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From:	General Secretariat of the Council
To:	Delegations
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 - comments from the European Parliament on various Articles

Delegations will find, in the annex to this note, comments from the European Parliament on Rows 88a, 101e, 124, 171a, 211a, 228h, 246a, 116, 228j, 239 and 241d on Articles 1(4), 2, 15B, 16(5) and recital 55.

As regards the remaining pending rows, other than those linked to the outstanding political points, the Presidency's comments are as follows:

- Row 88a (and row 107b):

As regards the suggestion to exclude personal messages, the Presidency suggests the following addition (cyan) to the compromise proposal already transmitted on 26 July:

2a. Political views and opinions and other editorial content expressed in any media under the editorial responsibility of a media service provider as well as in personal capacity shall not be considered political advertising unless specific payment or other remuneration is provided for or in connection with their preparation, placement, promotion, publication, delivery or dissemination by third parties.

EP prefers to have this provision in row 88a. EP can accept the deletion of “media service provider” but cannot agree with the addition of “as well as in personal capacity”. EP considers that this element should be included elsewhere but not in this provision.

- Row 101e:

Presidency takes note of the Commission suggestion however prefers the text of the Council's mandate as it is clearer.

Article 1(4), point (ic)					
	Commission	EP mandate	Council mandate	Draft Agreement	Comments
Y 101e			1. This Regulation shall apply to political advertising where the political advertisement is disseminated in the Union, or is directed to individuals or brought to the public domain in one or several Member		Commission suggestion: 1 <i>This Regulation shall apply to political advertising irrespective of the means used [in] for its publication where it is:</i> a) <i>sponsored, prepared, placed, promoted, published, delivered or disseminated in the Union and directed to individuals in one or several Member States, or to Union citizens; or</i> b) <i>directed to individuals in one or several</i>

			States, irrespective of the place of establishment of the provider of political advertising services, and irrespective of the means used.		Member States, or to Union citizens, irrespective of the place of establishment of the sponsor or the provider of political advertising services. The Council notes this suggestion but needs to discuss this proposal internally.
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EP reminds that this text is a Commission suggestion and EP believes that it better reflects the outcome of the discussion we had at technical level.

- Row 124:
Commission sent new possible compromise proposals on 11 September. In this regard, the Presidency can support the latest Commission's compromise proposal (see below):

Article 2, first paragraph, point (11)					
	Commission	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 provider of political advertising services that publishes or disseminates 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.	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</i>

			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.	<i>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>
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EP can accept this text

- Row 171a:
Commission circulated a possible compromise proposal on 6 September. The Presidency can support the Commission's compromise proposal (see below):

Operative text

The Commission, after consulting the Network, ~~single points of contact~~, may issue guidelines to assist publishers of political advertising in the application of this article, **in particular to support the preparation of suitable technical specifications for the mechanism, adapted for the audiovisual sector, printed media, online and offline advertising.**

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LIN For recital

In the interests of a consistent implementation of mechanisms to enable the notification of potentially unlawful political advertising, the Commission

EP can consider this proposal instead of the original DA in light of an overall agreement on other political points. As technical suggestion, EP proposes the highlighted addition to the operative part of the Commission proposal. EP prefers these guidelines to be issued after consultation with the Network.

- Row 211a:
The Presidency had indicated provisional agreement to include a recital. In this regard, the Presidency suggests the following recital as a possible compromise (added to recital 55 or a standalone recital 55a) - (see recital 55 below for reference):

“Given the importance of this requirement for the effective enforcement of this Regulation in relation to providers established in a third country, as well as for maintaining a level playing field for all providers of political advertising in the internal market, in the absence of a designated legal representative, Member States should take any appropriate measures to ensure compliance with this Regulation, including by discontinuing the publication or dissemination of the relevant political advertisements when compliance cannot be ensured otherwise.”

Recital 55					
	Commission	EP mandate	Council mandate	Draft agreement	Comments
R 65	(55) Providers of political advertising services established in a third country that offer services in the Union should designate a mandated legal representative in the Union to allow for effective	(55) Providers of political advertising services established in a third country that offer services in the Union should designate a mandated legal representative in the Union <u>that is registered with the</u>	(55) Providers of political advertising services established in a third country that offer services in the Union should designate a mandated legal representative in the Union to allow for effective		

	oversight of this Regulation in relation to those providers. The legal representative could be the one designated on the basis of Article 27 of Regulation (EU) 2016/679) or the representative designated on the basis of Article 11 of Regulation (EU) 2021/xxx [the DSA].	<u>national single contact point</u> , to allow for effective oversight of this Regulation in relation to those providers. The legal representative could be the one designated on the basis of Article 27 of Regulation (EU) 2016/679 <u>2016/679</u> or the representative designated on the basis of Article 11 <u>13</u> of Regulation (EU) 2021/xxx <u>2022/2065</u> [the DSA] <u>(Digital Services Act). Member States should keep a publicly available register of all legal representatives registered on their territory under this Regulation, and the Commission should keep a publicly available and easily accessible database of legal representatives registered within the Union.</u>	oversight of this Regulation in relation to those providers. The legal representative could be the one designated on the basis of Article 27 of Regulation (EU) 2016/679) or the representative designated on the basis of Article 11 of Regulation (EU) 2021/xxx <u>2022/xxx</u> [the DSA].		
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EP can accept this proposal and prefers to have it as a standalone recital.

- Row 228h:
Commission sent a possible compromise proposal on 28 July which the Presidency can support (see below):

Row 228h – right to bring a complaint

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[to be added to article 15, or could be a separate article per EP proposal]

Without prejudice to other administrative procedures or judicial remedies, competent authorities shall duly address notifications of possible



EP takes note of the Commission proposal but cannot accept it as it is almost identical to the Council mandate. EP asks the Commission to present an updated proposal including more elements from EP row 228h.

- Row 246a
As part of an overall compromise, the Presidency can provisionally agree to the EP amendment.



	Commission	EP mandate	Council mandate	Draft agreement	Comments
Y	246a	<u>(a) the scope of the Regulation and definition of political advertising in Article 2 (2);</u>		Rapporteur suggestion: keep EP text.	Y

EP OK

- Rows 116, 228j, 239 and 241d:
Council maintains its position on these rows.

Article 2, first paragraph, point (4)(g)					
	Commission	EP mandate	Council mandate	Draft agreement	Comments
Y	116	(g) a political campaign organisation with or without legal personality, established to achieve a specific outcome in an election or referendum;	<i>deleted</i>		Y

EP maintains its position on row 116.

Article 15b, Introductory part					
	Commission	EP mandate	Council mandate	Draft agreement	Comments
228j		<u>1. National contact points, designated pursuant to Article 15(7), shall draw up a standardised annual report on the activities covered by this Regulation of all competent authorities designated under in Article 15, including details of the number of complaints received pursuant to Article 15a and an overview of their follow-up.</u> <u>The national contact points shall make the annual reports available to the public in a machine-readable format, and shall transmit them to the European Cooperation Network on Elections and, in the case of elections to the European Parliament, to the European Parliament.</u>		<u>1. National contact points, designated pursuant to Article 15(7), shall draw up an standardised annual report on the activities covered by this Regulation of all competent authorities designated under in Article 15, including details of the number of an overview of the complaints received pursuant to Article 15a and an overview of their follow-up.</u> <u>The national contact points shall make the annual reports available to the public in a machine-readable format, and shall transmit them to the Network of national contact points. European Cooperation Network on Elections. and, in the case of elections to the European Parliament, to</u>	

				<u>the European Parliament.</u>	
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EP compromise proposal to cover rows 228i and 228j (EP mandate). See draft agreement column.

Article 16(5)					
	Commission	EP mandate	Council mandate	Draft agreement	Comments
R 239	5. If a service provider intentionally or negligently infringes the provisions of this regulation, for the same or linked political advertising, the total amount of the administrative fine shall be sufficiently adjustable in order to take into account all the relevant factors; the fact that the Regulation has been violated in multiple respects shall be reflected in the amount of the total fine, in compliance with the principle of proportionality.	5. If a service provider intentionally or negligently infringes the provisions of this regulation, for the same or linked political advertising, the total amount of the administrative fine shall be sufficiently adjustable in order to take into account all the relevant factors; the fact that the Regulation has been violated in multiple respects shall be reflected in the amount of the total fine, in compliance with the principle of proportionality.	<i>deleted</i>		

EP can agree in principle with this deletion, pending an overall agreement on rows 230a-230c.

	Commission	EP mandate	Council mandate	Draft agreement	Comments
Y 241d			Without prejudice to any other administrative procedure or judicial remedy, competent authorities shall duly address every notification they receive concerning a possible infringement of this Regulation and, at least upon request, inform the person who made the notification of the follow-up given to it. During the last month preceding elections or referendum, any notification received in relation to these elections or referendum shall be addressed without undue delay.		

See our comment on row 228h