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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising - Comments from delegations

Following the meeting of the Working Party on General Affairs on 23 October 2023 and further comments circulated in writing, delegations will find in Annex comments from Member States.

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CZECH REPUBLIC

WK 13892/23

- We generally welcome that the EP is willing to make several concessions. These concessions, however, do not and cannot compensate for the presented proposal as regards the ban on profiling.
- Our aim and the outcome of the negotiations should not be a Regulation that is prone to hamper the industry, making political advertising potentially ineffective or even driving online platforms to move away from political advertising completely. Such interventions might create severe unintended consequences and damage the democratic life. Notwithstanding the fact that political advertising should not be a priori seen as manipulative – which is what the EP is consistently implying.
- That being said, **we cannot support the suggested compromise**, as it still goes against our long-term position, even though certain exceptions are currently listed. We are against any additional restrictions on regular personal data, the processing of which should remain governed by the GDPR. Therefore, we demand to follow the revised mandate and apply the **ban only to the special categories of data**.
- On the other hand, when it comes to adjustments to the recital on data minimization, while we are not in principle supportive of the EP version, it is acceptable as part of the overall package and taking into account that this particular provision was removed from the normative part.
- On top of the comments mentioned above, it remains unclear how the supervisory powers over Article -12/Article 12 are intended to be distributed among the DSA and DP authorities. Hence, we would highly appreciate if this distribution is clarified in the Regulation.

WK 13434/23

Article 2

- As regards the definition of political advertising, we remain committed to keeping the reference to “designed”. Dropping this reference seems theoretically imaginable only in case of narrowing the scope to paid advertising. Even then, however, further discussions and possibly also alignments would be needed, and even then, we would prefer sticking to the Council's mandate.

- Regarding the proposed alternatives to the definition of a political advertising campaign, we cannot support the proposals at the moment. We consider the current wording to be unclear in terms of its intent as well as impact or in terms of the difference between the respective alternatives. That is also with regard to some parts of the proposed recital that appear to be in contradiction to the individual wordings.

Articles -12 and 12

- We can accept a reference to political advertising "by electronic means", although we have so far understood that this reference would also apply to advertisements disseminated offline.
- We can also agree with the integration of Article -12 into Article 12, as well as with the overall wording reflecting the Council's currently revised mandate. Therefore, we strongly disagree with the EP's request to apply a complete ban on profiling to regular personal data as well, or with any other similar restrictions.
- In this light, we welcome that the COM did not include the limitation of the number of categories of personal data in the normative part. In principle, we can agree to the modification of the issue in the recitals. However, we would like to ask whether the intention is to encourage publishers to limit the number of categories processed, or to provide the possibility for the data subject to choose within the service that they want to limit the number of categories, or possibly both.
- In connection with Chapter III, we can also agree with the proposed definitions of targeting and amplification/delivery techniques.
- Article 7b – European public repository
- We specifically welcome the proposal to extend the deadline to 72 hours and that a fee for using the service was not included.
- Overall, we can be more or less flexible with regard to the specific parameters of the COM proposals.

Article 15 – Role of EDPB

- We can support the suggested compromises.

Labels

- In principle, we do not support harmonizing the presentation of the required information, but we are not opposed to setting some minimum standards or guidelines.
- We would therefore welcome a more detailed explanation in relation to the current EP proposal.

Non-discrimination clause

- We can be flexible regarding the current EP wording.

WK 13710/23

Generally, most of the compromise proposals seem to be acceptable and to those we have no particular comments at this moment. Nevertheless, find bellow our comments on points 1, 4 and 8.

1) Early entry into application

- Technically speaking, we can be flexible as regards the proposed alternatives.
- However, since there is still no agreement on the key elements of the Regulation, we have doubts that the gradual entry into application is realistic, or at the very least meaningful (depending on when the final compromise text is finished). That being said, we are not strictly opposing the idea to have some provisions applicable before the EP elections. Nevertheless, not only that the addressees of the Regulation need rational space for adaptation, but for a meaningful effect, the applicable rules are also needed well in advance of the elections. Therefore, if the final deal gets delayed and the provisions are applicable only, for instance, from the last month before the elections, we fear that the added value of the Regulation would be significantly undermined.
- Last but not least, when it comes to general entry into application, we strongly prefer referring to “12 months” rather than a set date, or demand to adjust the date accordingly if the deal is not reached in time to preserve the 12 months.

4) Article 1a(1) (Row 101e)

- We can support the additions as regards the sponsor.
- However, we ask for more clarifications on the reference to political advertisement “directed to Union citizens”. Does the reference imply that the Regulation should apply in situations within the EU or even outside the EU? This was not part either of the COM proposal or the relevant mandates of the two institutions (it should, therefore, also be properly marked).
- Our understanding is that this language is meant to also capture political ads outside the Union when directed to the EU citizens. If this is the aim, we do not find it proportionate, not to mention that it would be hardly implementable. If not, the language should be modified.

8) Elaboration of the reference to the needs of people with disabilities

- We continue to believe that the presentation framework already envisaged in the original COM proposal or as foreseen in the GA is sufficient. Further, we also agree with the COM comments that if we are to set additional requirements, these should rather be concrete requirements relevant to the political advertising environment.
- In any case, as long as the reference to Directive (EU) 2016/2102 is kept in the recitals, we are not necessarily opposing the compromise suggestions by the COM, with a preference towards alternative 1.

WK 13713/23

Article 15a (Row 228h)

- We can, in principle, accept the addition. Nonetheless, we believe that no particular deadline should be established. To compare, DSA does not foresee such deadline.

Article 16 (Row 238a)

- In line with our previous comments, we support merging the provisions into one and agree with the wording proposed by the EP.

Article 8(2a) (Row 166a)

We can agree with the compromise proposal.

DENMARK

Comments on compromise proposal for art. 7b – European repository for online political advertisements (WK 13434/2023)

Denmark is hesitant to support imposing advertising publishers who are not a VLOP or VLOSE an obligation to provide information to the European Agency for Online Political Ads within 72 hours, as proposed by EP in art. 7b(4). As previously stated by Denmark, it is important that small and medium-sized enterprises are not subject to unnecessary administrative burdens, which is why we would like small and medium-sized enterprises to be exempted from this obligation to provide information.

Comments on compromise proposal for definition of political advertising campaign in art. 2(6) (WK 13434/2023)

Denmark can show flexibility and support EP's proposed draft in art. 2(6), which limits the scope of the provision to apply in the course of a contract for political advertising.

Comments from Denmark on additional compromise proposals from the Commission and the European Parliament on the proposal for a regulation on the transparency and targeting of political advertisement

Comments on the Commission's suggestions (WK 13710/2023):

1) Early entry into application:

Denmark prefer the Council's compromise proposal on article 20(2).

2) Recital on engagement and reach (row 163 m):

Denmark can support the Commission's compromise proposal for a recital on engagement and reach.

3) Article 7a(1), point (g) (row 163 i):

Denmark can support the Commission's compromise proposal for the provision.

4) Article 1a(1) (Row 101 e):

Denmark can support the Commission's compromise proposal for the provision.

5) Definitions of targeting and amplification or ad delivery techniques (rows 121, 121a, 121b):

Denmark can support the Commission's compromise proposal for the definition of targeting techniques.

Denmark prefers to keep the Council's compromise proposal and reference to am-plification techniques.

6) Article 18, first paragraph, point (d) (Row 246d):

Denmark can support the Commission's compromise proposal for the provision.

7) Article 7a(2) (Row 163o):

Denmark can support the Commission's compromise proposal.

8) Elaboration of the reference to the needs of people with disabilities:

Denmark can support the Commission's compromise alternative 1.

9) Article 12a (rows 196c-205):

- Generally: We support the Council's proposal for a separate provision (article 12a) containing the requirements related to targeting and am-plification.
- Row 197: Denmark can support the addition of a reference to the DSA.
- Row 198: Denmark can support the Commission's compromise but pre-fers the Council's compromise for a retention period of six years.
- Row 200-200b: Denmark can support the Commission's compromise proposals.
- 200ba-200bc: Denmark can support the Commission's compromise pro-posals but it is unclear what type of information about artificial intelli-gence systems that is to be considered "meaningful" in row 200ba.
- Row 200d-200e: Denmark can support the Commission's compromise proposals.
- Row 201-205: Denmark can support the Commission's compromise pro-posals.

Comments on EP's suggestions (WK 13713/2023):

1) Right to lodge a complaint (row 228 h):

Denmark can support the EP's compromise proposal and the wish to make the right to lodge a complaint a separate article. We understand the proposal circu-lated in this working document as a proposal for such a separate article.

2) Reporting on sanctions (merge between 238 a and 241 a):

Denmark can support the EP's proposed merger between row 238 a and 241 a on the reporting on sanctions.

Comments on suggestion from inter-institutional technical meeting held 24. October:

1) Article 8 paragraph 2a (row 166a):

Denmark prefers the Council's mandate to not include this provision in the Regulation. Denmark has concerns that the provision will impose disproportionate administrative burdens on micro, small and medium-sized enterprises.

Comments on EP's compromise proposal on articles 12 and 15 (WK 13892/2023):

1) Article 12

It is unclear whether an agreement has been reached on the use of "amplification" or "ad delivery" as "amplification" is used in EP's compromise proposals.

Denmark prefers the use of "amplification" as in the Council mandate.

2) Recital 48 on consent and data minimization

It is unclear why the recital provides an explanation of what applies to consent. It would be useful to simply refer to the GDPR and make it clear if, in certain areas, something special applies to this Regulation.

3) Article 15 – Role of European Data Protection Board

Denmark can support EP's addition to article. 15.

4) Recital on emergency powers

It is unclear why only "targeting" is mentioned in the recital and not "ad delivery" or "amplification".

Denmark can support EP's proposal on this recital as the recital in our view does not introduce anything new in relation to GDPR.

GERMANY

Dok. WK 13439/2023 (Art. 3a, Art. 7(1))

a) DEU supports propositions on Art. 3a (non-discrimination clause):

- DEU is open for text proposal.

b) Concerning the proposal on Art. 7(1) (labels):

- DEU welcomes text proposal regarding implementing acts for labels to be adopted by COM 12 months after entry into force of the regulation.

DEU welcomes all provisions in this regard that expand transparency on political advertising.

1. Dok. WK 13434/23 (Art. 2(2), (6), -12, 12, 7b, definitions on targeting and amplification/ad delivery, Art. 15)

a) Scope of Art. 12 (Article 2(2) and (6)):

- With regard to Art. 2(2), DEU reiterates that it supports the wording "...normally provided for remuneration...", as it leaves sufficient room for interpretation.
- DEU is open with regard to inclusion ["or through **inhouse activities**"] – still in "red". However, it is not sufficiently determined what kind of structure is covered by "in-house".
- DEU prefers the wording "**is designed to influence**" in Art. 2 (2)(b) instead of "is liable to" (**clear and substantial link** to the potential to influence democratic processes).
- **DEU understands from Dok. ST 13875/23 that** the exclusion of public communications from official sources from the scope of application continues to be foreseen in Art. 2(1), point (2)(ba)(iii). DEU would welcome this. This is a key issue for DEU.
- Concerning Art. 2(6) "**political advertising campaign**": DEU would like to point out that in the definition of "political advertising" reference is made to "political advertising campaign" and vice versa. (Political advertising campaigns are composed of political advertisements ("series of linked political advertisements"), which in turn is (solely) defined by political advertising ("an instance of political advertising"). This might constitute a definitional "loop". DEU therefore proposes to delete the reference "political advertising campaigns" in Art. 2 (2). Besides, compromise alternative 2 seems "more" in line with GA of Council. Therefore, also concerning recital (15), DEU would prefer alternative 2.

b) With regard to Art. -12, 12

- DEU is **open to inserting Art. -12 in Art. 12(1)(c)** in sake of clarity and in view of a future consistent enforcement.
- We suggest however to **evaluate what impact** the proposed merging of new legal terms (“amplification, ad-delivery, targeting techniques”) with existing terms (“profiling”) might have on the scope of application.
- Additionally, we suggest to clearly specify whether the unified Art. 12 is to be considered data protection law as this would decide whether the data protection authorities would be in charge according to Art. 15.
- DEU supports COM-proposal for general ban of targeting and amplification techniques in Art. 12(1). DEU supports “by electronic means” [EP-proposal], which refers to the form of (display of) advertising (for the purpose of excluding offline/telephone advertising).
- With regard to Art. 12(3): How will “subscription data” be defined?
- Concerning the compromise proposals on recital 48, DEU supports clarification on “inferred data” (in line with recent ECJ decision) and “on consent”. However, text proposal on “mixing data and data minimization” seems to be quite vague, e.g. “take specific measures to ensure that the personal data...is limited to what is necessary in relation to this purpose...”.

c) Art. 7b – European repository for online political advertisement

- DEU is in general open for text proposals.
- Underlines, that **alignment with Art. 39 Digital Services Act (DSA) is necessary**, which foresees a repository to be made available by very large online platforms (VLOPs) and very large search engines (VLOSEs) for **(any kind of) advertisement**. Advertisement is defined in Art. 3f DSA and also includes political advertisement, if presented online against remuneration.
- Concerning the proposed paragraph 6b (starting date of repository), DEU is of the opinion, that it is preferable to fix a certain date than leave it open to COM to decide when repository should start. DEU proposes 18 months after entry into force with regard to the DSA.

d) definitions of amplification, ad-delivery, targeting techniques

- DEU is in general open for the text proposals which merge elements of Council and EP Mandate.

e) Art. 15 (Role of European Data Protection Board)

- DEU **supports** the new proposal concerning Art. 15, **that COM shall request the European Data Protection Board to prepare guidelines** for the purpose of assisting the supervisory authorities referred to in the GDPR.
- Concerning the recital on “**emergency powers**”: DEU is open to refer to the GDPR. However, the “period preceding elections or referendums” should be clarified.

German comments on Docs. WK 13710/23, WK 13713/23 and new compromise proposal on Article 8 paragraph 2a (row 166a)

Doc. WK 13710/2023 (Commission informal suggestions)

1. Article 20, entry into force and application (rows 253, 254)

- DEU supports COM proposal that the regulation shall generally apply from 1/1/25.
- DEU is open with regard to the earlier application (3 months following entry into force) for Articles 2 (definitions) and Art. 3 a (non-discrimination).
- In any case, DEU underlines the importance to consider the impact on already booked or running campaigns (for instance, elections on local or regional level). If sponsors and companies are obliged to adapt within 3 months, this would cause very likely disproportionate and unforeseeable burdens. This needs to be addressed appropriately.
- Concerning Art. -12 and 12 however, DEU can only support earlier application in case that data protection authorities were exclusively competent according to the general rules of GDPR. Therefore, this regulation should not require any additional national legal acts to define the competent data protection authority. Otherwise DEU can only support application from 1/1/25 (with regard to national implementation).

2. Recital on engagement and reach (row 163m)

- DEU is open to text proposal.

3. Article 7a(1), point (g), transparency notices (row 163i)

- DEU is open to text proposal

4. Article 1a(1), scope (row 101e)

- DEU supports proposal to clarify geographical scope of application for sponsors.

5. Definitions on targeting and amplification / ad delivery (rows 121, 121a, 121b)

- DEU is in general open for text proposals which merge elements of Council and EP Mandate.

6. Article 18, first paragraph, point (d), evaluation and review (row 246d)

- DEU is open for text proposal that COM also shall assess in its report the „possible need to make [the rules] more or less restrictive“.

7. Article 7a(2), transparency notices (row 163o)

- DEU points out, that the description of the time period „before and during the period of publication, delivery or dissemination of the political advertisement“ seems vague. This should be clarified.
- DEU proposes same wording as proposed by the Council for Article 7 (2) point (ga), for political advertising publishers: „...from its first publication and until the end of its publication“ (row 157a).

8. Article 7a(3), elaboration of the reference to the needs of people with disabilities (row 163p)

- DEU is open to both alternative text proposals

9. Article 12a, specific requirements related to targeting and amplification (rows 196c-205)

- **row 197:** DEU welcomes to include a reference to the Digital Services Act
- **row 198:** DEU is open to extend period from five to six or even seven years, depending on alignment with other requirements
- **row 200:** DEU is open to insert „AI“

Doc. WK 13713/2023 (Compromise proposals from EP)

1. Art. 15a, Right to bring a complaint, rows 228h (EP) and 241c (Council)

- DEU is open to merge rows 228h and 241c, however the transmission period for the competent authority to another MS should be „**without undue delay**“ (as proposed by the Council) instead of „**within 10 working days**“.
- DEU is open to text proposal on the „recital“.

2. Article 16(4a), reporting on sanctions, rows 238a (IMCO) and 241a (LIEBE)

- DEU is against new reporting obligations for the national contact points in view of the additional administrative burden.

Compromise proposal on Article 8 paragraph 2a (row 166a)

*"2a. Providers of political advertising services shall **make available** reports on their activities concerning political advertising services which they **are required to** prepare in accordance with national law, where applicable, to the competent authorities **responsible for the auditing or supervision of political actors.**"*

- DEU is open to text proposal.

German comments on Doc. WK 13892/2023

(EP Compromise proposals on Arts. 12 and 15)

Article 12 (targeting and amplification)

- **DEU welcomes deletion of Article -12** and merging of Article -12 with 12 which leads to more clarity, especially with regard to a future consistent enforcement and **responsibility of the data protection authorities** under Art. 15(1) in connection with Art. 51 GDPR.
- DEU would however prefer **a clearer wording of Article 12 (1)**, as was still foreseen in Doc. WK 13434/23, based on the rule-exception principle: "Targeting or amplification techniques that involve the processing of personal data in the context of [online] political advertising **shall be prohibited unless** the following conditions are fulfilled: [...]"
- DEU would prefer the wording "by electronic means" in Article 12(1) but may also accept "**online**". However, DEU proposes to include a clarification (e.g. in the recitals) that **offline or telephone advertising** is therefore not covered by the ban of Article 12.
- **DEU is open to the current list of exclusive exceptions** as proposed by the EP in the new paragraph 2 of Article 12.
- However, the **reference in Article 12(1) lit. c does not seem correct**, as Regulation (EU) 2018/1725 does not contain an Article 5(4). DEU therefore asks to review the reference.

Recital 48 (on consent; on mixing data and data minimization)

- DEU is open to text proposals.

Definitions of amplification, of ad-delivery and of targeting techniques

- DEU repeats that it is **open to text proposals** which merge elements of Council and EP Mandate and have been already presented in Doc. WK 13434/23 and discussed in the last working group on general affairs on 23/10.
- However, DEU wonders why **Article 12 covers “targeting and amplification techniques”** while the **definitions include “targeting techniques” and “ad delivery techniques”**. Is the definition for “ad-delivery” still needed when it is not referred to in Article 12? In the last Doc. WK 13434/23, page 11, the definition of “ad delivery techniques” still included “amplification/ad delivery techniques”. The new definitions would lead to a **definition loophole for “amplification techniques”**. Therefore, it is proposed, to **re-insert “amplification techniques” to the definitions and delete “ad delivery techniques”**.

Article 15 (European Data Protection Board)

- **DEU repeats its support** with regard to the proposal concerning Article 15, that COM shall request the European Data Protection Board to prepare guidelines for the purpose of assisting the supervisory authorities referred to in the GDPR. This proposal has also already been presented in Doc. WK 13434/23 and discussed in the last working group on general affairs on 23/10.
- Concerning the recital on “emergency powers”: DEU as well repeats that is open to refer to the GDPR. However, the **“period preceding elections or referendums” should be clarified**.

ESTONIA

Comments on article 15

- In relation to the granting of investigative powers to the European Data Protection Board.
If the EDPS is not given the right to investigate and is instead only expected to provide guidelines/guidelines, this would be a very welcome solution in our view.

- Emergency powers

Proposal to add a recital which, inter alia, calls on the Data Protection Supervisory Authorities to support the implementation of the Political Advertising Regulation (Independent supervisory authorities under Regulation (EU) 2016/679 should be supported to make full use of their powers under that Regulation to supervise the protection of personal data provided under this Regulation, including of cooperation and consistency and in particular of urgency.) Is it expected that the MS - s will provide additional resources to the national supervisory authorities specifically for the implementation of this Regulation?

IRELAND

Ban on third country sponsors

- Ireland notes that the Parliament can agree to the Council's last proposal. Ireland has no specific comments or observations to make on this issue and broadly supports the requirement that the sponsor of a political advertisement is a citizen of the European Union or a natural or legal person residing or established in the Union;

Non Discrimination reference

- Ireland notes that the Council and the Parliament have maintained their positions. Ireland has no specific comments or observations to make to make and is flexible on this issue;

Data Retention Period

- Ireland notes that 6 years is proposed by Council while 7 is proposed by Parliament. Ireland has no specific comments or observations to make to make and is flexible on this issue (albeit a retention period of 7 years would be line with requirements in Part 4 of our Electoral Reform Act 2022 in connection with online archives/libraries);

Public Repository

- Ireland notes that the Parliament maintains its condition of a 24 month implementation period while CION are seeking a longer period. This is a matter that primarily concerns CION and, accordingly, Ireland is flexible on the issue of a public repository for online political advertisements established by CION to host all online political advertisements from political advertising publishers that are not very large online platforms (VLOPs) nor very large online search engines (VLOSEs);

Article 12 and -12

- Ireland notes that the Parliament insists on including “electronic means”, maintains that targeting should be restricted to the use of a maximum of 5 categories of personal data and notes the introduction of a new condition that the processing of inferred/observed data should not be allowed for targeting political advertising. Ireland reiterates its view that it does not support extending the scope of Article 12 to include the processing of personal data by ‘electronic means’. Virtually, all data processing in a modern economy is undertaken by electronic means. To restrict such processing, over and above the requirements of the General Data Protection Regulation, could, potentially, lead to a withdrawal of political advertising services in both the online and the offline space. Ireland also reiterates its view that it does not support the additional restrictions proposed by Parliament on the processing of personal data (that does not fall within the meaning of special categories of personal data) for the purposes of political advertising. This is clearly moving the proposal further away from its original intention which was to provide for enhanced transparency around political advertising during electoral periods while maintaining freedom of expression on the one hand and the right to be informed on the other. The processing of personal data is already well-established and comprehensively addressed in the General Data Protection Regulation. Additional restrictions, over and above what is set out in the General Data Protection Regulation, could give rise to unintended consequences;

Scope of Chapter III

- Ireland notes that the Parliament has raised concerns with regard to the scope of Chapter III, including Article 12. Ireland would welcome further clarifications on the issues Parliament might have with the scope of Chapter III, i.e. does this relate to confining the scope to political advertising provided as a service which is an issue that Ireland would broadly support albeit Ireland has welcomed the additional clarifications previously provided by CION in connection with personal messages, the internal communications of political parties etc.;

Article 2 (Definition of Pol Advertising)

- Ireland notes that the Parliament does not support the Council's proposal on the definition of a political advertising campaign and that it supports the original proposal from CION, or the proposal circulated by CION during the trilogue. Ireland would welcome sight of the proposal put forward by CION at the last trilogue;

Role of the European Data Protection Board

- Ireland notes that the Parliament has reiterated its stance in favour of including text on the role of the European Data Protection Board in the operative part of the draft regulation. Ireland reiterates its opposition to the proposed amendments for an enhanced role for the European Data Protection Board on the grounds this would be contrary to the country of origin principle which provides that responsibility for compliance and enforcement of data protection laws rests with the national data protection authorities. Ireland has no difficulty in restating/referencing the urgency procedure, and the role of the European Data Protection Board, as it is currently set out in the General Data Protection Regulation;

Sanctions

- Ireland notes that the Parliament would like to see a lower amount set. Ireland has no specific comments or observations to make to make and is flexible on this issue; and

Entry into force

- Ireland notes that the Parliament is insisting that several basic elements of the draft regulation come into force in time for the 2024 European elections and before the campaign period begins. Ireland supports the position taken by the Presidency and Council for a 12-month implementation period for all provisions.

GREECE

Following up on the discussion at COREPER on 4 October 2023, we would like to submit the following comments with regard to the proposed ban on third country sponsors and the wording of Article 3a (rows 129b-129c) and the relevant new recital contained in document ST 13482/2023:

- There is need for more legal clarity in article 3a. This article sets a ban on sponsors from third countries for a period of 3 months before elections and referenda.
- According to the Greek electoral law, parliamentary elections can take place in a period shorter than this. Therefore, it is important to insert language that makes clear that this provision should not be understood to give rise to obligations in the period before the elections or referenda were announced.
- The following wording could be added to the aforementioned article: *“Where elections or referenda are announced less than three months before the date of the election or referendum, this provision should not be understood to give rise to obligations in the period before the elections or referenda were announced.”*.

FRANCE

Les commentaires écrits ci-après portent sur les documents wk13710 et wk13713 présentant des propositions de compromis du Parlement européen et des suggestions informelles de la Commission. De plus, des propositions de rédaction de compromis portant sur le champ d'application sont présentées en annexe.

- **Entrée en vigueur**

Les autorités françaises rappellent que l'objectif d'une entrée en vigueur du règlement, ou de certaines de ses dispositions, avant les élections européennes du mois de juin 2024 continue d'avoir la préférence des autorités françaises.

Les autorités françaises émettent toutefois des réserves s'agissant d'une mise en oeuvre dans les trois mois après l'entrée en vigueur des dispositions des articles 12 et -12.

Les obligations des articles susmentionnés pourraient représenter une charge importante pour les plateformes en ligne, et une demande d'application rapide pourrait avoir pour conséquence de les inciter à prendre des mesures drastiques comme rendre invisible de nombreux types de contenus, et aurait ainsi des conséquences importantes sur la liberté d'expression et la qualité du débat public. Ces dispositions doivent être discutées en lien avec les dispositions sur le champ d'application et la définition des publicités politiques, afin de disposer d'une plus grande visibilité sur les obligations qui s'appliqueront in fine aux plateformes en ligne.

- **Considérant l'engagement et la portée du publicité politique (row 163 m)**

Comme déjà indiqué, les autorités françaises ne souhaitent pas que ce type d'informations soit intégré dans l'avis de transparence. Les précisions apportées par le considérant induisent une mise à jour constante de l'avis de transparence (le nombre de vues pouvant évoluer quotidiennement par exemple), et donc constitueraient une charge disproportionnée pour certains acteurs.

- **Article 7a (2) (Row 163o)**

Les autorités françaises ne sont pas favorables à l'ajout de «*before and during the period of publication, delivery, or dissemination of the political advertisement.*» qui apparaît superflu. La limitation dans le temps de la responsabilité de la véracité des informations par le parraineur n'apparaît pas pertinente.

- Article 12a (rows 196c-205)

L197 : Les autorités françaises estiment que cette disposition doit être négociée en lien avec les discussions en cours sur la définition de la publicité politique et le champ d'application.

L200 : Les autorités françaises peuvent soutenir l'ajout de «*including whether an artificial intelligence system has been used to target the political advertisement*».

L200 bb : Comme déjà indiqué, les autorités françaises ne sont pas favorables à la liste très étoffée - proposée par le Parlement européen par rapport au mandat du Conseil - des informations à fournir par le responsable de traitement, qui constitue une charge disproportionnée. Elles sont opposées en particulier à la ligne L200 bb («*(iv) the period of dissemination, the number of individuals to whom the advertisement is disseminated;*»), une telle information nécessitant une mise à jour de manière continue.

- Row 228h – droit à porter plainte

Les autorités françaises ont déjà émis des réserves s'agissant de la proposition du Parlement européen de créer un nouvel article sur le droit à porter plainte. Elles estiment que la proposition de la Commission visant à trouver une formulation de compromis entre l'article 15a du PE (ligne 228h) et l'article 16a du Conseil (ligne 241c) va dans le bon sens.

Elles souhaitent tout de même émettre des doutes quant à l'obligation pour l'autorité compétente de traiter individuellement des plaintes/notifications, particulièrement lorsque ce traitement est assorti de délais. Elles estiment en effet que cette obligation pourrait constituer une charge lourde pour l'autorité compétente, et nuire à la qualité du traitement desdites plaintes. De la même manière, les autorités françaises ne peuvent pas soutenir le délai de 10 jours – qui est très court - proposé par le Parlement européen dans lequel les autorités compétentes doivent transmettre les plaintes qui relèvent de la compétence d'une autorité compétente dans un autre État membre.

Annexe I

Proposition de rédaction de compromis [champ d'application]

[Article 2. 2. 'political advertising' means the preparation, placement, promotion, publication, delivery or dissemination, by any means, of a message, *normally provided for remuneration or through in-house activities, or as part of a misleading political advertising campaign* :

(14) The Regulation should provide for harmonised transparency requirements applicable to economic actors providing political advertising and related services (i.e. activities that are normally provided for remuneration; *which may include a benefit in kind, or in-house activities, which includes activities taken by several entities owned by a single entity*), those services consist in particular of the preparation, placement, promotion, publication and dissemination of political *advertising advertisement*. 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. (...)

(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 harmonized 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.

Political advertising should cover the preparation, placement, promotion, publication, delivery or dissemination, by any means, of a message in return for payment ~~or for similar consideration, or through~~. It should also cover in-house activities, which includes activities where multiple measures, such as the preparation, placement, promotion, publication, delivery or dissemination of a message are taken by several entities owned by a single entity. It should also include messages whose preparation, placement, promotion, publication, delivery or dissemination takes place as part of a misleading political advertising campaign. This could encompass instances ~~where advertisements show common preparation, placement, promotion, publication, delivery or dissemination, where there is common sponsorship or funding, or~~ where one or several individuals follow a common plan or act in a concerted manner with the clear objective to ~~influence the outcome~~ disturb the proceedings of an election, referendum or regulatory process, for example by ~~promoting or opposing~~ massively spreading misinformation online, or by using fake accounts on online platforms to present unauthentic support or opposition to a political actor, their ideas or a specific policy. Compliance with this regulation shall not require online intermediaries as defined in Regulation 2022/2065 to take general monitoring measures, pursuant to Article 8 of said Regulation.]

Les commentaires écrits ci-après portent sur le WK 13892/2023 qui présente des propositions de compromis du Parlement européen sur les articles 12 et 15.

Sur l'article -12

Il est indiqué dans le document de la Présidence que le Parlement européen accepte la suppression de l'article -12 de sorte qu'il ne devrait pas y avoir de complications concernant l'application de l'article 12 entre les autorités désignées par le DSA et les autorités nationales de protection des données.

Le mandat révisé du Conseil tel qu'adopté le 4 novembre en COREPER ne prévoit pas la suppression de cet article -12.

Les autorités françaises souhaiteraient ainsi avoir plus de précisions à ce sujet.

Sur l'article 12

Comme déjà indiqué à plusieurs reprises, les restrictions proposées initialement par le Parlement européen de l'utilisation des techniques de ciblage ou d'amplification qui impliquent le traitement de données à caractère personnel dans le contexte de la publicité politique en ligne peuvent avoir un impact considérable sur la diffusion de contenus, et donc sur la liberté d'expression.

Les nouvelles propositions du Parlement européen ne pourraient donc être acceptables que dans la mesure où le champ d'application intègre un critère de rémunération suffisamment précis et objectif.

Sur l'article 15

Le Parlement européen propose un compromis sur le rôle du Comité européen de la protection des données.

Les autorités françaises peuvent accepter la proposition du Parlement européen consistant à charger le Comité européen de la protection des données d'élaborer des lignes directrices afin d'aider les autorités de contrôles à évaluer le respect des exigences du règlement, ainsi que l'ajout du considérant pertinent.

LATVIA

WK 13710/2023 INIT:

Entry into force of the regulation:

Latvia strongly believes that the whole regulation should enter into force at the same time, ensuring a comprehensible scope of rights and obligations for those applying the regulation. Such entry into force of individual norms, especially considering the short period of time, as well as the fact that the regulation has not yet been adopted, would not be supportable. In Latvia's view, however, longer time should be provided to prepare for the implementation of the regulation and the implementation of its individual norms should be rushed 3 months after the regulation comes into force.

Para. 12a(3)ca

Latvia is cautious about the proposed wording in Article 12a(3)ca (200d row). Namely, the proposal envisages removing the need to assess the impact on society as a whole in the annual risk assessment. The comment states that Article 35 of the GDPR already provides for the performance of impact assessments, and this article of the proposal for the regulation additionally only provides for making these assessments publicly available. Latvia cannot agree to such a comment, because the impact assessment regulated in Article 35 of the GDPR must be carried out before data processing begins and only the impact of data processing on data subjects - natural persons - can be assessed. It is not related to the annual assessment. In this specific case, the impact of targeted political advertising on each individual data subject within the meaning of the GDPR may be small, but have a significant impact on society and democratic processes as a whole. In compliance with the above, Latvia requests not to link the annual assessment included in the regulation proposal with the impact assessment regulated in Article 35 GDPR.

With the Article 12(1)c it is intended to determine that political advertising targeting methods may be used if they are not based on profiling as defined in Article 4(4) of the GDPR. Taking into account that the purpose of targeting is to identify persons or groups of persons to whom advertising should be addressed, Latvia would like to understand the new proposal of Article 12, that is, - how targeting can be done without using profiling? Namely, profiling is any type of automated processing of personal data, which is perceived as the use of personal data to evaluate specific personal aspects related to a natural person. Hereby, if personal data will be used to evaluate whether a specific political advertisement is addressed to a person, it will in any case be considered as profiling. In view of the above, Latvia would invite to delete in the Article 2(1)c and determine those categories of data on which personal profiling can take place.

Alternatively, please supplement the relevant points of the recital by describing cases where targeting based on personal data will not constitute profiling within the meaning of the GDPR.

Latvia would support version of the regulation, which provides for a clear prohibition on the use of targeted or amplification methods involving the processing of personal data (targeting or amplification techniques the involve the processing of personal data in the context of the Online political Advertising shall be prohibited unless [...]), similarly to the prohibition on the processing of specific categories of personal data in Article 9(1) of GDPR. The design of Article 12(1) of the Proposal for a regulation does not emphasise the prohibition on the use of targeted or enhanced methods involving the processing of personal data, but, on the contrary, stresses the permissibility of the use of those methods, so that it may be misguided that the use of those methods would even be desirable under certain conditions. In view of the above, Latvia maintains its position on imposing a clear ban on the use of targeted or enhanced methods involving the processing of personal data. It is also of concern to amend the wording to delete “shall” in Article 12(1) and replace it with “may” on the admissibility under certain conditions of the use of targeting and reinforcing methods. That could lead to differences between the Member States as regards the application of the rules.

FINLAND

WK 13434 Informal suggestions by the Commission

Scope of Article 12 (Article 2(2) and (6)).

- **Inhouse activities**

- “Political advertisement” is one of the key concepts of the legislation and should therefore be very clearly defined in the article. It seems, that although “remuneration” covers also inhouse activities (compensation given to the employees for their work performances), there has been some misinterpretation along the way. That in mind, if the definition of “political advertisement” aims to cover also “inhouse activities”, it could be wise to mention it in the article. Finland could however support moving the reference about “inhouse activities” from article to recital, if it is clearly placed in the text at a point where it is explained what “political advertisement” means. COM proposal cannot be considered to be fully successful in this respect, as the matter will only be explained in the context of political advertising campaign.

- **Liabe and designed**

- Using only the term “liabe” is likely to create uncertainty and may affect the decline of legal certainty in the advertising market. It could create situation where the original message is not intended by any means to be a political advertisement, but as the situation evolves turns out to have similar effects and could thus be interpret as having liabe influenced regulatory process etc. For example, how the definition would work in a situation where private health care companies would actively market their services in a situation where there would be an ongoing social welfare and healthcare reform and discussion whether or not the reform should increase the role of private health care companies? In this kind of situation also purely commercial marketing could turn to liabe influence the situation, and thus could create obligations under this legislation. If so, it would mean that point 2a and 2b in the first paragraph of article 2 would contradict. Hence, it would be reasonable to include also the term “designed” as purely commercial messages are not designed to be political advertisement although they may have in certain situations same kind of influence. In such a case, the assessment would take into account whether the actor

had intended to influence or not, which would make regulation more precise and predictable.

- **Political advertising campaign**

- Finland would prefer COM's suggestion alternative 1, as Finland has have doubts with the broadened definition of a political advertising campaign. Although Finland has been willing to support also the broader definition (COM's suggestion alternative 2), if it is ensured that messaging by private individuals (including politicians) is excluded from the scope of the regulation. Especially if the recital mentions "promoting or opposing a political actor" as an example of political campaigning, the text should highlight that political debate between different actors (individuals or groups) should by no means clarify as political advertising and thus should not be considered as a form of political advertising campaigning. Otherwise, there is a genuine risk that the provision will be misinterpreted, in which case the provision would significantly reduce freedom of expression. On the basis of the above, the definition of a political advertising campaign would therefore make more sense to tie in with some form of contractuality "or other similar arrangements" (COM's suggestion alternative 1).

Articles -12 and 12.

- If we understand correctly, the aim is to join Articles -12 and 12 together and delete Article -12. In general this might be a good solution as it would make this Regulation more clear
- However, if this is not the case and both Articles -12 and 12 would regulate on the profiling ban, we would need more information on the relationship between these Articles. We should regulate on the profiling ban only in one article.
- Regarding the EP proposal in Article 12(1)(c), the ban on profiling should only be limited to processing special categories of personal data, this is a redline. We should stick to the Council mandate.
- Our redline still remains also concerning the wording "explicit" consent in Article 12(1)(b). We have noticed that the recitals attempts to clarify that the consent would be understood as the consent regulated in the GDPR and EUDPR. However, we still want to emphasize that concerning consent, the GDPR nor the EUPDR does not leave any margin of maneuver for the legislator to change the conditions for consent [requiring an explicit consent in Article 12(1)(c) would add further conditions to consent compared to Articles 4, 6 and 7 GDPR].

- Concerning Article 12(3) and the relevant recital, could it be clarified that (at least in the recitals), in addition to newsletters, personal social media posts would also be out of scope of this Regulation.
- Concerning the wording on online/by electronic means we remain flexible. We want to emphasize the role of clear regulation that cannot be easily circumvented and is technologically neutral.

Article 7b on European public repository.

- We draw attention to the lack of precision of the delegated and implementing acts. The delegated and implementing acts can give too much opportunity to influence the central contents of the repository for online political advertisements. A delegated act is appropriate if it only relates to technical characteristics. The delegated and implementation acts give the impression that the need for an advertising library could be clarified later. In particular, the entry into force can cause uncertainty, because in practice it will only be possible to know after 24 months how the advertising library works and how the obligations set by it will be implemented. This uncertainty can also possibly cause administrative burden, especially for small and medium-sized operators.
- It should also be clearly stated that the repository must be implemented within the current budget.
- Hence, we see two options:
 - o 1) either the future of the repository is left to be decided later, in which case the provision would give the Commission a mandate to determine the best means of implementing the repository in 24 months;
 - o 2) the article clearly defines the operating principles (including the question about fee), responsibilities and deployment schedule of the repository, and the delegated acts are for Commission to supplement the provision in terms of technical functionality of the repository;

Definitions of targeting and amplification / ad delivery

- Concerning the definitions of amplification/ad delivery/targeting techniques we remain flexible on the final wording. It's important that the wording remains technologically neutral and minimises the possibilities to circumvent this Regulation

Article 15 - Role of European Data Protection Board.

- In general it's positive that the role of the EDPB would be limited to giving guidance, as the EDPB is not a supervisory authority. We want to reprise our previous comments that the Data Protection Authorities should be responsible for supervising all the provisions concerning processing of personal data. The tasks and powers of the EDPB are laid down in the GDPR.
- Concerning the proposal, we would like to point out that pursuant to Article 70 GDPR, the EDPB already has the power to examine and issue recommendations, guidelines and best practises on the application of the GDPR, as well as on the interplay between the GDPR and other EU legislation. In this regard the proposed provision of the EDPB's role giving guidance seems unnecessary and we would prefer to stick to the GDPR. The same issue should not be laid down twice and overlapping regulation should be avoided.

WK 13439/2023

The latest compromise proposals from the European Parliament:

Non-discrimination clause (Article 3a):

- Finland has considered very important that regulation should avoid unnecessary restrictions to the freedom of expression (including the independence of editors-in-chief). Therefore, it should be clearly stated in recitals of non-discrimination clause, that the non-discrimination clause is not intended by any means to diminish editors-in-chief's decision-making power over editorial content (including the editorial line for advertising).
- EP suggestions to delete the term "cross border" from the article cannot be considered very reasonable. The freedom to conduct a business includes the right to decide on the provision of a service also on a regional basis. Hence, this provision should therefore continue to apply only to cross-border service providers. In reality, there is also always a possibility for differences of treatment based on justified objective reasons, why it should be mentioned in the recital.

Labels (Article 7 (1)).

- Finland is concerned that the provisions of labelling political advertisements may cause problems to certain mediums (especially radio), and may affect negatively to their willingness to provide political advertising services in future, which would be likely to affect, for example, the visibility of elections. Therefore, it is important to leave sufficient room for operators in terms of labelling. It is also important that the provision does not direct or restrict political advertising only to certain media (namely social media), where labels are easier to implement without disturbing the user experience too much. Finland is thus open to the EP's proposal if it sufficiently takes into account the needs of different media, and if it does not increase the administrative burden on small or medium-sized media operators.

WK 13713/2023 Compromise proposals from the European Parliament

Article 15a - right to lodge a complaint (row 228h).

- Complaint and notification can be understood somewhat as different procedures, and therefore should not be confused with each other. It seems that we are talking here more about the right to notify suspicions of negligence to the competent authority regarding the possible violations of the regulations. Thus, it seems more reasonable to use the term notification (from Council Mandate), as it better describes the right given in the article.
- It seems that requirement forwarding information in 10 days is too strict. Acting “without undue delay” seems more suitable and meets the requirements of good governance. Strict time limit would only make it more difficult for the authority to organize supervision and operational work appropriately. A strict time-bound procedure would also make it possible to intentionally burden the authority, which can be considered a risk. Hence, Finland favours the Council wording "without undue delay".
- It seems also that competent authorities will already have significant possibilities to react in cross-border situations. We think that row 224 would cover the needs of cross-border cooperation in this case. However, the cross-border cooperation in this particular notification matter may need clarification. Hence, it could be reasonable to include some kind of provision in the cross-border cooperation article about this situations (article 15a in ST 13875/2023).

- Concerning row 228h (right to bring a complaint) and the accompanying recital, we would like to inquire why Article 77 of the GDPR (and Article 53 of the DSA) should be mentioned. This row would add a responsibility for the authorities to address notifications of possible infringements. This is without prejudice to other administrative procedures or judicial remedies pursuant to this and other legislation. The proposed recital text would raise question why only these remedies would be mentioned and not other administrative or judicial remedies. It should be clear from row 228 that the administrative and judicial remedies pursuant to both the GDPR and DSA, as well as other EU and national legislation, will apply.

Article 16 - reporting on sanctions (rows 238a and 241a).

- Proposed reporting requirements seem appropriate.

WK 13710/2023 Informal suggestions from the Commission on the following

Early entry into application

- Concerning the entry into application, Finland supports the Council mandate (12 months).
- We also wonder why the Commission's proposal states that the Council would support 3 month for the non-discrimination clause. As has already been pointed out, there is a significant risk of introducing this type of regulation in too tight a time frame - regardless of whether national implementation is required or not.

Recital on engagement and reach (row 163m).

- It seems appropriate to clarify what “reach” and “engagement” means in recital.

Article 7a(1), point (g) (row 163 i)

- It seems appropriate to include this information in the transparency notice. Also COMs clarifications to article and recital seems reasonable.

Article 1a(1) (Row 101 e)

- Suggested clarifications seem ok.

Definitions of targeting and amplification / ad delivery (rows 121, 121a, 121b).

- Concerning the definitions of amplification/ad delivery/targeting techniques we remain flexible on the final wording. It's important that the wording remains technologically neutral and minimises the possibilities to circumvent this Regulation.

Article 18, first paragraph, point (d) (Row 246d)

- The clarifications seem reasonable.

Article 7a(2) (Row 163o)

- It seems appropriate that sponsors should ensure the accuracy of information they provide. Also the wording and COMs clarifications seem ok.

Article 7a(3) - Row 163p (the needs of people with disabilities)

- Important issue, COMs proposal seems reasonable.

Article 12a (rows 196c-205)

- Concerning Article 12a, this Article seems rather detailed, although we remain flexible [more critical is to ensure that 1) the profiling ban in Article -12 applies only to special categories of personal data and to ensure that 2) the data protection authorities supervise the data protection provisions of this regulation].
- In general this Article seems partly overlapping with the GDPR and EUDPR which should be avoided. In addition Article 12a provides more detailed provisions than GDPR and EUDPR. These provisions should be limited to what is necessary to achieve the objectives of this Regulation. The evaluation on what is necessary, should also take into account the administrative burden it will affect to SMEs.

Other proposals (via email) Compromise proposal on Article 8 paragraph 2a (row 166a)

- Finland considers it very important not to increase the administrative burden on small and medium-sized operators. Article 8 paragraph 1 does not apply to small and medium-sized operators. Is it intended to exclude small and medium-sized operators from this obligation as well? If not, what “make available reports” means? If it means sending reports to a large group of different authorities, it may increase significantly the administrative burden.
- It is also not clear, what this provision strives to achieve in the context of this regulation.

WK 13892

Article 12

- In general it seems appropriate that Articles -12 and 12 are combined.
- However, Finland is not able to accept the compromise proposals for Article 12(1)(c) and Article 12(2) of this Regulation.
- Finland has considered it important to find a balance between the protection of personal data and other fundamental rights with regard to targeted political advertising. Finland's position is primarily that targeted political advertising should be possible when the data subject has given his or her consent to it. Targeted advertising based on specific categories of personal data should also be possible with an explicit consent.
- In order to find a compromise solution in the trilogues and as a last resort, Finland has been able to accept the prohibition on targeting advertising when it is based on the processing of specific categories of personal data.
- Overall Finland has stressed the need to ensure that this Regulation as a whole is clear and understandable and fully compatible with the GDPR and EUDPR and DSA. In this regards Article 12(1)(c) and Article 12(2) seems problematic as it goes beyond what DSA regulates.

Article 15

- In general it's positive that the role of the EDPB would be limited to giving guidance, as the EDPB is not a supervisory authority (compared to the EP's previous proposals).
- However we would like to point out that the EDPB already has the power to issue recommendations, guidelines and best practises on the application of the GDPR, as well as on the interplay between the GDPR and other EU legislation.
- In general, overlapping regulation with the GDPR should be avoided.
- All-in-all Finland is still evaluating whether the wording "The Commission **shall** request" is appropriate.

SWEDEN

Comments on Article 8 paragraph 2a (row 166a)

Our understanding of the intention behind this article is that it aims not to impose new legislative requirements on MS for reporting activities but rather to apply to those MS that already have such national legislation in place. To ensure this intention is clearly reflected and to avoid potential ambiguity, we propose the following alternative wording:

*“2a. **When/Where** providers of political advertising services **are required by national law to prepare a report on their activities concerning political advertising services, they shall make **this report** available, where applicable, ~~reports on their activities concerning political advertising services which they are required to prepare in accordance with national law, where applicable,~~ to the competent authorities **responsible for the auditing or supervision of political actors.**”***
