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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 30 November 2023 and further comments circulated in writing, delegations will find in Annex comments from delegations.

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GERMANY

Recital 4 – row 14 (proposal for linguistic amendment)

DEU reiterates its text proposal transmitted to the PCY on 27 november to amend the wording as following:

Text proposal:

(...) and to counter information manipulation and interference and unlawful interference, including from third countries.

Justification: “interference” is duplicated here. The DEU understanding would be that “unlawful interference” is a sub-category of interference per se. DEU therefore suggests to delete the “unlawful interference”.

Recital 16 - row 105 (addition of “inhouse” activities to recital 16)

DEU regrets that its proposal submitted on 20 and 27 november has not been taken into account. DEU would once again like to underline that the current **wording regarding the addressees of in-house activities is unclear**. Even if row 105 is now marked green, DEU once again repeats its text proposal for amendment, as row 26 regarding recital 16 is still marked yellow.

Text proposal:

In order to prevent possible circumventions of the restrictions laid down in Chapter III of this regulation, political ~~Political~~ advertising comprises the situation where the preparation, placement, promotion, publication, delivery or dissemination of a message which is liable and designed to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour is done by an entity acting on its own behalf (in-house activities). In-house activities, which should be considered as solely relevant for Chapter III of this Regulation, should be understood as activities carried out within an entity which comprise or substantially contribute to the preparation, placement, promotion, publication, delivery or dissemination, by any means, of a message which is liable and designed to influence the outcome of an election, referendum or regulatory process, or voting behaviour.

This shall apply to political actors and their affiliated entities as well as other entities aiming to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour by such in-house activities.

Justification: The inclusion of in-house activities aims to prevent well-resourced political actors or other entities aiming to influence the outcome of an election or referendum etc. from circumventing the restrictions laid down in Chapter III. However, the current wording regarding in-house activities does not reflect this rationale sufficiently and might lead to legal uncertainties regarding the addressees of in-house activities. Therefore, DEU proposes to clarify the rationale and the addressees by the above amendments.

Recital 17 - row 107 (deletion of “public opinion...”)

“With regard to the proposed recital 17 to “designed to” in row 107, DEU **asks** for the **deletion of “or the public opinion on societal or controversial issues”**. This part of the proposal has no link to Article 2 (2) (b). It extends the recital beyond the aim and scope of the Regulation to the pure formation of public opinion, without any reference to an election or referendum, legislative or regulatory process or voting behaviour.”

(Remark: Row 27 on recital 17 is still red and marked "to prepare a possible compromise". Row 107, on the other hand, is marked green, but is intended to supplement recital 17, so it is unclear whether the text in line 107 is already agreed upon.)

Recital 18 – row 28 (“public communication”)

DEU thanks the PCY for the agreement reached on the wording of recital 18 which DEU fully supports.

Recital 19 – row 29 (“editorial freedom for the media”)

DEU welcomes that the text proposal for the draft agreement on recital 19 takes into account parts of the text proposal submitted to the PCY on 20 november. However, DEU **repeats its request** submitted to PCY on 27 november to **delete the last sentence** (...However, when such political opinions are subsequently promoted, published or disseminated by service providers, they should be considered to be political advertising.)

According to the wording of the last sentence, for example, **the subsequent use of content in media libraries would be considered political advertising**. It also **does not take into account licensing models**. This cannot be the aim of the regulation.

Recital 27 – row 37 (“private capacity”)

With regard to the second sentence, the current proposal for recital 27 (row 37) does **still not establish a sufficiently concrete link** between the remuneration and the expression of the political opinion. With regard to the freedom of expression DEU therefore **repeats** the proposal submitted to the PCY on 27 november **to add “specific”** before “renumeration”. Otherwise, unpaid personal political opinions expressed on paid platforms or channels would be included.

Text proposal:

...However, individuals should not be considered as acting in their personal capacity if they are publishing messages ... which involve **specific** remuneration, including benefits in kind, from third parties.

Recital 42b – row 52c (information obligation of VLOPs/VLOSEs)

DEU asks the PCY to work towards **deletion of row 52c and replacement by row 52g (Council mandate)**. If the EP text (2nd coulumn in row 52c) is negotiated, DEU asks **at least** to ensure **the deletion of “...in real time” as this goes beyond the obligations of Article 39 of the Digital Services Act** (Regulation (EU) 2022/2065) and wording of the Council mandate in row 52g: “immediately”. DEU asks the PCY to ensure alignement with Article 39 DSA

Recital 42c – row 52e (information obligation of non-VLOPs / VLOSEs)

Concerning the EP text (2nd column), DEU is against the EP proposal that the information by non-VLOPs/VLOSEs should be made available in the European repository for online political advertisement **“without undue delay, and no later than 24 hours”**. DEU at least asks for **deletion of “...and not later than 24 hours”**

FRANCE

Considérant 19 (ligne 29)

La France rappelle son inquiétude s'agissant de la nouvelle formulation de ce considérant. Les opinions politiques exprimées dans les médias, sauf rémunération d'un tiers, ne peuvent être considérées comme de la publicité politique. Or, la formulation « should not be covered by this Regulation » est manquante.

De plus, la dernière phrase du compromis (« However, when such political opinions are subsequently promoted, published or disseminated by service providers, they should be considered to be political advertising ») devrait être supprimée.

Considérant 13a (ligne 23 a) et considérant 14a (ligne 24a)

La France salue la reprise de ces deux considérants sur la prise en compte des besoins spécifiques des petites et moyennes entreprises, ainsi que de la spécificité des médias audiovisuels et presse imprimée dans la mise en œuvre de ce règlement.

Article 2.2 sur la définition de la publicité politique (ligne 105)

S'agissant de la définition des publicités politiques, la France rappelle qu'elle est attachée à ce que **les critères d'application du règlement soient suffisamment précis et objectifs** pour que les plateformes puissent effectivement l'appliquer et afin d'éviter de soumettre les plateformes à une obligation de surveillance généralisée pour qualifier les contenus de publicité politique.

Les précisions apportées par le nouveau considérant 16 pourraient être renforcées et clarifiées pour permettre aux plateformes d'identifier aisément les contenus concernés. [La définition actuelle des publicités politiques impose en effet une appréciation au cas par cas des contenus : la notion de « in-house activities » empêchant toute identification automatisable des publicités politiques].

Article 12 (Ligne 195 et suivantes - notamment 195b)

Les exigences de l'article 12 impliquent la mise en place d'un système de traitement de données spécifique aux publicités politiques ; la ligne 195b notamment exige le recueil d'un consentement spécifique et distinct pour ces traitements de données. En conséquence, les services comme ceux des plateformes en ligne, qui reposent sur des traitements de données pour la sélection et l'affichage d'informations pour chaque utilisateur, devront analyser chaque élément de contenu présent sur leurs services pour déterminer si le contenu est une publicité politique au sens du texte, et ainsi savoir si elles doivent soumettre ce contenu à un régime spécifique de traitement de données conforme à l'article 12.

La France souhaiterait qu'il soit assuré que le texte n'induisse pas d'obligation de facto de surveillance généralisée, proscrite par le DSA, ni de charge excessive qui aurait pour effet d'inciter ces plateformes à renoncer à tout traitement de données pour tous les contenus susceptibles d'être des publicités politiques, **et ce afin d'éviter que ces contenus ne soient plus sélectionnés ni affichés sur ces plateformes, ce qui aurait un effet néfaste significatif sur le débat public.**

Ligne 200d : la référence à l'analyse des risques systémiques pourrait être intégrée à celle prévue dans le DSA s'agissant des très grandes plateformes et des très grands moteurs de recherche. En outre, ces obligations pourraient faire peser des obligations trop lourdes sur les acteurs qui ne sont pas des très grandes plateformes même si la notion de « society as a whole » a été supprimée.

Article 7a

La France estime que les informations correspondent bien à celles qui sont détenues uniquement par l'éditeur, excepté pour le point (k), qui peut varier de manière régulière. La disposition prévoyant l'obligation pour le service de publicités politiques d'informer la plateforme de tout élément lié à la véracité des informations va dans le bon sens mais la répartition des responsabilités pourrait être encore clarifiée afin de s'assurer que la plateforme ne se retrouve pas responsable d'une information inexacte qui lui aurait été transmise par le service de publicités politiques.

THE NETHERLANDS

Row 52E: we believe the 24 hour deadline could put too much administrative burden on SME. For example, the proposal does not take into account weekend days.

Row 57l: We feel that the aim of the regulation is not to reduce polarizing or opposing messages but to enhance transparency. Therefore 'polarizing' or 'opposing' should not be included in the recitals.

Row 75a: We prefer to have any guidelines on identifying political ads in the regulation so that it's clear for everyone how to determine what is a political ad.

Row 66: Does the commission foresee any form of delegated act or is it foreseen that all MS implement this through their own national law. We would think it would be helpful to clarify at the end of recital 56 *'to swiftly act on situations that might lead to infringements of this regulation and entitle them with all powers required to address these possible infringements before the elections take place'*.

FINLAND

Recital

Row 23

- Finland has considered it very important that the regulation does not affect national campaign financing rules. We therefore have reservations about the EP's review on the use of term financing. We find it important that the recital is kept in such form that it clearly states the same things that are in the current version of the text.

Row 34

- It might be appropriate to give an example of a political campaign in order to make it clear what kind of situations would be considered to fall within the definition. It is now quite clear which kind of situations would be counted as contracts that the article is referring. Therefore, the definition should be opened up better in the recital.

Row 50

- The mention “or be easily retrievable on the basis of an indication provided in the advertisement” should be left as the recital would then describes better the possible need to use different kind of solutions. For example, it may be necessary to use different kinds of solutions than dedicated webpage link, a Quick Response code (or “QR code”), or equivalent user-friendly technical measures. It seems that using terms “equivalent” and “technical”, when referring to webpage links and QR codes, could be understood so that measures should always move the user directly to the transparency notice, which may not always be possible in offline media (especially radio).

- **Article**

Row 163s

- We made already the same comment to row 149b, but would restate it:
 - o It should be noted that there would be only 3 months to implement the delegated provisions, if the Commission adopts delegated provisions for 15 months from the date of publication of the Regulation. Will the political advertising services and other actors involved be able to adequately take into account the delegated provisions before the actual article enters into force? SMEs, in particular, may face challenges in responding quickly to demands.
- Why the text, from EP proposal, requiring the Commission to take into account the potential specific needs of different media and operators has been deleted?
 - o We find it very important that COM should take 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 when adopting implementing acts regarding the format and technical specifications of the transparency notice.
 - o SMEs, in particular, may face challenges to implementing requirements set by COM if not taken into account their needs.

Row 165

- It should be defined more clearly what “making the information available” means.
- In general, however, such a provision, which seeks to ensure that relevant authorities are able to make use of that information, is important.

Row 177a

- Although the row is already marked in green, we would like to point out that it could be sensible to extending the provision to medium-sized operators (Article 3 paragraphs 3 of Directive 2013/34/EU) as well. That would be better in line with the provision in article 10(3) (row 178), as SMEs would not have in-house designate contact point for the interaction with competent national authorities. The need for provide the requested information in no later than 48 hours, could basically mean that medium-sized operators would have to set also an in-house contact point, which would then make the provision in article 10(3) unworkable for medium-sized operators. Alternatively, they would have to appoint an external natural person as contact point, which could be very expensive with such tight timeframes.