



Council of the European Union
General Secretariat

Brussels, 25 July 2023

Interinstitutional files:
2021/0381 (COD)

WK 10245/2023 INIT

LIMITE

AG
MI
DATAPROTECT
DISINFO

FREMP
AUDIO
CONSUM
TELECOM
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on General Affairs
N° prev. doc.:	11214/23
N° Cion doc.:	14374/21 +COR1 REV1 +ADD1 +ADD1 COR1 REV1 - COM(2021) 731 final + Annexes 1 to 2
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising – informal suggestions from Commission

Delegations will find, in the annex to this document, informal suggestions from the Commission on the following:

- Recital for risk assessment by VLOPs and VLOSEs under DSA (row 135d)
- Recital for COM oversight of VLOPs and VLOSEs (row 215a)
- Recital on the reach of political message (row 163m)
- Sanctions - New paragraph (row 230a and 230b)
- Recital on urgency procedure
- Proposals on phased approach to Entry into force (Article 20)

The following texts are shared informally to support the discussions among the co-legislators and does not necessarily represent the Commission position.

1) Recital for the risk assessment to cover EP proposal in 135d

Political advertising publishers that are also Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) should diligently identify, analyse and assess any systemic risks that their political advertising services pose in the context of their risk assessments according to Article 34 of Regulation (EU) 2022/2065 (Digital Services Act) and put in place reasonable, proportionate and effective mitigation measures in accordance with Article 35 of Regulation (EU) 2022/2065 (Digital Services Act) to address these risks.

2) Recital on VLOPs COM oversight

To the extent that the Commission has exclusive competence to supervise and enforce the compliance of very large online platforms and of very large search engines within the meaning of Regulation (EU) 2022/2065 (Digital Services Act) with the obligations laid down in that Regulation, the Commission should take into account compliance with Article 5(2d) and Article 7b(2) of this Regulation.

3) A recital on what the reach of the message could mean in row 163 m (transparency notice element from the EP text)

It is necessary to collect information on the reach of the online advertising. Reach of the message can be understood as relevant interactions of individuals with online political advertising for transparency notices, including the number of views and clicks or other engagement with the advertising content.

4) Sanctions – a new paragraph in article 16 to complement rows 230a and 230b:

Without prejudice to paragraph X and Y on this article, the maximum amount that may be imposed to providers of intermediary services shall be determined on the basis of Article 52 of Regulation (EU) 2021/xxx2022/xxx [the DSA].

5) Recital on urgency procedure

The period preceding elections or referendums is particularly important in political campaigning, in influencing citizens to form political opinions and exercise their voting rights. It is also particularly sensitive to infringements of applicable rules, because remedial action will usually need to be in place before the electoral event in order to be effective. That is why infringements of the rules applicable to the processing of personal data for targeting political advertising in this period is liable to have a particularly significant negative effects on citizens' rights including their freedoms to form opinions without undue inference and of information. In the light of this, during periods preceding elections or referendums, data protection authorities should ensure that they are able to act promptly to enforce the rights of the concerned data subjects. In this spirit, Data Protection Authorities should make use of the range of tools provided in the GDPR to cooperate and assist each other, including as the case may be the process laid down in Article 66 GDPR.

6) Entry into force, phased approach

- There remains a window of opportunity to have a common EU framework on transparency of political advertising in place for the next 2024 elections. This is an aim shared among the co-legislators.
- Campaigning will start officially at different times in the Member States (and certain Member States do not designate such periods), and in practice the use of specific advertising is expected to start to ramp up from the new year.
- Some provisions, such as those involving the designation of new competent authorities or the establishment of new IT services, will need more time for necessary arrangements.
- The provisions of the proposal can be split into two groups for this purpose – encumbered and unencumbered provisions. See Annex for a possible grouping of provisions.
- Encumbered provisions are those have dependencies: an implementing measure or delegated act is required; some specific action is required from the Member States (eg designation of a competent authority or establishment of sanctions in national legislation), national authorities (preparation of guidance or protocols for coordination) or the Commission (preparation of guidance, standards etc); or some significant action is required from the addressee of obligations (establishment of specific contractual terms, implementation of standards, agreement and implementation of information transmission procedures among service providers, establishment of specific ancillary services such as to host transparency notices).
- Where provisions require steps from authorities, Member States or the Commission, they can apply immediately but will require realistic deadlines for the necessary steps to be completed.
- Where provisions require steps from the addressees of obligations, a period is needed before they can become fully effective, depending on how much work is needed and whether there are further dependencies, e.g. where a service provider must take steps to implement standards which will need to be established by the Commission.
- Unencumbered provisions are those which do not depend on other additional steps. They could take a effect and be usefully applied immediately. On this basis, Chapter 1 could provide binding definitions for use in other measures as well as this one, for instance for the Code of Practice on disinformation.
- Certain encumbered provisions could also be given effect and usefully applied before the 2024 EP elections, even though some work would be needed and they might not be fully effective throughout the campaign period. Some of Chapters 2 (eg Article 5 and Article 7.1) and Chapter 3 (much of article 12) could be made to work this way. This would ensure a level of transparency and specific data protection for the EP elections. These provisions would need to be assessed also against the relevant Venice Commission guidance on the stability of electoral law.¹
- Chapter 4 could also be brought into application, with specific deadlines for designations and other acts..
- Other provisions would require more work and more steps. Different approaches to a phased entry into application could be considered. The DSA, for instance, established a general entry into application 18 months after the enactment took effect, and another group of provisions, mainly concerning the Very Large Online Platforms and certain sections of the oversight provisions, which started to apply a month after enactment. The entry into application of oversight obligations did not mean that oversight authorities were designated immediately – the digital services coordinators under Article 49 DSA will be designated by February 2024.

¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2005\)043-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)043-e).

Annex – assessment of proposal for earlier entry into force

Provision²	Encumbrance	Who is affected	What steps are required	Approx period required
Article 4 Transparency	Dependent on the other transparency measures	Service providers	The entry into application of the other transparency measures	
Article 5 Identification of political advertising, except 5(1), (2a)	Contractual arrangements specifying how to comply with Article 6 and 7 Facilitating online interface (2b)	Service providers		before EP elections after EP elections
6a information transmission	Best practice and industry standards, by means of a standardised automated process, machine-readable format	COM/Service providers	Drafting of industry standards and specification of machine-readable format	before EP elections
Article 7 (1)(c) – reference to transparency notice Article 7(1a,1b) labels (still under discussion)	Article 7a Developing efficient and prominent marking and labelling techniques Delegated acts	Service providers COM	Transparency notice requirement should be in place COM should adopt delegated acts	before EP elections after EP elections for the standardized labels
Article 7a Transparency notices	Requires transmission of information, contractual arrangements Article 9 (reference to mechanisms)	Service providers	Time to set up contractual arrangements and build capacity	before EP elections
Article 7b ad repository	Technical specifications, tender and building up the repository Reallocating staff for repository maintenance and development	COM Service providers	Set up the repository, comply with repository	48 months

² Where paragraphs are not specified the whole article is considered

Article 9 Indicating possibly unlawful political advertisements	To be made available from transparency notice (Article 7b) Information on redress possibilities linked to competent authorities 170b shorter timelines ahead of elections linked to publication of election dates Delegated acts	Service providers COM	Introduce/adapt mechanism Adopt delegated acts	before EP elections after EP elections for the delegated acts
Article 10 Transmission of information to competent authorities	Entry into application of Article 6, 7, 8 Appointment of contact point shorter timelines ahead of elections linked to publication of election dates	MS Service providers	The competent authorities should be designated	after EP elections
Article 11 Transmission of information to interested entities	Linked to the information available to service providers s per Article 6 and 7	Service providers	Article 6 and 7 should enter into application	before EP elections
Article 12	Prohibitions require service providers to create specific algorithms for political advertising Adopt policy Specific transparency (also linked to publishers)	Data controllers Service providers		before EP elections
Article 13 – Transmission of information	Linked to Article 12	Data controllers	Article 12 should be applicable	before EP elections
Article 14 legal representative	Must be registered by competent authorities COM portal of legal representatives	Service providers MS COM	MS need to appoint their competent authorities COM needs to set up the portal	before EP elections
Article 15 competent authorities	MS to designate competent authorities			18 months (DSA precedent)
Article 15a cross-border cooperation	Competent authorities designated Network of competent authorities	MS	MS need to appoint their competent authorities	after EP elections?

			The Network must be put in place	
Article 15a right to lodge a complaint	MS to designate competent authorities	MS		before EP elections
Article 15 b activity reports	Tbc	Tbc	tbc	
Article 16 Sanctions	MS lay down rules in national law MS notify the COM within after EP elections Minimum sanctions by delegated act	MS COM	Member States need time to lay down the sanctions in their national law Competent authorities should be designated.	after EP elections after EP elections for delegated acts
Article 17(2) COM portal	COM portal publishing election and referendums days	COM	Portal needs to be established	before EP elections

Unencumbered provisions

Article 1	Article 3	Article 5(1), (2a)	Article 7(1)(a), (b), (ba)	Article 18
Article 1a	Article 3a(2) – non-EU sponsor restrictions	Article 5a	Article 8	Article 19
Article 2	Article 3a(2) non-discrimination	Article 6	Article 17	Article 20