

Proposal for a Regulation on the transparency and targeting of political advertising.

Informal and indicative list of outstanding points (on the basis of ST 11214/23)

Article	Rows	Comments
Article 1 / 1a Subject matter and objectives / Scope (rows 84 – 101p)	86 - 87	• Subject to outcome on scope of Chapter III and possible application to ‘services’ • Linked to outcome on Article 3a. • Subject to Ad-delivery / amplification • Row 86 – refer to WK 9179/23
	88a	• Linked to exclusion of opinions under ‘editorial responsibility’ in row 107b (Art 2(2)(b)) of Council general approach. • Refer to WK9179/23 for latest state of play.
	101e	• Linked to row 88. • Refer to WK 9179/23 for latest state of play.
Article 2 Definitions (rows 102 – 126h)	107 – 107e	• Definition of ‘political advertising’ • 107b on exclusion of opinions under ‘editorial responsibility’ linked to row 88a. • 107c on exclusion of messages from official sources on organisation and modalities linked to row 126. • 107d on exclusion of public communication • 107e on exclusion of presentation of candidacies. • Refer to WK 9179/23 for latest state of play. • Refer to WK 10246/23 for latest informal suggestion from the Commission
	116	• Including ‘political campaign organisation under definition of ‘political actor’ • Both co-legislators maintain their respective positions.
	121 – 121b	• Definitions of targeting techniques, amplification / ad-delivery techniques. • Linked to outcome on Article 12 and on the scope of application of Chapter III • Refer to WK 9179/23 for latest state of play.
	124	• Definition of ‘political advertising publisher’. • Refer to WK 9179/we for latest state of play.
	126	• exclusion of messages from official sources on organisation and modalities linked to row 107c. • Refer to WK 9179/23 for latest state of play.
Article 2a Identification of a political advertising (rows 126a – 126h)	126h	• Link between political message and potential to influence outcome. • Linked to recital 17. • Both co-legislators maintain their respective position.
Article 3 Internal Market principle (rows 127 – 129)	129	• Linked to outcome on Article 3a. • Refer to WK 9179/23 for latest state of play.

Article 3a Provision of political advertising services in the Union (rows 129a – 129d)	129b & 129c	- Ban of non-EU sponsors. - Refer to WK 9179/23 for latest state of play.
	129d	- Non-discrimination clause. - Refer to WK 9179/23 for latest state of play. - Refer to WK 10243/23 for latest counter proposal from the Presidency.
Article 4 Transparency and due diligence obligations for political advertising services (rows 130 – 132a)	General	No outstanding rows.
Article 5 Identification of political advertising services (rows 133 – 135d)	134a / 135	- Possible provisional agreement in row 135. - Refer to WK 9179/23 for latest state of play.
	135d	- Reference to risk assessment by VLOPs and VLOSEs under the DSA. - Possible provisional agreement in a recital. - Refer to WK 9179/23 for latest state of play. - Refer to WK 10245/23 for an informal suggestion from the Commission for a recital.
Article 5a Identification of a political advertisement (rows 135e – 135n)	135i	- Use of language in political advertisement. - Refer to fourth column in ST 11214/23.
Article 6 Record-keeping and information transmission (rows 136 – 143b)	142	- Reference to machine readable format - Linked to retention period. Refer to WK 9179/23 for latest state of play.
	142a	- Exclusion of micro-undertakings if provision of services is ancillary to their main activities. - Both co-legislators maintain their respective positions.
Article 6a Transmission of information to the political advertising publisher (rows 143c – 143f)	General	No outstanding rows
Article 7 Labelling and transparency requirements (rows 144 – 163)	General	- Provisional agreement to split article and have transparency notices requirements in Article 7a. - Provisional agreement to have labels.
	147	- Entity ultimately controlling or financing sponsor. - Work on recital to clarify ‘financing’ of sponsor. - Refer to WK 9179/23 for latest state of play.
	149 - 149c	Consideration of language to ensure that the term ‘label’ is construed widely and is adaptable to all forms of media and techniques (to replace need for delegated act).

	150 – 163	Moved to new Article 7a (see below).
Article 7a Transparency notices (rows 163a – 163s)	163f	- Information to be included in transparency notices. - Information on aggregated amounts and sources - Linked to rows 153, 267, 268, 269. - Refer to WK 9179/23 for latest state of play.
	163i	- EP request to indicate if advertisement has been suspended / discontinued due to infringing the Regulation. - Council maintains reservations. - Linked to outcome on repository and if transparency notices are to be kept after an advertisement is taken down.
	163j	Refer to fourth column of ST 11214/23.
	163m	- Linked to row 275. - Refer to WK 9179/23 for latest state of play. - Refer to WK 10245/23 for an informal suggestion from the Commission for a recital.
	163o	- Provisional agreement to explore text which clarifies the responsibilities of sponsors and publishers to help the implementation of the regulation. - Linked to row 158. - Refer to WK 8362/23 for latest state of play.
	163p	- Linked to row 157a. - Refer to WK 8362/23 for latest state of play.
	163q	- Linked to row 160 and outcome on retention period. - Refer to WK 8362/23 for latest state of play.
	163s	- EP proposed delegated act to adapt information to be included in transparency notices (paragraph 1) to other forms of media (printed, audiovisual, etc) and specific needs of micro, small and medium undertakings. - Council maintains reservations.
Article 7b European repository for online political advertisements (rows 163t – 163ah)	General	- EP proposal for a single EU repository for online political advertising. - Provisional agreement to establish an EU repository. - Refer to WK 9179/23 for latest state of play. - Refer to WK 10058/23 for latest informal proposal from the Commission.
Article 8 Periodic reporting (rows 164 – 166a)	166a	Both co-legislators maintain their respective position.
Article 9 Indicating possibly unlawful political advertisements (rows 167 – 171a)	170 - 170 c	- Ongoing discussions at technical level. - Refer to WK 9179/23 for latest state of play. - Commission to propose a recital on ‘where technically feasible’ in relation to the information on redress.
	171a	- EP proposal for a delegated act to adapt the notification mechanism to other forms of media. - Council maintains reservations.
Article 10 Transmission of	175	- Ongoing technical discussions - Possible clarifications on ‘serious administrative

information to competent authorities (rows 172 – 178a)		offence’ in a recital.
Article 11 Transmission of information to other interested entities (rows 179 – 192)	General	No outstanding rows
Articles – 12 / 12 / 12a (rows 193 - 205)	General	- Technical and political discussions are ongoing. - Key issues: scope of application and extent of restrictions for processing of personal data. - Refer to WK 7458/23 for informal Commission suggestions to safeguard personal speech and freedom of expression. - Refer to WK 9179/23 for latest state of play. - Refer to WK 10246/23 for the most recent informal Commission suggestions on the adaption of the scope.
Article 13 Transmission of information concerning targeting or amplification to other entities (rows 206 – 208)	207	- Linked to outcome on amplification / ad delivery techniques. - Council maintains position on ‘free of charge’. EP maintains reservations.
Article 14 Legal representative (rows 209 – 212c)	211a	- Linked to recital 63. - Council may consider a recital subject to agreement on Article 16.
	212a	Reference to Commission pending outcome on row 215a
Article 15 Competent authorities and contact point (213 – 223)	General	Ongoing technical discussions on a possible compromise text for the rest.
	214a – 214d	- Role of EDPB. - Refer to WK 9179/23 for latest state of play on this matter.
	215a	- EP is open to consider a recital as part of an overall compromise package. - Refer to WK 10245/23 for an informal suggestion from the Commission for a recital.
	216 – 223	- Ongoing technical discussions on a possible compromise text. - Refer to WK 6431/23 for latest state of play. - Commission to propose a possible compromise on the Network on single contact points (row 222a).
Article 15a Cross border cooperation (rows 223a – 228f)	Council proposal	- Ongoing technical discussions on a possible compromise text. - Refer to WK 8362/23 for latest state of play.

Article 15a Right to lodge a complaint (rows 228g – 228h)	EP proposal	- Linked to Council proposal for Article 16a on Notifications to competent authority (rows 241c and 241d). - Commission to propose a compromise proposal merging rows 228h and 241d.
Article 15b Activity reports (rows 228i – 228j)	General	Co-legislators maintain their respective position.
Article 16 Sanctions (rows 229 – 241b)	230	Possible provisional agreement in fourth column of ST 11214/23, subject to outcome on Article 3a.
	230a – 230c	- Maximum amounts of financial sanctions. - Refer to WK 9179/23 for latest state of play. - Refer to WK 10245/23 for an informal suggestion from the Commission on applying different maximum amounts, as a possible compromise.
	238	- Serious infringements. - Possible provisional agreement in fourth column of ST 11214/23, subject to outcome on Article 3a. - Refer to WK 10245/23 for an informal suggestion from the Commission for a recital on infringements of rules related to the protection of personal data.
	238a	- Linked to row 241a. - Council open to a compromise covering rows 238a and 241a.
	239	Both co-legislators maintain their respective position.
	240 - 241	- Linked to role of EDPB in Article 15. - Refer to WK 9179/23 for latest state of play.
	241a	Linked to row 238a.
	241b	- EP proposal for minimum sanctions for infringements related to Articles -12 and 12 through delegated acts. - Council maintains reservations.
Article 16a Notifications to the competent authority (rows 241c – 241d)	241d	- EP expressed concerns due to too much flexibility. - Council maintains position.
Article 17 Publication of dates of elections and referendums (rows 242 – 243a)	243	- Ongoing technical discussions. - EP maintains position to include reference to ‘electoral periods if relevant’, in the context of reporting.
Article 18 Evaluation and review (rows 244 – 246k)	General	- Ongoing technical discussions - Refer to WK 9643/23 for latest compromise proposal from the EP.
Article 19 Exercise of delegation (rows 247 – 252)	General	- General provision linked to delegated acts. - Subject to overall provisional agreement.

Article 19a Committee procedure (row 252a – 252c)	General	• General provision linked to implementing acts. • Subject to overall provisional agreement.
Article 20 Entry into force and application (rows 253 – 261)	255	• Date of application of the regulation • Ongoing discussion on possible phased application. • Refer to WK 10245/23 for further information from the Commission.
Annex I Information to be provided under Article 7(2) (rows 261.1 – 272)	General	• Provisional agreement to delete Annex I and to merge its contents into article 7a on transparency notices.
Annex II Information to be provided under Article 12a(1) (rows 272.1 – 277a)	General	• Linked to outcome on Article 12. • Co-legislators maintain their respective position.



Council of the European Union
General Secretariat

Brussels, 28 July 2023

Interinstitutional files:
2021/0381 (COD)

WK 10398/2023 INIT

LIMITE

AG
MI
DATAPROTECT
DISINFO

FREMP
AUDIO
CONSOM
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 and indicative list of outstanding points

Delegations will find, in annex to this note, an informal and indicative list of outstanding points on the above-mentioned proposal intended to present an overview of the inter-institutional negotiations based on the latest state of play as presented in the 4 columned table annexed to ST 11214/23.

This table is intended for information purposes only. It is not, in any way, to be considered as an official communication on the inter-institutional negotiations and has not been endorsed by both co-legislators.