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From:	General Secretariat of the Council
To:	Working Party on General Affairs
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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 - informal suggestions from the Commission

With a view to the meeting of the General Affairs Group of 15 September, delegations will find attached an informal suggestion from the Commission for further consideration by both co-legislators on:

1. the third country ban,
2. definition of 'political advertising publisher'.

Third country restrictions compromises

The EP shared a compromise proposal for the third country restrictions:

~~“Without prejudice to the Union obligations under international trade agreements, [2-3 months] before an election or referendum is organised at Union level or at national, regional or local level in a Member State, political advertising services pertaining to that election or referendum shall only be provided to a sponsor or service provider acting on behalf of a sponsor who is a citizen of the Union, or a third country national permanently residing in the Union and having a right to vote in the Member State of residence in accordance with national law or a legal person established in the Union, with the exception of legal persons owned or controlled by third country entities.”~~

The restrictions are framed to be linked to elections, limited in time, and to affect third country actors which do not have a right to intervene in an election. This narrows them, which also helps link them to available justifications under our international obligations.

They would nonetheless have quite a broad impact and affect entities which do not pose a specific threat to public security and free and fair elections.

[2-3 months] before an election or referendum is organised at Union level or at national, regional or local level in a Member State, political advertising services pertaining to that election or referendum shall only be provided to a sponsor or service provider acting on behalf of a sponsor who **declares itself to be:**

- i. a citizen of the Union, **or*****
- ii. a third country national permanently residing in the Union and having a right to vote **in that election or referendum** ~~in the Member State of residence in accordance with national law~~ or***
- iii. a legal person established in the Union **that is ultimately owned or controlled by a citizen of the Union, by a third country national permanently residing in the Union and having a right to vote in the election or referendum concerned, or by another legal person established in the Union..*****

Article 5 would be amended to reflect that sponsors need to declare this information

Article 5

1. Providers of advertising services shall request sponsors and providers of advertising services acting on behalf of sponsors to declare whether the advertising service they request the service provider to perform constitutes a political advertising service within the meaning of Article 2(5) and whether they are a citizen of the Union; a third country national permanently residing in the Union and having the right to vote in the election or referendum concerned; or a legal person established in the Union that is ultimately owned or controlled by a citizen of the Union, by a third country national permanently residing in the Union and having a right to vote in the election or referendum concerned or by another legal person established in the Union. Sponsors and providers of advertising services acting on behalf of sponsors shall make such declarations truthfully.

As in other options, the relevant recital would be adapted to reflect that sponsors and service providers acting on their behalf are responsible for declaring their status to the political ads service provider (see above).

The following texts would need to be introduced into recitals:

For the recital on Article 3a

Interference in elections by certain third country entities or third country nationals, who may sponsor political advertising in the Union, is known to pose a serious threat to democracy, which is a common value of the Union, the securing of which is of fundamental importance to the Union and its Member States. As such, it is necessary to provide for an obligation applying [2-3 months] before an election or referendum organised at Union level or at national, regional or local level in a Member State to only provide political advertising services to a citizen of the Union, third country nationals permanently residing in the Union and having a right to vote in that election or referendum or legal persons established in the Union that is ultimately owned or controlled by a citizen of the Union, by a third country national permanently residing in the Union and having a right to vote in the election or referendum concerned or by another legal person established in the Union.

Recital 16

*The definition of political advertising should include advertising prepared, placed, promoted, published or disseminated directly or indirectly by or prepared, placed, promoted, published or disseminated directly or indirectly for or on behalf of a political actor. Political advertising is usually directly or indirectly under the control of a sponsor, which could be a political actor, and which would in particular be able to determine the political nature, content or publication of the political advertising being prepared, placed, promoted, published or disseminated. Sometimes another entity may ultimately exercise effective control over relevant decision making of the sponsor, by providing funding or by other forms of control, including corporate control. Corporate control includes instances is established where an entity has, having regard to the considerations of fact or law involved, a decisive influence on the sponsor through economic rights, contractual arrangements, or any other means. It may include instances where the right to appoint or dismiss a majority of the members of the administrative, management or supervisory organ of the sponsor; or where an entity is a shareholder or member of the sponsor and has sole control of a majority of the voting rights of its shareholders. [In exceptional circumstances, a situation of economic dependence may lead to control on a *de facto* basis where, for example, very important long-term supply agreements or credits provided by the entity, coupled with structural links, confer decisive influence over the sponsor.] It is necessary that a sponsor or service provider acting on behalf of a sponsor should declare such relationships of control and that political advertising service providers should not be required to seek facts or circumstances or conduct further investigations in this respect. It should ~~therefore~~ be ensured that the transparency standards provided by this Regulation cover such situations. Since advertisements by, for or on behalf of a political actor cannot be detached from their activity in their role as political actor, they can be presumed to be liable to influence the political debate, except for messages of purely private or purely commercial nature. In order to determine that a message is of a purely private or purely commercial nature, account should be taken of all relevant factors such as its content, the language used to convey the message, the context in which the message is conveyed, including the period of dissemination, the objective of the message and the means by which the message is promoted, that are published or disseminated and the targeted audience. Messages for or on behalf of a political actor, promoted, published or disseminated to a potentially unlimited number of third parties should not be considered as purely private.*

Article 2, first paragraph, point (11)					
	COM proposal	EP Mandate	Council Mandate	Comment	Compromise
Y 124	11. 'political advertising publisher' means a natural or legal person to the public domain political advertising through any medium;	11. 'political advertising publisher' means a natural or legal person that broadcasts, makes available through an interface or otherwise brings to the public domain <u>provider of political advertising service that places, promotes, publishes, delivers or disseminates</u> political advertising through any medium;	11. 'political advertising publisher' means a natural or legal person that broadcasts, makes available through an interface or otherwise brings to the public domain <u>provider of political advertising services that publishes or disseminates</u> political advertising- through any medium;	This is a key definition because political advertising publishers have specific obligations, and while responsibility for carrying them out can be shared in some circumstances (notably ad tech), it is essential for the effective implementation of this regulation that these actors can be reliably identified. That is why the COM original sought to identify the publisher by its distinguishing role in the production chain and not by reference to the verbs which define advertising and which are already incorporated by reference to the definition of political ads service provider. Ideally, wording based on the Commission's original would be retained, but otherwise, it would be helpful to narrow the verbs in the operative part, and include some text for a recital, probably 27a, with a possible cross reference to 43.	11. 'political advertising publisher' means a natural or legal person that broadcasts, makes available through an interface or otherwise brings to the public domain <u>provider of political advertising service that places, promotes, publishes, delivers or disseminates</u> political advertising through any medium; <i>Recital 27a. Political advertising service providers have responsibilities which support the achievement of the objectives of this regulation. Certain political advertising service providers will broadcast, make available through an interface or otherwise bring to the public domain the political advertising, and will by virtue of this role be in a position to ensure that this is done compliantly with this regulation and provides a high standard of transparency. These service providers should therefore have specific responsibilities as political advertising publishers, and it is necessary that they are identified as such.</i>