster the development of a European industry of political advertising services based on high transparency standards, and will enable existing national enterprises to scale up.

The limitations on the targeting of political advertising are proportionate because they are strictly limited in scope to the specific targeting activities in the political context that have been identified as posing a significant risk to individual's fundamental rights.

- **Choice of the instrument**

Article 114 and Article 16 TFEU grant the legislator the power to adopt regulations and directives.

A Regulation is considered to be the most appropriate legal instrument to define the framework for transparency of political advertising in the Union. The choice of a regulation as a legal instrument is justified by the need for a uniform application of the new rules, such as the definition of political advertising and the transparency obligations that providers of political advertising services must fulfil when preparing or disseminating political advertisements.

The direct applicability of a Regulation in accordance with Article 288 TFEU will reduce legal fragmentation and provide greater legal certainty by introducing high transparency standards for political advertising, which will provide legal certainty for relevant service providers and prevent divergences hampering the free provision of the relevant services within the internal market.

Nonetheless, the provisions of the proposed regulation do not impinge on national competences for the organisation of the electoral process and leave room for industry to establish standards to enable the efficient publication and transmission of information under the regulation, to streamline compliance and foster innovation.

As regards the framing of specific targeting techniques, using a Regulation is in line with Regulation (EU) 2016/679, which is itself a Regulation.

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is the result of extensive consultation with stakeholders, in which the general principles and minimum standards for consultation of interested parties were applied by the Commission.

A consultation on the Inception Impact Assessment published on 26 January 2021 provided information to develop the problem definition and policy options. An open public consultation (OPC) took place from 22 January to 2 April 2021. The OPC was promoted through the Commission's website, as well as through specific networks.

The Commission organised meetings with key stakeholders to gather additional evidence and data on the specific problems addressed by the initiative, as well as on the policy approach and its impact. It also conducted targeted bilateral consultations and analysed numerous position and analytical papers received especially in the context of the preparation of the initiative. The preparation of the Impact Assessment underpinning the initiative was supported by an external study. The contractor conducted a series of individual consultations with key stakeholders.

**Overall**, there is a general agreement amongst stakeholders on a need for action at Union level. A large majority of stakeholders agree that legislative gaps exist or that new legislation is needed. A limited amount voiced concerns referring to electoral matters as a national prerogative.

The OPC shows that the majority of **citizens** believe that publishers of political advertising should retain certain basic information from those placing such advertisements.

**Providers of political advertising services** have asked in particular for a common EU definition that allow them to determine which advertisement are political advertisement and a common approach to provide for proportionate requirements to label sponsored political advertisement, including as regards the identity of the sponsor of the advertisement. Providers pointed to uncertainty and costs related to identifying and complying with relevant transparency obligations when offering political advertising services across borders or in multiple Member States.

**Civil society organizations** supported especially high transparency around political advertisement including which advertisements are shown to whom, why, and who has paid for them. They considered that soft measures were not sufficient in this perspective. They also requested the issue of targeting to be addressed beyond transparency.

**Member States** welcomed the initiative and agreed with the need to regulate at EU level political advertising. Member States also supported measures that will enhance access by researchers to more information on political advertising. Member States underlined the existence of regulatory and enforcement gaps when political advertising services are provided across borders.

**European Political Parties** pointed out that labelling measures that help citizens identify when they are being exposed to a political advertisement will contribute to strengthen European democracy. They were particularly concerned about how the policy implemented

by some very large platforms online during the previous elections to the European Parliament negatively affected their activities at EU/cross border level.

- **Collection and use of expertise**

The Commission has relied on a wide array of expertise for the preparation of this proposal.

Relevant work in the Council (including in the competent working parties) and in the European Parliament (including in the Committees in charge of Constitutional Affairs, Legal Affairs; Civil Liberties, Internal Market and Consumer Protection, Justice and Home Affairs and the Special Committee on Foreign Interference) has provided significant input to this process.

In addition to the OPC, described above, the Commission has engaged in several stakeholders meetings, with questions tailored for each category.

On 18 March 2021, the Commission discussed the initiative with Member Sates' expert in a dedicated meeting of the Rapid Alert System. Representatives of Member States and of the European Regulators Group for Audiovisual Media Services were present. Member States' experts were also consulted on 25 March 2021, in the framework of the European Cooperation Network on Elections. Information was also obtained from the input of Member States in previous meetings of this network since 2019, including in the preparation of an extensive mapping of relevant national laws and procedures.

Finally, the study supporting the Impact Assessment integrates a literature review which shows that there is an emerging academic consensus on the need for specific transparency for political advertising and controls on the use of personal data in connection with political advertising (in particular online).

Guidance from international standard setting bodies such as the Council of Europe also call for specific transparency of political advertising, including in particular on sponsor and funding, and where online, on the mechanism for delivery (e.g. algorithms, data).

- **Impact Assessment**

In line with its "Better Regulation" policy, the Commission conducted an Impact Assessment for this proposal examined by the Commission's Regulatory Scrutiny Board. A meeting with the Regulatory Scrutiny Board was held on 29 September 2021, which was followed by a positive opinion with reservations. The Impact Assessment was further revised to accommodate the reservations of the Regulatory Scrutiny Board.

The Commission examined different policy options to achieve the general objective of the proposal, which is to ensure the proper functioning of the single market by setting out rules for a high level of transparency for political advertising and related services and rules on the use of targeting in the context of the dissemination of political advertising.

Two policy options of different degrees of regulatory intervention were assessed:

- Option 1: Limited measures to promote transparency and to address issues with targeting;
- Option 2: Measures to harmonise transparency and to address issues with targeting. This Option included two sub-options concerning targeting.

According to the Commission's established methodology, each policy option was evaluated against economic, fundamental rights and societal impacts. The preferred option were option 2 and sub option 2 for the use of targeting, as these best meet the general objectives of the

intervention and would establish a coherent and proportionate framework for political advertising in the EU.

By clarifying and harmonising the rules on the retention and provision of information in political advertising for the purposes of oversight and accountability, it would remove the key driver of compliance costs in multi-Member State and cross-border service provision. In addition, it would add legal predictability for intermediary services active in several Member States, contributing to the good functioning of the internal market. This would also improve regulatory outcomes, removing the justification for national market segmentation, thereby increasing opportunities for cross-border services to develop. The advantage derived from regulatory fragmentation by providers of political advertising services for online ads compared to offline media would reduce. The impact on SMEs is limited by a tailored obligation on periodic reporting on political advertising and by allowing them to appoint an external person as contact point for interaction with competent national authorities.

The measures on targeting would address the problematic targeting techniques while also providing for its use in a manner which incentivises good practice.

Sub option 2 contemplated a conditional ban on targeting, but it was envisaged that the suboptions could be combined. A non-conditional prohibition on targeting on the basis of special categories of personal data has been deemed to be more effective and has thus been included in this proposal. The prohibition of targeting on the basis of special categories of personal data also counts with the support of stakeholders consulted during the preparation of the Impact assessment.

Tailored restrictions would limit the availability of targeting services in the context of the dissemination of political advertising. This would be outweighed by opportunities for providers of political advertising services resulting from increased trust among citizens and regulators in the technique and from greater legal certainty of compliance in its use in the political context.

Harmonised transparency and specific limits will reduce the scope of problematic targeting tactics such as the inauthentic amplification of certain ads, or those uncovered in the *Cambridge Analytica* scandal. These measures should enhance trust in the use of political ads, and more generally in the political debate and the integrity of the electoral process. It would contribute to a higher resilience of the EU electoral system to information manipulation and interference.

- **Regulatory fitness and simplification**

The benefit of harmonising the rules on the transparency around political advertising is notably that it will bring EU-wide legal certainty, remove the incremental compliance costs of delivering a service across borders, and reduce the non-compliance risk. All providers of political advertising services are expected to derive cost efficiencies when offering services through a common framing of political advertising.

SMEs would benefit from the proposed measures as they will be able to offer their services more easily in the internal market. The proposal contains specific derogations for SMEs to reduce their compliance costs.

The proposal contains a common set of rules that will not discriminate between online and off line and address issues resulting from the current situation where existing rules are tailored to off line activities with gaps and loopholes resulting from this. The Regulation will ensure that

the requirements to provide high transparency apply to off line and on line means of disseminating political lines on the same way.

- **Fundamental rights**

All measures envisaged under this proposal have a positive impact on fundamental rights, and are not expected to have significant negative impact on fundamental rights.

Fundamental freedoms and fundamental rights can be restricted only where it is justified by the pursuit of a legitimate public interest and only under the condition that the restriction is proportionate to the objective pursued. The guarantee of transparency, fairness and equal opportunities in political in the electoral process and the fundamental right to be informed in an objective, transparent and pluralistic way constitute an overriding reason of public interest.

This proposal imposes limited restrictions on the freedom of expression and information (Article 11 of the Charter of Fundamental Rights of the European Union), the right to private life (Article 7) and right to the protection of personal data (Article 8). Those restrictions are proportionate and limited to the minimum necessary.

As for freedom of expression, the decision regarding publication and dissemination of political advertisements as such, and their content, remain regulated on the basis of relevant national and EU law. Beyond the requirements for transparency, the initiative does not interfere with the substantive content of political messages. While a limitation of targeting techniques could impact freedom of expression, this impact would be proportionate if limited in scope and balanced by positive impacts on other fundamental rights, including as linked to reducing the possibility of manipulation of the democratic debate and the right to be informed in an objective, transparent and pluralistic way. The enhanced transparency, conditions and restrictions on targeting should benefit the right to data protection and privacy of persons targeted with such advertising. Measures which would identify a natural person as the sponsor of a political advertisement and the amount of money spent on and the value of other benefits received in part or full exchange for an advertisement impact the protection of personal data and have to be proportionate to the policy aim sought: to ensure that individuals engaged in the political debate use political advertising transparently. The impact on these rights is justified by the overall positive effect on democracy and electoral rights.

Where this initiative requires very large online platforms to facilitate data access by interested actors, such measures would not provide for any derogations from the EU data protection acquis. Only relevant data should be made accessible to stakeholders including to conduct research on practices affecting the democratic debate and elections or referendums.

This initiative will support the exercise of electoral rights and will support free and fair elections and a fair democratic debate, by facilitating transparent cross-border political advertising which guaranteeing a high level of protection of rights, including as regards the protection of personal data and ensuring that citizens are able to make informed political choices without manipulation or coercion. Furthermore, the limitations to targeting practices are coherent with, and have a positive impact on electoral rights as protected by international standards.

Finally, this proposal will also support provider of political advertising services in the exercise of their freedom to conduct a business under Article 16 of the Charter.

## 4. BUDGETARY IMPLICATIONS

No budgetary implications are expected for this initiative.

## 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will assess the implementation of the initiative following each European Parliamentary election based on specific data collection conducted by a specialised contractor. Within two years after each election to the European Parliament, the Commission should publish a report evaluating the implementation of this Regulation including aspects that go beyond elections to the European Parliament.

- **Detailed explanation of the specific provisions of the proposal (check cross references)**

Chapter I sets out the general provisions, including the subject matter and scope (Article 1), the definitions of key terms used in the Regulation (Article 2) and the level of harmonisation of such measures (Article 3).

Chapter II contains provisions on the transparency obligations applicable to paid political advertising. It establishes measures applicable to all providers of political advertising services involved in the preparation, placement, promotion, publication or dissemination of political advertising. In particular, it provides for transparency in political advertising (Article 4), an obligation to identify political advertisements (Article 5), and an obligation to keep records and transmit information to advertising publishers (Article 6).

Furthermore, this Chapter also establishes obligations applicable only to advertising publishers, additional to those in Articles 4, 5 and 6. Advertising publishers shall include in each advertisement a clear statement to the effect that it is of a political nature, indicate the name of the sponsor, and make available information to enable the wider context of the political advertisement and its aims to be understood (Article 7). Advertising publishers shall publish annually information on the amounts or the value of other benefits received in part or full exchange for the services they have provided connected to political advertisements (Article 8). They shall put in place user-friendly mechanisms to enable citizens to notify them of advertisements that do not comply with the obligations established in this Regulation (Article 9).

Providers of political advertising services shall transmit the relevant information to competent authorities (Article 10) and to other interested entities (Article 11).

Chapter III regulates the use of targeting or amplification techniques involving the processing of personal data for political advertising purposes. When sensitive data are at stake, a prohibition applies accompanied by specific exemptions. Further, controllers making use of these techniques for political advertising purposes shall adopt and implement an internal policy, keep records, and provide information to allow individuals to understand the logic involved and main parameters of the targeting used, and the involvement of third-party data and additional analytical techniques (Article 12). Article 12 provides further requirements for advertising publishers. Controllers within the scope of Article 13 shall take the appropriate measures to be able to transmit the information to interested entities (Article 13).

Chapter IV lays down the provisions concerning the supervision and enforcement of this Regulation. It lays down an obligation for providers of political advertising services not established in the Union to appoint a legal representative in one of the Member States where they provide their services (Article 14); it lays down which authorities are entrusted with the supervision and enforcement of specific the measures set out in this Regulation; it requests Member States to ensure cooperation among the relevant competent authorities; it asks for the designation of contact points for the purposes of this Regulation and mandates Member States to take appropriate measures to ensure the exchange of information among them (Article 15). Member States are to lay down rules on sanctions applicable to breaches of the obligations established in this Regulation (Article 16). This Chapter also establishes an obligation for Member States to publish the dates of national electoral periods in an easily accessible place (Article 17).

Chapter V provides further final provisions, such as the evaluation and review clause (Article 18) and the possibility to adopt delegated acts (Article 19). Finally, the remaining provision in this Chapter is the specification of the entry into force and date of application of the Regulation (Article 20).

2021/0381 (COD)

Proposal for a

# REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

## on the transparency and targeting of political advertising

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[9],

Having regard to the opinion of the Committee of the Regions[10],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The supply of and demand for political advertising are growing and increasingly cross-border in nature. A large, diversified and increasing number of services are associated with that activity, such as political consultancies, advertising agencies, "ad-tech" platforms, public relations firms, influencers and various data analytics and brokerage operators. Political advertising can take many forms including paid content, sponsored search results, paid targeted messages, promotion in rankings, promotion of something or someone integrated into content such as product placement, influencers and other endorsements. Related activities can involve for instance the dissemination of political advertising upon request of a sponsor or the publication of content against payment.

(2) Political advertising can be disseminated or published through various means and media across borders. It can be disseminated or published via traditional offline media such as newspapers, television and radio, and also increasingly via online platforms, websites, mobile applications, computer games and other digital interfaces. The latter are not only particularly prone to be offered cross-border, but also raise novel and difficult regulatory and enforcement challenges. The use of online political advertising is strongly increasing, and certain linear offline forms of political advertising, such as radio and television, are also offered online as on-demand services. Political advertising campaigns tend to be organised to make use of a range of media and forms.

(3) Given that it is normally provided against remuneration, advertising, including political advertising, constitutes a service activity under Article 57 of the Treaty on the

[9] OJ C , , p. .
[10] OJ C , , p. .

Functioning of the European Union ('TFEU'). In Declaration No 22, regarding persons with a disability, annexed to the Treaty of Amsterdam, the Conference of the Representatives of the Governments of the Member States agreed that, in drawing up measures under Article 114 of the TFEU, the institutions of the Union are to take account of the needs of persons with disabilities.

(4) The need to ensure transparency is a legitimate public goal, in conformity with the values shared by the EU and its Member States pursuant to Article 2 of the Treaty on European Union ('TEU'). It is not always easy for citizens to recognise political advertisements and exercise their democratic rights in an informed manner. A high level of transparency is necessary, among others, to support an open and fair political debate and free and fair elections or referendums and to combat disinformation and unlawful interference including from abroad. Political advertising can be a vector of disinformation in particular where the advertising does not disclose its political nature, and where it is targeted. Transparency of political advertising contributes to enabling voters to better understand when they are being presented with a political advertisement on whose behalf that advertisement is being made, and how they are being targeted by an advertising service provider, so that voters are better placed to make informed choices.

(5) In the context of political advertising, targeting techniques are frequently used. Targeting or amplification techniques should be understood as techniques that are used either to address a tailored political advertisement only to a specific person or group of persons or to increase the circulation, reach or visibility of a political advertisement. Given the power and the potential for the misuse of personal data of targeting, including through microtargeting and other advanced techniques, such techniques may present particular threats to legitimate public interests, such as fairness, equal opportunities and transparency in the electoral process and the fundamental right to be informed in an objective, transparent and pluralistic way.

(6) Political advertising is currently regulated heterogeneously in the Member States, which in many cases tends to focus on traditional media forms. Specific restrictions exist including on cross-border provisions of political advertising services. Some Member States prohibit EU service providers established in other Member States from providing services of a political nature or with a political purpose during electoral periods. At the same time, gaps and loopholes in national legislation are likely to exist in some Member States resulting in political advertising sometimes being disseminated without regard to relevant national rules and thus risking undermining the objective of transparency regulation for political advertising.

(7) To provide enhanced transparency of political advertising including to address citizens' concerns, some Member States have already explored or are considering additional measures to address the transparency of political advertising and to support a fair political debate and free and fair elections or referendums. These national measures are in particular considered for advertising published and disseminated online and may include further prohibitions. These measures vary from soft to binding measures and imply different elements of transparency.

(8) This situation leads to the fragmentation of the internal market, decreases legal certainty for providers of political advertising services preparing, placing, publishing or disseminating political advertisements, creates barriers to the free movement of related services, distorts competition in the internal market, including between offline

and online service providers, and requires complex compliance efforts and additional costs for relevant service providers.

(9) In this context, providers of political advertising services are likely to be discouraged from providing their political advertising services in cross-border situations. This is particularly true for microenterprises and SMEs, which often do not have the resources to absorb or pass on the high compliance costs connected to the preparation, placement, publication or dissemination of political advertising in more than one Member State. This limits the availability of services and negatively impacts the possibility for service providers to innovate and offer multi-medium and multi-national campaigns within the internal market.

(10) A consistent and high level of transparency of political advertising throughout the Union should therefore be ensured when political advertising services are provided, while divergences hampering the free circulation of related services within the internal market should be prevented, by laying down uniform transparency obligations for providers of political advertising services guaranteeing the uniform protection of rights of persons and supervision throughout the internal market based on Article 114 of the TFEU.

(11) Member States should not maintain or introduce, in their national laws, provisions diverging from those laid down in this Regulation, in particular more or less stringent provisions to ensure a different level of transparency in political advertising. Full harmonisation of the transparency requirements linked to political advertisement increases legal certainty and reduces the fragmentation of the obligations that service providers meet in the context of political advertising.

(12) Full harmonisation of the transparency requirements should be without prejudice to the freedom of providers of political advertising services to provide on a voluntary basis further information on political advertising, as part of the freedom of expression protected under Article 11 of the Charter of Fundamental Rights.

(13) This Regulation should not affect the substantive content of political advertising nor rules regulating the display of political advertising including so-called silence periods preceding elections or referendums.

(14) The Regulation should provide for harmonised transparency requirement applicable to economic actors providing political advertising and related services (i.e. activities that are normally provided for remuneration); those services consist in particular of the preparation, placement, promotion, publication and dissemination of political advertising. The rules of this Regulation that provide for a high level of transparency of political advertising services are based on Article 114 of the TFEU. This Regulation should also address the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the processing of personal data. The rules of this Regulation that address the use of targeting and amplification are based on Article 16 of the TFEU. Political advertising directed to individuals in a Member State should include advertising entirely prepared, placed or published by service providers established outside the Union but disseminated to individuals in the Union. To determine whether a political advertisement is directed to individuals in a Member State, account should be taken of factors linking it to that Member State, including language, context, objective of the advertisement and its means of dissemination.

(15) There is no existing definition of political advertising or political advertisement at Union level. A common definition is needed to establish the scope of application of the harmonised transparency obligations and rules on targeting and amplification. This definition should cover the many forms that political advertising can take and any means and mode of publication or dissemination within the Union, regardless of whether the source is located within the Union or in a third country.

(16) The definition of political advertising should include advertising published or disseminated directly or indirectly by or published or disseminated directly or indirectly for or on behalf of a political actor. Since advertisements by, for or on behalf of a political actor cannot be detached from their activity in their role as political actor, they can be presumed to be liable to influence the political debate, except for messages of purely private or purely commercial nature.

(17) The publication or dissemination by other actors of a message that is liable to influence the outcome of an election or referendum, legislative or regulatory process or voting behaviour should also constitute political advertising. In order to determine whether the publication or dissemination of a message is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, account should be taken of all relevant factors such as the content of the message, the language used to convey the message, the context in which the message is conveyed, the objective of the message and the means by which the message is published or disseminated. Messages on societal or controversial issues may, as the case may be, be liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

(18) Practical information from official sources regarding the organisation and modalities for participation in the elections or referendums should not constitute political advertising.

(19) Political views expressed in the programmes of audiovisual linear broadcasts or published in printed media without direct payment or equivalent remuneration should not be covered by this Regulation.

(20) For the purpose of this Regulation, election should be understood as the elections to the European Parliament as well as all elections or referendums organised at national, regional and local level in the Member States and elections to establish political party leadership. It should not include other forms of elections such as privately organised ballots.

(21) It is necessary to define political advertisement as an instance of political advertising. Advertisements include the means by which the advertising message is communicated, including in print, by broadcast media or via an online platforms service.

(22) Political actors within the meaning of this Regulation should refer to concepts defined under Union law, as well as under national law in line with international legal instruments such as those of the Council of Europe. The concept of political parties should include their affiliated and subsidiary entities established, with or without legal personality, in order to support them or pursue their objectives, for instance by engaging with a specific group of voters or for a specific electoral purpose.

(23) The concept of political actors should also include unelected officials, elected officials, candidates and members of Government at European, national, regional or local level. Other political organisations should also be included in that definition.

(24) An advertising campaign should refer to the preparation, publication and dissemination of a series of linked advertisements in the course of a contract for political advertising, on the basis of common preparation, sponsorship and funding. It should include the preparation, placement, promotion, publication and dissemination of an advertisement or versions of an advertisement on different media and at different times within the same electoral cycle.

(25) The definition of political advertising should not affect national definitions of political party, political aims or campaign periods at national level.

(26) In order to cover the broad range of relevant service providers connected to political advertising services, providers of political advertising services should be understood as comprising providers involved in the preparation, placement, promotion, publication and dissemination of political advertising.

(27) The notion of political advertising services should not include messages that are shared by individuals in their purely personal capacity. Individuals should not be considered as acting in their personal capacity if they are publishing messages the dissemination or publication of which is paid for by another.

(28) Once an advertisement is indicated as being connected to political advertising, this should be clearly indicated to other service providers involved in the political advertising services. In addition, once an advertisement has been identified as political advertisement, its further dissemination should still comply with transparency requirements. For instance, when sponsored content is shared organically, the advertising should still be labelled as political advertising.

(29) The rules on transparency laid down in this Regulation should only apply to political advertising services, i.e. political advertising that is normally provided against remuneration, which may include a benefit in kind. The transparency requirements should not apply to content uploaded by a user of an online intermediary service, such as an online platform, and disseminated by the online intermediary service without consideration for the placement, publication or dissemination for the specific message, unless the user has been remunerated by a third party for the political advertisement.

(30) The transparency requirements should also not apply to the sharing of information through electronic communication services such as electronic message services or telephone calls, as long as no political advertising service is involved.

(31) Freedom of expression as protected by Article 11 of the Charter of Fundamental Rights covers an individual's right to hold political opinions, receive and impart political information and share political ideas. Every limitation to it has to comply with Article 52 of the Charter of Fundamental Rights and that freedom can be subject to modulations and restrictions where they are justified by the pursuit of a legitimate public interest and comply with the general principles of EU law, such as proportionality and legal certainty. That is inter alia the case where the political ideas are communicated through advertising service providers.

(32) As regards online intermediaries, Regulation (EU) 2021/XX [Digital Services Act] applies to political advertisements published or disseminated by online intermediaries through horizontal rules applicable to all types of online advertising, including commercial and political advertisements. Based on the definition of political advertising established in this Regulation, it is appropriate to provide additional granularity of the transparency requirements laid out for advertising publishers falling under the scope of Regulation (EU) 2021/XX [Digital Services Act], notably very

large platforms. This concerns in particular information related to the funding of political advertisements. The requirements of this Regulation leave unaffected the provisions of the Digital Services Act, including as regards risk assessment and mitigation obligations for very large online platforms as regards their advertising systems.

(33) The preparation, placement, promotion, publication and dissemination of political advertising can involve a complex chain of service providers. This is the case in particular where the selection of advertising content, the selection of targeting criteria, the provision of data used for the targeting of an advertisement, the provisions of targeting techniques, the delivery of an advertisement and its dissemination may be controlled by different service providers. For instance, automated services can support matching the profile of the user of an interface with the advertising content provided, using personal data collected directly from the user of the service and from the users' online conduct, as well as inferred data.

(34) In view of the importance of guaranteeing in particular the effectiveness of the transparency requirements including to ease their oversight, providers of political advertising services should ensure that the relevant information they collect in the provision of their services, including the indication that an advertisement is political, is provided to the political advertising publisher which brings the political advertisement to the public. In order to support the efficient implementation of this requirement, and the timely and accurate provision of this information, providers of political advertising services should consider and support automating the transmission of information among providers of political advertising services.

(35) Where an artificial commercial or contractual construction risks circumventing the effectiveness of the transparency obligations laid down in the Regulation, those obligations should apply to the entity or entities that in substance provide the advertising service.

(36) Steps could also include providing an efficient mechanism for individuals to indicate that a political advertisement is political, and taking effective action in response to such indications.

(37) While providing for specific requirements, none of the obligations laid down in this Regulation should be understood as imposing a general monitoring obligation on intermediary service providers for political content shared by natural or legal persons, nor should they be understood as imposing a general obligation on intermediary service providers to take proactive measures in relation to illegal content or activities which those providers transmit or store.

(38) Transparency of political advertising should enable citizens to understand that they are confronted with a political advertisement. Political advertising publishers should ensure the publication in connection to each political advertisement of a clear statement to the effect that it is a political advertisement and of the identity of its sponsor. Where appropriate, the name of the sponsor could include a political logo. Political advertising publishers should make use of labelling which is effective, taking into account developments in relevant scientific research and best practice on the provision of transparency through the labelling of advertising. They should also ensure the publication in connection to each political advertisement of information to enable the wider context of the political advertisement and its aims to be understood, which can either be included in the advertisement itself, or be provided by the publisher on

its website, accessible through a link or equivalent clear and user-friendly direction included in the advertisement.

(39) This information should be provided in a transparency notice which should also include the identity of the sponsor, in order to support accountability in the political process. The place of establishment of the sponsor and whether the sponsor is a natural or legal person should be clearly indicated. Personal data concerning individuals involved in political advertising, unrelated to the sponsor or other involved political actor should not be provided in the transparency notice. The transparency notice should also contain information on the dissemination period, any linked election, the amount spent for and the value of other benefits received in part or full exchange for the specific advertisement as well for the entire advertising campaign, the source of the funds used and other information to ensure the fairness of the dissemination of the political advertisement. Information on the source of the funds used concerns for instance its public or private origin, the fact that it originates from inside or outside the European Union. Information concerning linked elections or referendums should include, when possible, a link to information from official sources regarding the organisation and modalities for participation or for promoting participation in those elections or referendums. The transparency notice should further include information on how to flag political advertisements in accordance with the procedure established in this Regulation. This requirement should be without prejudice to provisions on notification according to Article 14, 15 and 19 of Regulation (EU) 2021/XXX [Digital Services Act].

(40) The information to be included in the transparency notice should be provided in the advertisement itself or be easily retrievable on the basis of an indication provided in the advertisement. The requirement that the information about the transparency notice is to be inter alia clearly visible should entail that it features prominently in or with the advertisement. The requirement that information published in the transparency notice is to be easily accessible, machine readable where technically possible, and user friendly should entail that it addresses the needs of people with disabilities. Annex I of Directive 2019/882 (European Accessibility Act) contains accessibility requirements for information, including digital information that should be used to render political information accessible for persons with disabilities.

(41) Transparency notices should be designed to raise user awareness and help the clear identification of the political advertisement as such. They should be designed to remain in place or remain accessible in the event a political advertisement is further disseminated for instance posted on another platform or forwarded between individuals. The information included in the transparency notice should be published when the publication of the political advertisements start and be retained for a period of one year after the last publication. The retained information should also include information about political advertising which was terminated or which was taken down by the publisher.

(42) Since political advertising publishers make political advertisements available to the public, they should publish or disseminate that information to the public together with the publication or dissemination of the political advertisement. Political advertising publishers should not make available to the public those political advertisements not fulfilling the transparency requirements under this Regulation. In addition, political advertising publishers which are very large online platforms within the meaning of Regulation (EU) 2021/XXX [Digital Services Act] should make the information contained in the transparency notice available through the repositories of

advertisements published pursuant to Article 30 Regulation [Digital Services Act] . This will facilitate the work of interested actors including researchers in their specific role to support free and fair elections or referendums and fair electoral campaigns including by scrutinising the sponsors of political advertisement and analysing the political advertisement landscape.

(43) Where the provider of the political advertising service which hosts or otherwise stores and provides the content of a political advertisement is separate from the provider of the political advertising service which controls the website or other interface which eventually displays the political advertisement, these should be considered together as advertising publishers, with respective responsibility in respect of the specific service they provide, to ensure that labelling is provided and that the transparency notice and relevant information is available. Their contractual arrangements should reflect the way they organise compliance with this Regulation.

(44) Information about the amounts spent on and the value of other benefits received in part or full exchange for political advertising services can usefully contribute to the political debate. It is necessary to ensure that an appropriate overview of political advertising activity can be obtained from the annual reports prepared by relevant political advertising publishers. To support oversight and accountability, such reporting should include information about expenditure on the targeting of political advertising in the relevant period, aggregated to campaign or candidate. To avoid disproportionate burdens, those transparency reporting obligations should not apply to enterprises qualifying under Article 3(3) of Directive 2013/34/EU.

(45) Political advertising publishers providing political advertising services should put in place mechanisms to enable individuals to report to them that a particular political advertisement which they have published does not comply with this Regulation. The mechanisms to report such advertisement should be easy to access and use, and should be adapted to the form of advertising distributed by the advertising publisher. As far as possible, these mechanisms should be accessible from the advertisement itself, for instance on the advertising publisher's website. Political advertising publishers should be able to rely on existing mechanisms where appropriate . Where political advertising publishers are online hosting services providers within the meaning of the Digital Services Act, with regards to the political advertisements hosted at the request of the recipients of their services, the provisions of Article 14 of the Digital Services Act continue to apply for notifications concerning non-compliance of such advertisements with this Regulation.

(46) In order to allow specific entities to play their role in democracies, it is appropriate to lay down rules on the transmission of information published with the political advertisement or contained in the transparency notice to interested actors such as vetted researchers, journalists, civil society organisations and accredited election observers, in order to support the performance of their respective roles in the democratic process. Providers of political advertising services should not be required to respond to requests which are manifestly unfounded or excessive. Further, the relevant service provider should be allowed to charge a reasonable fee in case of repetitive and costly requests, taking into account the administrative costs of providing the information.

(47) Personal data collected directly from individuals, or indirectly such as inferred data, when grouping individuals according to their assumed interests or derived through their online activity, behavioural profiling and other analysis techniques, is

increasingly used to target political messages to groups or individual voters or individuals, and to amplify their impact. On the basis of the processing of personal data, in particular data considered sensitive under Regulation (EU) 2016/679 of the European Parliament and of the Council[11] and Regulation (EU) 2018/1725 of the European Parliament and of the Council[12], different groups of voters or individuals can be segmented and their characteristics or vulnerabilities exploited for instance by disseminating the advertisements at specific moments and in specific places designed to take advantage of the instances where they would be sensitive to a certain kind of information/message. That has specific and detrimental effects on citizens' fundamental rights and freedoms with regard to the processing of their personal data and their freedom to receive objective information, to form their opinion, to make political decisions and exercise their voting rights. This negatively impacts the democratic process. Additional restrictions and conditions compared to Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 should be provided. The conditions set out in this Regulation on the use of targeting and amplification techniques involving the processing of personal data in the context of political advertising should be based on Article 16 TFEU.

(48) Targeting and amplification techniques in the context of political advertising involving the processing of data referred to in Article 9(1) of Regulation (EU) 2016/679 and Article 10(1) of Regulation (EU) 2018/1725 should therefore be prohibited. The use of such techniques should only be allowed when carried out by the controller, or someone acting on its behalf, on the basis of the explicit consent of the data subject or in the course of their legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical or religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects. This should be accompanied by specific safeguards. Consent should be understood as consent within the meaning of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Therefore, it should not be possible to rely on the exceptions as laid down in Article 9(2), points(b), (c), (e), (f), (g), (h), (i) and (j) of Regulation (EU) 2016/679 and Article 10(2), points(b), (c), (e), (f), (g), (h), (i) and (j) of Regulation (EU) 2018/1725 respectively for using techniques targeting and amplification techniques to publish, promote or disseminate political advertising involving the processing of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and 10(1) of Regulation (EU) 2018/725.

(49) In order to ensure enhanced transparency and accountability, when making use of targeting and amplification techniques in the context of political advertising involving the processing of personal data, controllers should implement additional safeguards. They should adopt and implement a policy describing the use of such techniques to target individuals or amplify their content and keep record of their relevant activities.

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11 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

12 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

When publishing, promoting or disseminating a political advertisement making use of targeting and amplification techniques, controllers should provide, together with the political advertisement, meaningful information to allow the concerned individual to understand the logic involved and main parameters of the targeting used, and the use of third-party data and additional analytical techniques, including whether the targeting of the advertisement was further optimised during delivery.

(50) Political advertising publishers making use of targeting or amplification techniques should include in their transparency notice information necessary to allow the concerned individual to understand the logic involved and main parameters of the technique used, and the use of third-party data and additional analytical techniques used and a link to the relevant policy of the controller. In case the controller is different from the advertising publisher the controller should transmit to political advertising publisher the internal policy or a reference to it. Providers of advertising services should, as necessary, transmit to the political advertising publisher the information necessary to comply with their obligations under this Regulation. The provision of such information could be automated and integrated in the ordinary business processes on the basis of standards.

(51) In order to further empower individuals to exercise their data protection rights, political advertising publishers should provide additional information and effective tools to the concerned data subject to support the exercise of their rights under the EU data protection legal framework including to object or withdraw their consent when targeted with a political advertisement. This information should also be easily accessible directly from the transparency notice. The tools made available to the individuals to support the exercise of their rights should be effective to prevent an individual from being targeted with political advertisements, as well as to prevent targeting on the basis of specific criteria and by one or several specific controllers.

(52) The Commission should encourage the drawing up of codes of conduct as referred to in Article 40 of Regulation (EU) 2016/679 to support the exercise of data subjects' rights in this context.

(53) Information to be provided in accordance with all requirements applicable to the use of targeting and amplification techniques under this Regulation should be presented in a format which is easily accessible, clearly visible and user-friendly, including through the use of plain language.

(54) It is appropriate to lay down rules on the transmission of information on targeting to other interested entities. The applicable regime should be consistent with the regime for the transmission of information linked to the transparency requirements.

(55) Providers of political advertising services established in a third country that offer services in the Union should designate a mandated legal representative in the Union to allow for effective oversight of this Regulation in relation to those providers. The legal representative could be the one designated on the basis of Article 27 of Regulation (EU) 2016/679) or the representative designated on the basis of Article 11 of Regulation (EU) 2021/xxx [the DSA].

(56) In the interest of the effective supervision of this Regulation, it is necessary to entrust oversight authorities with the competence to monitor and enforce the relevant rules. Depending on the legal system of each Member State and in line with existing Union law including Regulation (EU) 2016/679 and Regulation (EU) 2021/xxx [Digital

Services Act], different national judicial or administrative authorities may be designated to that effect.

(57) As regards the supervision of online intermediary services under this Regulation, Member States should designate competent authorities and ensure that such supervision is coherent with the competent authorities designated pursuant to Article 38 of Regulation (EU) [Digital Services Act]. Digital Services Coordinators, pursuant to Regulation (EU) Digital Services Act, in each Member State should in any event be responsible for ensuring coordination at national level in respect to those matters and engage, where necessary, cross-border cooperation with other Digital Services Coordinators following the mechanisms laid down in Regulation (EU) [Digital Services Act]. In the framework of application of this Regulation, this mechanism should be limited to the national cooperation across Digital Services Coordinators [and should not include the escalation to the Union level as provided by the Regulation (EU) [Digital Services Act].

(58) For the oversight of those aspects of this Regulation that do not fall within the competence of the supervisory authorities under Regulation (EU) 2016/679, Regulation (EU) 2018/725 Member States should designate competent authorities. To support the upholding of fundamental rights and freedoms, the rule of law, democratic principles and public confidence in the oversight of political advertising it is necessary that such authorities are structurally independent from external intervention or political pressure and are appropriately empowered effectively monitor and take the measures necessary to ensure compliance with this Regulation, in particular the obligations laid down in Article 7. Member States may designate, in particular, the national regulatory authorities or bodies under Article 30 of Directive 2010/13/EU of the European Parliament and of the Council[13].

(59) Where rules already exist under Union law regarding the provision of information to competent authorities and cooperation with and between those authorities such as Article 9 of Regulation (EU) 2021/xxx [Digital Services Act], or those contained in Regulation (EU) 2016/679, those rules should apply mutatis mutandis to the relevant provisions of this Regulation.

(60) Authorities competent for the oversight of this Regulation should cooperate with each other both at national and at EU level making best use of existing structures including national cooperation networks, the European Cooperation Network on Elections as referred to in Recommendation C(2018) 5949 final, and the European Regulators Group for Audiovisual Media Services established under Directive 2010/13/EU. Such cooperation should facilitate the swift, 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.

(61) With a view to facilitating the effective application of the obligations set out in the regulation, it is necessary to empower national authorities to request from the services providers the relevant information on the transparency of political advertisement. Information to be transmitted to competent authorities could concern an advertising

[13] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive (OJ L 95, 15.4.2010, p. 1).

campaign, be aggregated by years or concern specific advertisements. In order to ensure that the requests for such information can be complied with in an effective and efficient manner, and at the same time that the providers of political advertising services are not subject to any disproportionate burdens, it is necessary to set certain conditions that those requests should meet. In the interest of the timely oversight of an election process in particular, providers of political advertising services should quickly respond to requests from competent authorities, and always within 10 working days upon receipt of the measure. In the interest of legal certainty and in compliance with the rights of defence, requests to provide information from a competent authority should contain an adequate statement of reasons and information about available redress. Providers of political advertising services should designate contact points for the interaction with the competent authorities. Such contact points could be electronic.

(62) Member States should designate a contact point at Union level for the purpose of this Regulation. The contact point should, if possible, be a member of the European Cooperation Network on Elections. The contact point should facilitate cooperation among competent authorities between Member States in their supervision and enforcement tasks, in particular by intermediating with the contact points in other Member States and with the competent authorities in their own.

(63) Member States authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by administrative fines or financial penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In that context, the crucial role played by the obligations laid down in Article 7 for the effective pursuit of the objectives of the present Regulation should be taken into account. Furthermore, they should take into account whether the service provider concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, including by delaying the provision of information to interested entities, as well as, where relevant, whether the provider of political advertising services is active in several Member States. Financial penalties and administrative fines shall in each individual case be effective, proportionate and dissuasive, with due regard to the provision of sufficient and accessible procedural safeguards, and in particular to ensure that the political debate remains open and accessible.

(64) The exercise by the competent authorities of their powers under this Regulation should be subject to appropriate procedural safeguards in accordance with Union and national law, including effective judicial remedy and due process.

(65) Member States should publish the exact duration of their electoral periods, established according to their electoral traditions, sufficiently in advance of the beginning of the electoral calendar.

(66) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Article 7(7) to further specify the form in which the requirements for the provision of information in the transparency notices according to that Article should be provided; and in respect of Article 12(8) to further specify the form in which the requirements of the provision of information about targeting should be provided. It is of particular importance that the Commission carries out appropriate consultations, including of experts designated by each Member State, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional

Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(67) Within two years after each election to the European Parliament, the Commission should submit a public report on the evaluation and review of this Regulation. In preparing that report the Commission should also take into account the implementation of this Regulation in the context of other elections and referendums taking place in the Union. The report should review inter alia the continued suitability of the provisions of this Regulation's annexes and consider the need for their revision.

(68) Complementary obligations on the use of political advertising by European political parties are provided in Regulation (EU) 1141/2014 on the statute and funding of European political parties and foundations.

(69) Since the objectives of this Regulation, namely the contribution to the proper functioning of the internal market for political advertising and related services and the establishment of rules on the use of targeting in the context of the publication and dissemination of political advertising, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt this Regulation, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(70) This Regulation is without prejudice to the rules laid down in particular by Directive 2000/31/EC, including the liability rules for intermediary service providers in Articles 12 to 15 of that Directive as modified by Regulation (EU) 2021/xxx [the Digital Services Act], Regulation (EU) 2021/xxx [the Digital Markets Act], Directive 2002/58/EC and Regulation (EU) XXX [ePrivacy Regulation], as well as Directive (EU) 2010/13, Directive 2000/31/EC, Directive 2002/58/EC, Directive 2005/29/EC, Directive 2011/83/EU, Directive 2006/114/EC, Directive 2006/123/EC and Regulation (EU) 2019/1150.

(71) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on XX XX 2022.

HAVE ADOPTED THIS REGULATION:

# CHAPTER I – GENERAL PROVISIONS

*Article 1*

**Subject matter and scope**

1. This Regulation lays down:

(a) harmonised transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services;

(b) harmonised rules on the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the use of personal data.

2. This Regulation shall apply to political advertising prepared, placed, promoted, published or disseminated in the Union, or directed to individuals in one or several Member States, irrespective of the place of establishment of the advertising services provider, and irrespective of the means used.

3. The aims of this Regulation are:

(a) to contribute to the proper functioning of the internal market for political advertising and related services;

(b) to protect natural persons with regard to the processing of personal data.

1. This Regulation is without prejudice to the rules laid down in the following:

(a) Directive 2000/31/EC;

(b) Directive 2002/58/EC and Regulation (EU) XXX [ePrivacy Regulation];

(c) Directive 2005/29/EC;

(d) Directive 2006/114/EC;

(e) Directive 2006/123/EC;

(f) Directive (EU) 2010/13;

(g) Directive 2011/83/EU;

(h) Regulation (EU) 2019/1150;

(i) Regulation (EU) 2021/xxx [the Digital Services Act].

*Article 2*

**Definitions**

For the purpose of this Regulation, the following definitions shall apply:

1. 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU;

2. 'political advertising' means the preparation, placement, promotion, publication or dissemination, by any means, of a message:

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

(b) which is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

3. 'political advertisement' means an instance of political advertising;

4. 'political actor' means any of the following:

(a) a political party within the meaning of Article 2(1) Regulation (EU, Euratom) No 1141/2014 or an entity directly or indirectly related to the sphere of activity of such a political party;

(b) a political alliance within the meaning of Article 2(2) of Regulation (EU, Euratom) No 1141/2014;

(c) a European political party within the meaning of Article 2(3) Regulation (EU, Euratom) No 1141/2014;

(d) a candidate for any elected office at European, national, regional and local level, or for one of the leadership positions within a political party;

(e) an elected official within a public institution at European, national, regional or local level;

(f) an unelected member of government at European, national, regional or local level;

(g) a political campaign organisation with or without legal personality, established to achieve a specific outcome in an election or referendum;

(h) any natural or legal person representing or acting on behalf of any of the persons or organisations in points (a) to (g), promoting the political objectives of any of those.

5. 'political advertising service' means a service consisting of political advertising with the exception of an online intermediary service within the meaning of Article 2(f) of Regulation (EU) 2021/XXX [Digital Services Act] that is provided without consideration for the placement, publication or dissemination for the specific message;

6. 'political advertising campaign' means the preparation, placement, promotion, publication or dissemination of a series of linked advertisements in the course of a contract for political advertising, on the basis of common preparation, sponsorship or funding;

7. 'sponsor' means the natural or legal person on whose behalf a political advertisement is prepared, placed, published or disseminated;

8. 'targeting or amplification techniques' means techniques that are used either to address a tailored political advertisement only to a specific person or group of persons or to increase the circulation, reach or visibility of a political advertisement;

9. 'electoral period' means the period preceding or during or immediately after an election or referendum in a Member State and during which the campaign activities are subject to specific rules;

10. 'relevant electorate' means the body of individuals eligible to vote in the election or referendum being contested in the Member State in which a political advertisement circulates, which may be the entire electorate of a Member State;

11. 'political advertising publisher' means a natural or legal person that broadcasts, makes available through an interface or otherwise brings to the public domain political advertising through any medium;

12. 'controller' means a controller according to Article 4(7) of Regulation (EU) 2016/679 or, where applicable, to Article 4(8) of Regulation (EU) 2018/1725.

For the purposes of the first paragraph, point (2) messages from official sources regarding the organisation and modalities for participation in elections or referendums or for promoting participation in elections or referendums shall not constitute political advertising.

*Article 3*

**Level of Harmonisation**

1. Member States shall not maintain or introduce, on grounds related to transparency, provisions or measures diverging from those laid down in this Regulation.

2. The provisions of political advertising services shall not be prohibited nor restricted on grounds related to transparency when the requirements of this Regulation are complied with.

# CHAPTER II – TRANSPARENCY OBLIGATIONS FOR POLITICAL ADVERTISING SERVICES

*Article 4*

**Transparency**

Political advertising services shall be provided in a transparent manner in accordance with the obligations laid down in Articles 5 to 11 and 14 of this Regulation.

*Article 5*

**Identification of political advertising services**

1. Providers of advertising services shall request sponsors and providers of advertising services acting on behalf of sponsors to declare whether the advertising service they request the service provider to perform constitutes a political advertising service within the meaning of Article 2(5). Sponsors and providers of advertising services acting on behalf of sponsors shall make such a declaration.

2. Providers of political advertising services shall ensure that the contractual arrangements concluded for the provision of a political advertising service specify how the relevant provisions of this Regulation are complied with.

*Article 6*

**Record-keeping and information transmission**

1. Providers of political advertising services shall retain information they collect in the provision of their services, on the following:

   (a) the political advertisement or political advertising campaign to which the service or services are connected;

   (b) the specific service or services provided in connection to the political advertising;

(c) the amounts they invoiced for the service or services provided, and the value of other benefits received in part or full exchange for the service or services provided; and

(d) where applicable, the identity of the sponsor and its contact details.

2. The information referred to in paragraph 1 shall be in writing and may be in electronic form. Such information shall be retained for a period of five years from the date of the last preparation, placement, publication or dissemination, as the case may be.

3. Providers of political advertising services shall ensure that the information referred to in paragraph 1 is communicated to the political advertising publisher which will disseminate the political advertisement to enable political advertising publishers to comply with their obligations under this Regulation. That information shall be transmitted, in a timely and accurate manner in accordance with best practice and industry standards, by means of a standardised automated process where technically possible.

*Article 7*

**Transparency requirements for each political advertisement**

1. In the context of the provision of political advertising services, each political advertisement shall be made available with the following information in a clear, salient and unambiguous way:

(a) a statement to the effect that it is a political advertisement;

(b) the identity of the sponsor of the political advertisement and the entity ultimately controlling the sponsor;

(c) a transparency notice to enable the wider context of the political advertisement and its aims to be understood, or a clear indication of where it can be easily retrieved.

In this regard, political advertising publishers shall use efficient and prominent marking and labelling techniques that allow the political advertisement to be easily identified as such and shall ensure that the marking or labelling remains in place in the event a political advertisement is further disseminated.

2. The transparency notice shall be included in each political advertisement or be easily retrievable from it, and shall include the following information:

(a) the identity of the sponsor and contact details;

(b) the period during which the political advertisement is intended to be published and disseminated;

(c) based among others on information received in line with Article 6(3), information on the aggregated amounts spent or other benefits received in part or full exchange for the preparation, placement, promotion, publication and dissemination of the relevant advertisement, and of the political advertising campaign where relevant, and their sources;

(d) where applicable, an indication of elections or referendums with which the advertisement is linked;

(e) where applicable, links to online repositories of advertisements;

(f) information on how to use the mechanisms provided for in Article 9(1).

(g) The information to be included in the transparency notice shall be provided using the specific data fields set out in Annex I.

3. Political advertising publishers shall make reasonable efforts to ensure that the information referred to in paragraph 1 and 2 is complete, and where they find this is not the case, they shall not make available the political advertisement.

4. Transparency notices shall be kept up to date and presented in a format which is easily accessible and, where technically possible, machine readable, clearly visible and user friendly, including through the use of plain language. The information shall be published by the political advertising publisher with the political advertisement from its first publication until one year after its last publication.

5. Political advertising publishers shall retain their transparency notices together with any modifications for a period of five years after the end of the period referred to in paragraph 4.

6. Political advertising publishers which are very large online platforms within the meaning of Article 25 of Regulation (EU) 2021/xxx [the DSA] shall ensure that the repositories that they make available pursuant to Article 30 of that regulation [Digital Services Act] make available for each political advertisement in the repository the information referred to in paragraph 2.

7. Member States, including competent authorities, and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Article, taking into account the specific characteristics of the relevant service providers involved and the specific needs of micro, small and medium-sized enterprises, within the meaning of Article 3 of Directive 2013/34/EU.

8. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex I by adding, modifying or removing elements from the list of information to be provided pursuant to paragraph 2 where, in the light of technological developments, such an amendment is necessary for the wider context of the political advertisement and its aims to be understood.

*Article 8*

**Periodic reporting on political advertising services**

1. Where they provide political advertising services, advertising publishers shall include information on the amounts or the value of other benefits received in part or full exchange for those services, including on the use of targeting and amplification techniques, aggregated by campaign, as part of their management report within the meaning of Article 19 of Directive 2013/34/EU in their annual financial statements.

2. Paragraph 1 shall not apply to undertakings qualifying under Article 3(3) of Directive 2013/34/EU.

*Article 9*

**Indicating possibly unlawful political advertisements**

3. Where they provide political advertising services, advertising publishers shall put in place mechanisms to enable individuals to notify them, free of charge, that a particular advertisement which they have published does not comply with this Regulation.

4. Information on how to notify political advertisements as referred to in paragraph 1 shall be user friendly and easy to access, including from the transparency notice.

5. Political advertising publishers shall allow for the submission of the information referred to in paragraph 1 by electronic means. The political advertising publisher shall inform individuals of the follow up given to the notification as referred to in paragraph 1.

6. Repetitive notifications under paragraph 1 regarding the same advertisement or advertising campaign may be responded to collectively, including by reference to an announcement on the website of the political advertising publisher concerned.

*Article 10*

**Transmission of information to competent authorities**

1. Competent national authorities shall have the power to request that a provider of political advertising services transmits the information referred to in Articles 6, 7 and 8. The transmitted information must be complete, accurate and trustworthy, and provided in a clear, coherent, consolidated and intelligible format. Where technically possible, the information shall be transmitted in a machine readable format.

   The request shall contain the following elements:

   (a) a statement of reasons explaining the objective for which the information is requested and why the request is necessary and proportionate, unless the request pursues the objective of the prevention, investigation, detection and prosecution of criminal offences and to the extent that the reasons for the request would jeopardise that objective;

   (b) information on the redress available to the relevant service provider and to the sponsor of the political advertising service.

2. Upon receipt of a request pursuant to paragraph 1, providers of political advertising services shall, within two working days, acknowledge receipt of that request and inform the authority of the steps taken to comply with it. The relevant service provider shall provide the requested information within ten working days.

3. Providers of political advertising services shall designate a contact point for the interaction with competent national authorities. Providers of political advertising services which are SMEs within the meaning of Article 3 of Directive 2013/34/EU may appoint an external natural person as contact point.

*Article 11*

**Transmission of information to other interested entities**

1. Providers of political advertising services shall take the appropriate measures to transmit the information referred to in Article 6 to interested entities upon request and without costs.

   Where the provider of political advertising services is a political advertising publisher, it shall also take the appropriate measures to transmit the information referred to in Article 7 to interested entities upon request and without costs.

2. Interested entities requesting the transmission of information pursuant to paragraph 1 shall be independent from commercial interests and shall fall in one or more of the following categories:

   (a) vetted researchers in accordance with Article 31 of Regulation (EU) 2021/xxx [Digital Services Act];

   (b) members of a civil society organisation whose statutory objectives are to protect and promote the public interest, authorised under national or Union law;

   (c) political actors as authorised under national law; or

   (d) national or international electoral observers accredited in a Member State.

   Such interested entities shall also include journalists accredited in a Member State by national, European or international bodies.

3. Following a request from an interested entity, the service provider shall make best efforts to provide the requested information or its reasoned response under paragraph 5, within one month.

4. When preparing the information to be provided pursuant to paragraph 1, the service provider may aggregate the relevant amounts or place them in a range, to the extent necessary to protect its commercial legitimate interests.

5. Where requests pursuant to paragraph 1 are manifestly unfounded, unclear or excessive, in particular because of their lack of clarity, the service provider may refuse to respond. In this case, the relevant service provider shall send a reasoned response to the interested entity making the request.

6. Where requests under paragraph 1 are repetitive and their processing involves significant costs, the service provider may charge a reasonable and proportionate fee, which in any event shall not exceed the administrative costs of providing the information requested.

7. Service providers shall bear the burden of demonstrating that a request is manifestly unfounded, unclear or excessive, or that requests are repetitive and involve significant costs to process.

# CHAPTER III – TARGETING AND AMPLIFICATION OF POLITICAL ADVERTISING

*Article 12*

**Specific requirements related to targeting and amplification**

1. Targeting or amplification techniques that involve the processing of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and Article 10(1) of Regulation (EU) 2018/1725 in the context of political advertising are prohibited.

2. The prohibition laid down in the first sentence shall not apply to the situations referred to in Article 9(2)(a) and (d) of Regulation (EU) 2016/679 and Article 10(2)(a) and (d) of Regulation (EU) 2018/1725.

3. When using targeting or amplification techniques in the context of political advertising involving the processing of personal data, controllers shall, in addition to the requirements laid down in Regulation (EU) 2016/679 and Regulation (EU) 2018/1725, as applicable, comply with the following requirements:

   (a) adopt and implement an internal policy describing clearly and in plain language, in particular, the use of such techniques to target individuals or amplify the content, and retain such policy for a period of five years;

   (b) keep records on the use of targeting or amplification, the relevant mechanisms, techniques and parameters used, and the source(s) of personal data used.

   (c) provide, together with the political advertisement, additional information necessary to allow the individual concerned to understand the logic involved and the main parameters of the technique used, and the use of third-party data and additional analytical techniques. This information shall comprise the elements set out in Annex II.

4. Political advertising publishers making use of targeting or amplification techniques shall include in the transparency notice required under Article 7 the information specified in paragraph 3(c) and a link to the policy referred to in paragraph 3(a). In case the controller is different from the advertising publisher, the controller shall transmit the internal policy or a reference to it to the political advertising publisher.

5. Political advertising publishers making use of targeting or amplification techniques referred to in paragraph 3 shall include in or together with the advertisement and in the transparency notice required under Article 7 a reference to effective means to support individuals exercise their rights under Regulation (EU) 2016/679.

6. Information to be provided in accordance with this provision shall be presented in a format which is easily accessible and, where technically feasible, machine readable , clearly visible and user-friendly, including through the use of plain language.

7. Providers of advertising services shall, as necessary, transmit to the controller the information necessary to comply with paragraph 3.

8. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex II by modifying or removing elements of the list of information to

be provided pursuant to paragraph 3(c) of this Article in light of technological developments in relevant scientific research, and developments in supervision by competent authorities and relevant guidance issued by competent bodies.

*Article 13*

**Transmission of information concerning targeting or amplification to other interested entities**

1. The controller referred to in Article 12 shall take appropriate measures to transmit, upon request by interested entities in accordance with Article 11(1), the information referred to in Article 12.
2. Article 11(2) to (7) shall apply *mutatis mutandis*.

# 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. 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 providers of political advertising services for the performance of their supervisory tasks.

5. Competent authorities referred to in paragraph 3, where exercising their enforcement powers in relation to this Regulation, shall have the power to:

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

   (b) 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;

   (c) impose administrative fines and financial penalties.

6. Member States shall ensure cooperation among competent authorities in particular in the framework of national elections networks, 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 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.

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.

4. Infringements of Article 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 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.

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 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 the amount referred to in Article 66 (3) of that Regulation.

*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.

Done at Brussels,

| | |
|---|---|
| *For the European Parliament* | *For the Council* |
| *The President* | *The President* |