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PE 55
DATAPROTECT 140
FREMP 144
CONSOM 174
TELECOM 146
AUDIO 48
MI 410
DISINFO 32
FIN 537
CODEC 879**

NOTE

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

Further to the meetings of the Working Party on General Affairs on 12 and 16 May 2023, please find in Annex comments received from delegations.

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CZECH REPUBLIC

- **At this point, we have some specific preferences we would like to express, but it seems that, in most cases, we can be flexible. On the other hand, we have severe reservations regarding the EP's mandate when it comes to Article 12.**

Rows 211-212c

- **We do not think it is desirable in all circumstances to entrust the registration of legal representatives exclusively to national contact points. We believe that in some cases, the competencies will be divided between several authorities so that substantively it will make more sense to entrust the registration to a different authority than the one designated as the contact point. We therefore strongly appeal for a wording that will correspond to the Council's mandate.**
- **Furthermore, we have general reservations about the obligatory machine-readable format and believe that any references in this matter should, similarly to the Commission's original proposal and the Council's mandate, contain the condition "where technically possible".**
- **Regarding rows 212 and 212a, we can agree with the position of the EP. However, we are concerned that effective enforcement towards third-country service providers may be problematic. That is also why, in the context of the possible deletion of the Council's provision in row 211a, we would like to emphasize that it is essential for us that non-compliance with the requirement to appoint a legal representative is realistically enforceable. We are, nevertheless, open to possibly milder wording.**

Rows 215-222a

- **When it comes to rows 215 to 222a, at the moment, we do not find anything to which we have specific comments, and therefore we can express our flexibility.**

Rows 195a, 195c a 195d-195h

- **Setting aside the issue of services, we would first like to emphasize that we find focusing Article 12 only on online political advertising unsystematic and potentially risky.**
- **Regarding specific measures, the Czech Republic cannot agree with the strict proposals the EP's mandate foresees.**
- **At the same time, we are of the opinion that regulating an area touching upon free access to information should be approached very cautiously. In addition, we doubt whether the regulation should address all the details, especially if they are already foreseen in other regulations.**
- **The proposed measures (individually and as a whole), on the one hand, appear very complex and challenging to imagine in the application practice and, on the other hand, may ultimately lead to a practical prohibition, especially at the local level (taking into account the population condition and municipal structure of the Czech Republic).**

- **Too strict rules may pursue a noble goal, but at the same time, they may have significant negative consequences, for instance, in terms of a level playing field for political players, especially the small ones.**
- The explicitness of the provision of personal data, combined with limited categories, could also lead either to the collection of even more personal data or, conversely, to situations where, for example, an individual who uses social media in another language and, at the same time, does not explicitly state his place of residence will not see an advertisement they would have otherwise wished to see.
- **In the case of row 195a, we believe that the current wording of the provision goes against its definition, and we cannot technically fully imagine how determining the target audience without further processing of personal data would be feasible in practice.**

Row 200d

- We see the requirement for an annual risk assessment as an additional administrative burden and a potential duplication of already existing obligations rather than an added value. Under the GDPR, controllers are already required to carry out a data protection impact assessment where processing operations are likely to result in a high risk to the rights and freedoms of natural persons.

Row 202

- We can be flexible, but we would prefer the text of the Council, as well as maintaining the structure approved by the general approach, i.e. moving the point in question to the section defining the general requirements for data controllers (Art. 12a(1) in the mandate of the Council, Art. 12(3) in the mandate EP).

Row 121b

- In principle, we can be flexible regarding the name of the definition, however much we prefer the Council's version.
- In terms of content, we believe that careful linking of the two mandates could be beneficial. However, the definition should not be narrowly focused only on automated processes so as not to limit the scope of the definition and leave out cases where delivery techniques are only partially automated.

Rows 163a–163p

- We can support having measures related to transparency notices in a separate article.
- Regarding the particular content, however, we would prefer to adhere to the Council's approach when it comes to stating the required information directly in the regulation. Considering the scope of the regulation, we would also refrain from making an explicit reference to the directive on accessibility requirements for products and services directly in the enacting terms.

- Last but not least, as in other cases, we would prefer to keep the wording "where technically possible" in relation to the machine-readable format.
- As regards the remaining provisions, we can express our flexibility.

Row 215a

- We can be flexible about the EP's proposal.

Row 228–228j

- We do not believe that establishing a specific permanent network of national contact points is necessary, but we do not oppose the proposal.

Rows 238a + 241a

- We consider introducing a reporting mechanism on imposed sanctions to be potentially useful, as we believe that it could be beneficial for further analysis and evaluation of the application of the Regulation.
- In principle, we can therefore support the proposal. Still, from a technical point of view, we believe that the relevant rows duplicate this requirement, and it is desirable to unify the text into one provision.

DENMARK

Comments on drafting suggestions and 4 column table for meeting 12 May 2023

Concerning drafting suggestions for article 14-15b

Row 218

Denmark supports the draft suggestion on the condition that a reference to para. 2 is added and it is specified which powers authorities designated pursuant to article 15(2) have when they are not the same as the DSA coordinator.

Row 219b under ab)

Periodic penalty payments are interpreted in a way that is not related to punishment. Therefore, Denmark does not consider it suitable for periodic penalty payments to be listed as a financial penalty. Therefore, we suggest that “*financial penalty*” is changed to “*financial reactions*” or “*financial consequences*”.

It is essential for Denmark that the wording in article 15(5) (ac) “*or request a judicial authority in their Member State to do so;*” is repeated in 15(5) (ab).

Row 219 under ac)

It is essential for Denmark that the wording in article 15(5) (ac) “*or request a judicial authority in their Member State to do so;*” is repeated in both 15(5) (ab) and 15(5) (ac) as it otherwise may give rise to constitutional concerns for Denmark.

Comments for updated 4 column document

Concerning rows 163a-n

The text of Council’s mandate is preferable as EP’s proposals in the rows in question seem at first sight to unnecessarily elaborate on the text of Council’s mandate on transparency communications.

Concerning row 163o

The text of Council’s mandate is preferred as the proposed elaboration in row 163o seems more detailed than necessary.

Concerning rows 195c-195h

Denmark can support the Council's recommendation regarding the categories of personal data that may be used as a basis for targeting political advertising (in principle a ban on targeting based on sensitive personal data).

It is unclear whether EP's proposal of requiring the data subject to give explicit and separate consent to the targeting of political advertising based on non-sensitive personal information in practice will mean that it will be difficult for politicians and others to target advertising etc. to people residing in a particular country in connection with local elections. This could be the case, for example, if citizens do not consent to receiving targeted political advertising based on information about the country in which they reside or which language(s) they speak. If this is the case, it may not be practical. It is important for Denmark that the regulation does not prevent legitimate political actors from using political advertising as part of an open and democratic debate.

Concerning row 200d

Denmark cannot support EP's proposal, as we are concerned that it would be too burdensome for smaller companies to be obliged to carry out an annual risk assessment.

Denmark supports EP's proposal that very large online platforms and search engines should include political advertising in the risk assessment they are obliged to carry out under the DSA.

Concerning row 202

Denmark supports the Council's proposal to delete this provision, as the Council's compromise proposal in row 200e already requires individuals to be able to give and withdraw their consent and object to the use of their data which is also reflected in the EP proposal.

Concerning rows 228-228j

Denmark do not object to the establishment of national contact points, as also apparent from Articles 15(7) and 15b(3) in Council's general approach. However, it seems unnecessary to expand the obligations for cooperation further.

Concerning rows 238a and 241a

Denmark consider row 238a unnecessary, as the content of these two rows seems to be the same.

GERMANY

1. WK 6172/2023 INIT

Art. 14 (Legal representative)

a. Row 211 (Art. 14 para 1)

- DE is open for the draft agreement in Art. 14 para. 1 (row 211).

b. Row 211a (Art. 14 para 1a)

- DE asks the PCY to stay to the General Approach.

c. Row 212 (Art. 14 para 2)

DE would prefer Article 14 to be brought in line with Article 13 para 3 of the DSA.

d. Row 212a (Art. 14 para 2a)

DE is open for the EP suggestion in line 212a.

e. Rows 212b and 212c (Art. 14 2a and b)

DE is also open for the draft agreement in lines 212b and 212c.

Art. 15 (Competent authorities and contact points)

a. Rows 214a to 214d (Art. 15 para 1a)

- DE acknowledges the potential benefits of a more focused approach towards supervision. However, given the ongoing efforts of the Commission regarding harmonization of some aspects of the administrative procedure we express reservations towards modifying the GDPR supervisory ruleset within this regulation. Some drafted provisions raise doubts towards their compatibility with the independence of data protection supervisory authorities. DEU therefore expresses strong reservations towards modifying the existing data protection supervisory regime, especially on the occasion of such a difficult topic like the regulation at hand.

b. Row 215 (Art. 15 para 2)

- DE is open for the draft agreement in line 215 using the term “supervision”.

c. Rows 216 to 222a (Art. 15 Abs. 3 to 6a)

- DE is in general flexible with regards to the draft agreement.

2. ST 9184/23

a. Rows 57i, 195a, c to h (Art. 12 para 1)

- DE has a scrutiny reservation on the EP proposals as they are directly connected to the overall agreement on Article 12.
- In this context we reiterate our position from the joint statement.
- This regulation can only be effective if it does not fall behind the prohibition of the DSA on advertising using special categories of personal data.

b. Rows 200d

- DE is open to risk assessments that address the specific goals of the regulation to safeguard electoral processes and democratic debate. We would like to ask the PCY what the intention of the EP is with its text proposal and how important this proposal is for the EP.
- The text proposal of the EP covers all providers. This seems burdensome especially for smaller providers.

c. Rows 202

- DE is in general flexible with regards to the draft agreement.

d. Rows 121b

- DE has a scrutiny reservation on the EP proposal as it is directly connected to the overall agreement on Article 12. We refer to our remarks under point a.

e. Rows 163a to n, 163 o to p (Art. 7a)

- DE is in general flexible with regards to the draft agreement. However, we would ask the PCY for a balanced compromise with the EP given the level of detail required in the transparency notices in order to avoid overburdening obligations.

f. Rows 215a (Art. 15 para 2a)

- We would like to ask the COM whether it would be in favour of being in charge of the supervision of very large online platforms according to the DSA in order to avoid a potential bottleneck in some Member States.
- DE would like to know from the PCY how important a centralized supervision of VLOPS/VLOSEs at EU-level is for the EP.

g. Rows 228 to 228j (National contact points)

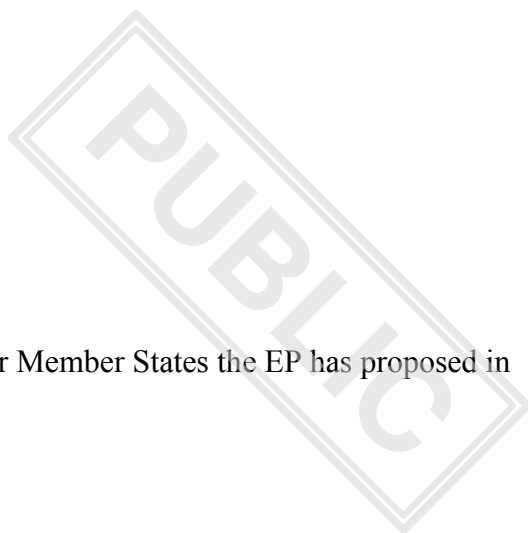
- DE asks the PCY to stay to the General Approach.

h. Rows 238a (National contact points)

- DE asks the PCY to stay to the General Approach.

i. Rows 241a

DE cannot support the extensive reporting obligations for Member States the EP has proposed in Art. 17 para. 7a.



IRELAND

Observations of Ireland 12 May

General Comments

- Ireland does not favour additional restrictions on targeting which amounts to a complete ban. We see a very real potential to severely damage if not accidentally collapse the political advertising industry arising from this approach.
- Ireland would like to underline again that Council has agreed a Common Position which is based on the Commission proposal for greater transparency. Voters individual free choice to read what they want is safeguarded. This is a transparency measure not a ban and protects fundamental freedoms. We ask the Presidency to proceed on this basis.
- Ireland has reviewed the Commission paper circulated this last week and agree with the Concerns and caution in the Commission approach. Scenario 1 is our preferred route. Scenario 2 makes clear that in certain circumstances you are actually reducing transparency if you apply the Parliament approach. As we have said before constructing a completely different proposal from the Commission proposal is not acceptable.

Detailed obs

- Row 57i – Ireland is of the view that the proposal should focus on transparency and not on restricting or prohibiting the targeting of political advertising. The electorate need to be made aware of why they are being targeted by a political advertisement, where the personal data was from, the publisher's targeting policy together with an opt-out mechanism if they no longer wish to receive such advertisements; In addition it is not clear the 60 days refers to the time immediately before polling day and might be read as another 60 days before an election is called.

- Row 195a – Ireland does not support additional restrictions on the targeting of political advertising where personal data has been legitimately obtained and processed in accordance with the requirements of the General Data Protection Regulation (GDPR);
- Row 195c-h – Ireland does not support additional restrictions on the targeting of political advertising where personal data has been legitimately obtained and processed in accordance with the requirements of the General Data Protection Regulation (GDPR). In addition, the requirements of these amendments appear particularly onerous and could potentially result in political advertising publisher's withdrawing from the provision of political advertising services;
- Row 200d – Ireland is of the view that this is creating an additional administrative burden on political advertising publishers and does not support the proposed amendment;
- Row 202 – Ireland supports the text in the original Commission Proposal. In broad terms, the electorate should be provided with an opt-out mechanism if they no longer wish to receive political advertisements and/or a mechanism to request the correction of personal data (if incorrect) legitimately obtained and processed in accordance with the requirements of the General Data Protection Regulation (GDPR);
- Row 163a-n – these amendments appear to insert an entire new article on transparency notices into the proposal setting out the information and detail that should inform a transparency notice. In broad terms, the proposed amendments would appear to provide for quite precise information to be included in a transparency notice and, as such, may bring a greater of clarity of what is required of political advertising service providers;
- Row 163o – this appears to be quite an extensive amendment which on the surface places obligations on sponsors, providers of political advertising acting on behalf of sponsors and political advertising publishers to ensure that information provided in respect of political advertising and accompanying transparency notices is accurate and correct. In that context, Ireland has no specific objections to it although clarification is sought on whether this amendment is intended to replace some of Article 7;

- Row 163p – Ireland is broadly supportive of the proposed amendment. As above, while Ireland has no specific objections to it, clarification is sought on whether this amendment is intended to replace some of Article 7;
- Row 215a – – Ireland supports the text in Article 15(2) of the Council Mandate or in Article 15(2) of the original Commission Proposal; We foresee no role for Commission in enforcement.
- Row 228-228j – Ireland is broadly supportive of the proposed amendments in 228-228e on the role of a network of national contact points within the framework of the European Cooperation Network on Elections. Ireland does not support the proposed amendments in 228g-228j as they relate to the introduction of complaint mechanisms and activity reports. These proposed amendments appear to place obligations on national contact points which, given the complex structure of Article 15 may not be the competent authorities responsible for enforcement of the subject matter of the complaint / activity report. Furthermore, it may not be practical for a competent authority to respond properly and comprehensively to a complaint within 5 days during an electoral period;
- Row 238a – Ireland supports the text in Article 16 of the Council Mandate or in Article 16 of the original Commission Proposal; Another reporting mechanism.
- Row 241a – Ireland supports the text in Article 16(7) of the Council Mandate or in Article 16(7) of the original Commission Proposal and does not support the insertion of a new Article 16(7a). Another reporting mechanism.

Observations of Ireland 17 May

- Row 170 – Ireland could accept the compromise text in respect of Article 9 as set out in the fourth column, subject to clarification on what is meant by “possibilities for redress” text being inserted under 3c (i.e. 3c. Political advertising publishers shall provide clear and user-friendly information on the possibilities for redress in respect of the advertisement to which the notification relates and, where applicable, on the use of automated means for the processing of notifications as referred to in paragraph 1.)? If a political advertisement is considered unlawful, it should be either corrected or removed by the political advertising publisher in consultation with the sponsor. Where such action is not taken by the political advertising publisher, it should be a matter for the competent enforcement authority to investigate the political advertisement and take appropriate action. It is also noted that a 48 hour turnaround time in the month before an election in order to respond to a notification from a natural or legal person may prove challenging to political advertising publishers;
- Row 211 – Ireland supports the text in the Council Mandate (including the text under rows 212, 212b and 212c) rather than that in the fourth column. While Ireland is broadly supportive of the establishment of a network of national contact points within the framework of the European Cooperation Network on Elections, the registration of designated legal representatives should be assigned to the national competent enforcement authority;
- Row 216 – Ireland can accept the compromise text in respect of Article 15(3) as set out in the fourth column. However, it is noted that the enforcement structures under Article 15 already appear quite complex with requirements on Data Protection Authorities, Digital Services Coordinators, competent authorities under Directive 2010/13/EU and such other competent authorities as may be designated at the national level;
- Row 218 – Ireland has no specific comments to make on the compromise text in respect of Article 15(5) as set out in the fourth column;

- Row 218a – Ireland can accept the compromise text in respect of Article 15(5)(a) as set out in the fourth column;
- Row 219a – see comment above;
- Row 219b – Ireland can accept the compromise text in respect of Article 15(5)(aa) as set out in the fourth column;
- Row 222 – Ireland can accept the compromise text in respect of Article 15(6) as set out in the fourth column;

Given the very limited time available, the above comments / observations only focus on those rows in the attached document for which compromise text is proposed.

On a more general point Ireland welcomes the Presidency proposal to continue in the negotiations along the line of scenario 1 in the Commission non paper and reiterates its concerns about agreeing further restrictions on the use of personal data or the inclusion in the text of further obligations, considering the restrictions and obligations already in the Commission text and Council position. Ireland also reiterates that it foresees no expansion in the remit of the European Data Protection Board resulting from this measure and appreciates the position of the Presidency in this.

FRANCE

12 May 2023

1.1. Sur le document WK 6172/23 relatif aux articles 14 et 15 :

- Article 14 (Représentant légal)

Ø (I211) : Emettre des réserves sur la nouvelle rédaction proposée qui reprend la position du PE. Les représentants légaux devraient plutôt se notifier auprès des autorités compétentes que du point de contact national, comme le prévoit le Conseil, afin de tenir compte du large panel d'acteurs concernés par le texte. De plus, signaler que de nouvelles obligations sont créées pour les points de contact nationaux s'agissant de la publication des informations concernant les représentants légaux.

- Article 15 (Autorités compétentes)

Ø (I214a-d) : S'agissant du pouvoir conféré au Comité européen de la protection des données d'initier des enquêtes en cas de non-respect par les très grandes plateformes ou très grands moteurs de recherche de l'article 12 et suiv., des précisions supplémentaires pourront être demandées concernant son articulation avec le DSA, ainsi qu'avec le RGPD. [Cette proposition nous semble en outre conférer au Comité européen de la protection des données des pouvoirs d'enquêtes allant au-delà de ce que prévoit le RGPD.]

Ø (I215a) [les autorités françaises ne peuvent pas se prononcer à ce stade. Cette proposition du Parlement européen doit faire l'objet d'un examen plus approfondi]

Ø (I216) : Saluer la reprise de la position du Conseil qui indique que les autorités compétentes peuvent être différentes de celles visées par le DSA ou la directive SMA, qui n'est pas compétente pour réguler la presse.

Ø (I219b) : Saluer le maintien de la référence au respect des droits fondamentaux que sont la liberté d'expression et d'information ainsi que la référence à l'autorité judiciaire qui était prévue dans le mandat du Conseil.

1.2 Observations sur les autres lignes du tableau quatre colonnes actualisé (ST 9184/23)

- Article 12 et considérant 47

[Lignes 195a, c, d, e, f, g, h] Les autorités françaises sont très vigilantes à ce que l'article 12a de la proposition de règlement, qui a fait l'objet d'un compromis au sein du Conseil, ne soit pas dénaturé.

La délégation soulignera que les propositions du Parlement européen qui limitent fortement le recours aux techniques de ciblage et d'amplification impliquant le traitement des données personnelles, qui introduisent des dispositions spécifiques pendant les 60 jours précédant immédiatement une élection ou un référendum (limitation à certaines données spécifiques explicitement fournies par la personne concernée) ou qui excluent des techniques de ciblage et

d'amplification des communications internes d'un parti politique viennent limiter l'équilibre précieux entre deux éléments essentiels du débat démocratique que sont l'accès de tous les citoyens à l'information politique, en particulier à travers l'action des partis politiques, et la protection de la capacité des citoyens à exercer leur liberté de manière éclairée et sans ingérence.

En conséquence, la délégation appellera la Présidence à défendre le mandat du Conseil.

[Ligne 200d] La délégation indiquera que la proposition du Parlement visant à rendre obligatoire, pour les responsables de traitement (au sens de l'article 4 §7 du règlement 2016/679 : personne physique ou morale, autorité publique, service ou autre organisme qui, seul ou conjointement avec d'autres, détermine les finalités et les moyens du traitement des données), de rendre une évaluation annuelle publique du risque de l'usage des techniques de ciblage sur les droits et libertés fondamentaux est intéressante et pourrait être précisée. Il pourrait néanmoins être précisé que pour les responsables de traitement qui sont des très grandes plateformes en ligne ou très grands moteurs au sens du DSA, cette obligation s'inscrit dans le cadre général de l'analyse et de l'atténuation des risques annuelles prévues aux articles 35 et 36.

[Ligne 202] La délégation indiquera que la proposition du Parlement visant à ce que l'avis de transparence fournisse un lien direct vers une interface accessible dans laquelle les utilisateurs peuvent retirer leur consentement ou modifier les données personnelles fournies pour la seule finalité de la publicité politique en ligne est intéressante. Elle pourra demander à ce que la proposition soit explicitée, notamment ses similitudes ou différences avec le système mis en place pour les cookies. 4 68, rue de Bellechasse 75700 Paris

- Article 7 (nouvel article 7 bis proposé par le Parlement européen – avis de transparence)

Ø (l163a à 163m) Signaler que la liste des informations prévues par le Parlement européen, devant figurer dans l'avis de transparence, est plus conséquente que celle prévue dans le mandat du Conseil. Ainsi, indiquer que cela pourrait constituer une charge administrative lourde en particulier pour les petits acteurs. [Le PE prévoit en plus de ce que prévoit le Conseil de faire figurer : la période durant laquelle la publicité politique sera publiée et disséminée ; des informations sur la façon d'utiliser le mécanisme de signalement prévu à l'article 9 (1) ; des informations sur les éventuelles périodes de suspension de la publicité politique ; une série d'informations liées à l'utilisation des techniques de ciblage ; le nombre de vues pour une publicité politique.]

Ø (l163o) : Emettre quelques réserves sur la proposition du Parlement européen consistant à distinguer la responsabilité de la véracité des informations, en fonction des acteurs. Indiquer que la chaîne de valeur est importante et que des dispositions aussi précises pourraient poser problème dans la mise en œuvre du règlement.

- Article 15 (disposition sur le point de contact national)

.Création d'un réseau des points de contact nationaux

Ø Faire valoir que ces dispositions sont à analyser en parallèle des dispositions sur la coopération entre les différentes autorités compétentes des Etats membres, qui doit être efficiente et structurée. Souligner qu'il convient de veiller à la bonne articulation de ce texte avec les discussions en cours sur le règlement sur la liberté des médias, qui crée un Comité

européen des médias qui se substitue au groupe des régulateurs européens pour les services des médias audiovisuels (ERGA), qui est mentionné dans la proposition du PE. Indiquer que les autorités françaises pourront revenir par écrit sur ce point ou lors du prochain groupe.

.Droit à porter plainte

Ø Emettre des réserves par rapport à l'introduction d'un droit à porter plainte auprès du point de contact, qui, en plus de conduire à un traitement indifférencié entre la presse écrite et audiovisuel, pourrait conduire à un engorgement des plaintes de ce point de contact en question./.

15 May 2023

. Sur la ligne 170c, le Parlement souhaitait que les publicités puissent être traitées dans un délai de 48 heures en période électorale. Le Conseil voulait limiter cette obligation aux VLOP.

La délégation française émettra de fortes réserves s'agissant de la volonté de la Présidence d'élargir l'obligation du Conseil aux moyennes entreprises.

Sur les dispositions de l'article 7 qui ne semblent pas avoir été abordées lors du précédent groupe, la délégation française réaffirmera qu'elle est réticente aux ajouts du Parlement européen qui consistent à intégrer une liste importante d'informations au sein de l'avis de transparence. Elle soulignera que cela pourrait constituer une charge administrative lourde en particulier pour les petits acteurs (1163a à 163m).

La délégation française indiquera qu'elle transmettra des commentaires écrits sur le document 6431/2023 compte tenu des délais de transmission du document.

AUSTRIA

1. Comments on the draft compromise text in WK 6172/23:

Rows 211 to 212c:

Assuming that AT's position is already adequately known and well documented, we welcome every single effort – as already indicated on page one in row 211 of the paper – to reduce the obligations to the minimum necessary so that these obligations might pass one day the „proportionality test“. The same argument is valid for the thoughts on „The objective is not to punish.“ expressed in row 211a.

Rows 215 to 219b:

It is indispensable that the provisions in Art. 15 clearly state which authority is responsible for which exact task. Having expressed this, we still see room for improvement in this respect. The different rows show that several terms in discussion are still unclear (e.g. „consistent“? or „supervise“, „monitor“).

2. Feedback on document ST 9184/23

Rows 163a – 163n, 163o, 163p and 228h:

As already indicated at several occasions, and just before, AT is clearly in favour of every single effort in reinforcing the responsibilities (and accountability) of the sponsor and in reducing the administrative burden and the responsibilities of the advertising publishers. AT can therefore at least in this respect support the basic idea of the EP-Mandate, that the sponsors are held responsible for the accuracy of the information, which they are required to provide. Nonetheless, it still needs a clearer accentuation in this respect that the sponsor (as the creator of the message) is the mainly responsible person and not the „messenger“. This has to be stressed especially when it comes to the proposed changes related to the sanctions in rows 230 to 238.

Row 238a and 241a:

We don't see the added value of the introduction of the manifold reporting obligations addressing the same topic. This is a superfluous administrative burden.

Scrutiny reserve on EC non-paper on sensitive data scenarios.

17 May 2023

General remarks:

- We want to repeat our written comments (already submitted in connection with the documents WK 6172/2023 and ST_9184/23) that we are against extending the manifold obligations for political advertising publishers. This position is also relevant when it comes to the proposal to amend row 170c by „medium sized enterprises“.
- As already said several times, the provisions in Art. 15 are still not sufficiently clear.
- Regarding row 210ff, we refer to our comments contained in document 8859/23.

Non-paper on sensitive data scenarios:

- We have to avoid any regulatory scenario which would further narrow the possibility for political debates or could have an impact on political debate online, as the Commission stated in its analysis.
- As the issues are complex, we would appreciate more time to examine them.
- As of now, we confirm our position that the current standard for the protection of special categories of personal data as contained in Art. 12 of the General Approach (general ban except Art. 9 para 2 lit. a and d) should be maintained.
- Although this would be achieved by Scenario 3, from a data protection perspective, with regard to the DSA, scenario 3 of the non-paper is not convincing, because it might not be feasible for the platform to distinguish between political and non-political advertising.
- Online platforms play a significant role both in the dissemination of political messages as well as infringements of the right to data protection in the context of political advertising. Therefore, a special focus has to be put on the work of online platforms in the context of political advertising.
- Whether a ban of all targeted political ads on online platforms as proposed in Scenario 1 is the best or only solution for these problems cannot be answered solely from a data protection viewpoint.

FINLAND

FI written comments / Proposal for a Regulation on the transparency and targeting of political advertising / 22nd May 2023

Rows 121 and 121b: Art. 2, first paragraph, point (8)

- FI is flexible in terms of definitions. We consider it important that the definitions be formulated so that they cover all the technologies used in targeted advertising and that this Regulation cannot be circumvented.

Rows 163a–163n, 163o, 163p: Art. 7a(1) points

- In general, FI finds it important to take note to the proportionality of all obligations (and their possible effects to the SMEs) as the EP's suggestion of information to be given is very detailed.

Row 170 c: Art 9(3), 9(3b) and 9(3c)

- More precise estimates of the proportion of medium-sized political advertising publishers would be needed, as well as estimates of potential reporting volume. Also the question of definition: for example, in many countries the ownership of media is becoming more centralized – how would the suggested provision be applied? Would this further add to the decline of (political) advertising in small and medium-sized traditional media?
- The EP's proposed 48 h processing time in the run-up to elections or referendums might become a burden for medium-sized publishers, i.e. proportionality. In general, FI is in favour of ensuring the operating conditions for small and medium-sized political advertising publishers. This is well reflected in the Council's general approach, where the deadline would only apply to VLOPs and VLOSEs. (We would also like to point out that the DSA does not introduce any specific timelines regarding reporting illegal content, see Article 9 of the DSA).
- FI would also like to inquire whether it is possible that a mechanism tied to a strict time limit would also allow for malicious notification campaigns that would affect small and medium-sized operators in particular?

Row 211: Art. 14(1)

- FI is open for the draft agreement.

Row 212a (Art. 14 (2a))

- FI is open for the EP suggestion

Rows 212b and 212c: Art. 14 (2a and b)

- FI is also open for the draft agreement regarding these lines.

Rows 214a-d (Art. 15; 15(1a-d))

- FI supports the Council Mandate and invites the EP to accept the Council text. FI has earlier forwarded concerns regarding the EDPB's suggested role.
- We understand the EP's point of view to have an EU-level supervisory authority. If the EP is adamant regarding the EDPB's role, it is important to make sure that this would not impact the competence, tasks and powers of the national supervisory authorities (pursuant to Chapter VI of the GDPR) more than necessary. In addition, it must be ensured that the

provisions on imposing administrative fines pursuant to the GDPR and the EUDPR [see Article 83 of Regulation (EU) 2016/679 and Article 66 of Regulation (EU) 2018/1725].

- FI considers that the conditions and/or specific criteria for administrative fines under the EU data protection regulation should not be supplemented through other EU legislation. We would also like the Commission and the Council's legal services to provide their legal analysis on this.

Targeted online political advertising

Rows 195a, 195c-g, Recital 47i: Art. 12(1)

- As we have previously commented, FI primarily supports the Council Mandate, but we are open for negotiation and could welcome some of the restrictions the EP has proposed.
 - The EP proposes that targeting techniques that involve the processing of personal data shall be restricted to personal data explicitly provided by the data subject with his or her consent given solely for the purpose of online political advertising.
 - This type of clarification would be acceptable, although FI would suggest that [in line with the Council Mandate] also the processing of special categories of data would be allowed when the data subject has given an explicit consent pursuant to Article 9(1)(a) of the GDPR and Article 10(1)(a) of the EUDPR.
 - We could accept that this Regulation would clarify that only personal data which the user has explicitly and actively provided for the sole purpose of online political advertising can be processed (ie. the data subjects should not be targeted with political advertisement by data controllers to whom they have not provided their personal data and that personal data that is processed in the course of the normal use of the service cannot be processed for the purpose of targeted online political advertising).
 - However, some of the EP proposals might be too detailed and might burden the SMEs too much.
 - For example introducing regulation on, what type of personal data can be processed, how many categories of data can be combined or on what grounds location data can be processed or introducing detailed percentages/amount of citizens for the target groups, might not be proportionate.
 - FI would also suggest some amendments to the EP proposal in order to ensure that this Regulation would be consistent with the GDPR and EUDPR and that the proposed provisions do not contain unnecessary, overlapping regulation.
 - For example, sentences such as the following seem overlapping: Refusing to give consent shall not be more difficult or time-consuming to the data subject than giving consent [see e.g. Article 7(3) of the GDPR]. FI considers that with regard to consent, the reference should be made to the relevant articles of the GDPR [and the EUDPR] in order to make sure that this Regulation would not cause confusion as to what consent means [see e.g. line 195c]. Referring to Articles 4(11), 7 and 9(2)(a) of the GDPR [and the relevant articles of the EUDPR] should be enough.
 - In addition the reference to Article 21(5) of the GDPR seems somewhat unclear, as Article 21 of the GDPR refers to the right to object and is subject when the legal basis for processing personal data is 6(1)(e) or 6(1)(f) of the GDPR. In this Article the legal basis would be the data subject's consent/explicit consent [see line 195c].

Row 200d: Art. 12a(1), point (c)(iii)

- This proposal might be ok, although FI asks to be considered whether this type of obligation suggested by the EP should be imposed on SMEs (or whether this would be disproportionate).

Row 202: Art. 12(5)

- As FI has previously commented, we share the EP's concerns relating to consent. We see that an interface could be a viable option to ensure that a freely given, specific and informed consent can be given. This type of interface would also make it possible for the data subject to give an explicit consent for the processing of special categories of data.
- gories of data would be possible when the data subject has given an explicit consent.

Comments to the non-paper by the Commission

- We are not absolute about which scenario should be chosen. In our view Scenario 3 seems to be closest to the Council Mandate as the other scenarios would introduce a full ban to processing special categories of data. FI has called for a balanced solution between different fundamental rights. In addition to providing a high level of data protection, it is important to avoid solutions that disproportionately narrow the freedom of expression, the right to information or narrow the possibility for political debate. Therefore we would prefer Scenario 3. Alternatively, we could be open to finding a compromise solution between Scenarios 1 and 3.
- In our preliminary view, as far as DSA is concerned, we do not see an obstacle to the regulation of political advertising being different from that of DSA. In order to make sure Scenario 3 is consistent with other existing legislation, in particular the DSA, we would add to the recitals (and possibly in the Articles as well) that Scenario 3 means that Article 26(3) of the DSA would not apply (this Regulation would be *lex specialis*).
- Our view has been that a total ban for the processing of special categories of personal data would not be necessary. The processing of special categories of data should be possible when the data subject has given an explicit consent. In order to ensure that an explicit consent can be given, it is necessary to provide for certain restrictions and higher transparency and accountability standards. However, as stated before, we think that some of the EP's proposed restrictions to processing personal data could be viable.
