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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation on the transparency and targeting of political advertising - Presentation by the Commission

Delegations will find attached the presentation on "Transparency and targeting of political advertising oversight and enforcement", given by the European Commission at the meeting of the Working Party on General Affairs on 27 September 2022.



Transparency and targeting of political advertising oversight and enforcement

European Commission, DG JUST, D3

Background information on governance arrangements

- The proposal aims to cover two specific issues:
 - fragmentation of the transparency provisions for political advertising within the internal market;
 - use of targeting and amplification techniques for political advertising on the basis of citizens' personal data.
- The approach to supervision and enforcement is complementary to the various established frameworks already provided in horizontal measures in the EU acquis

Addressees of obligations

All service providers

- Obligation to request sponsors to declare political ads - Article 5(1)
- Compliant contractual arrangements -Article 5(2)
- Retention and provision of specified information about the services provided – Article 6 and Article 12 (7)
- Transmission of information to competent authorities and other interested entities– A10 & 11

Publishers

- Inclusion of specific information for publication with political ads – A7 and 12 (4) and (5)
- Reporting on political advertising services in the annual financial statements – Article 8
- Making available to individuals the possibility to indicate unlawful political ads - Article 9
- Discontinuation of an advertisement which does not contain complete transparency information –Article 7(3)

Controllers

- Prohibition of targeting & amplification involving processing of special categories of data A12(1)
- Conditions regarding the processing of personal data for the purposes of targeting and amplifying political ads (policy, keep records, provide additional information) – Article 12(3)
- Provision of specified information to interested parties – Article 13

* Service providers established outside the Union are obliged to designate a legal representative.

Supervision and enforcement framework

Competence to monitor compliance divided between:

1. Data protection authorities (*Article 12*)
2. Authorities designated by the Member States to monitor compliance of providers of intermediary services within the meaning of DSA (*Articles 5 to 11 and 14* for providers and publishers who are online intermediaries)
3. Authorities designated by the Member States to apply, enforce and monitor compliance with regard other aspects of the Regulation (*Articles 5 to 11 and 14* for other service providers than intermediary providers of intermediary services; *Article 13 and 14(1)* for all types of service providers).

Data protection authorities (Article 15 (1)) - oversight

- Investigative powers (e.g. to order provision of information);
- Corrective powers (e.g. to issue reprimands, warnings, fines, and order compliance);
- Authorisation and advisory powers (e.g. to order rectification, to impose a ban on processing, to withdraw a certification);
- Power to bring infringements of the Regulation to the attention of the national judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings
- etc

Data protection authorities (Article 15 (1)) – coordination

Chapter VII GDPR

- Cooperation
 - Cooperation among supervisory authorities;
 - Mutual assistance
 - Joint operations
- Consistency mechanism applies;
- European Data Protection Board;
 - Dispute resolution by Board
 - Urgency procedure
 - Exchange of information

Authorities monitoring compliance of providers of intermediary services (Article 15(2))

- MS designate competent authorities to monitor the compliance of providers of intermediary services [DSA] with Articles 5 to 11 and 14 of this Regulation, where applicable.
- May also be one of the competent authorities designated under the DSA.
- Digital Service Coordinator (DSC) has mandatory power. Given a set of far-reaching investigation and enforcement powers, including:
 - power to request information,
 - on-site inspections,
 - power to accept commitments from providers and to make them binding,
 - to order the cessation of infringements
 - To impose fines.
- DSA provides for enhanced cooperation among national DSCs, to guarantee effective oversight and enforcement.

Competent authorities (Article 15(3))

- To cover the rest of the measure (*Articles 1-4*, Articles 13 and 17 for all, and Articles 5 to 11 and 14 for non-intermediary services)
- Competent authorities shall have the power to:
 - issue warnings addressed to the providers of political advertising services regarding their non-compliance with the obligations under this Regulation;
 - publish a statement which identifies the legal and natural person(s) responsible for the infringement of an obligation laid down in this Regulations and the nature of that infringement;
 - impose administrative fines and financial penalties.
- Member States may designate, in particular, the national regulatory authorities or bodies under Audiovisual Media Services Directive.

Sanctioning framework



- Member States are obligated to lay down rules on sanctions, including administrative fines and financial penalties.
- Sanctions should be effective, proportionate and dissuasive.
- Member States will use specific criteria for individual sanctions, including aggravating circumstances.
- Sanctions to be imposed by the competent authorities only to service providers under their jurisdiction.
- Infringements of Article 12 may include sanctions provided by Article 83 GDPR

Cooperation between authorities within a MS (I)

- Competent authorities should cooperate with each other at national level and make best use of existing structures.
- The Digital Services Coordinator referred to in DSA in each Member State shall be responsible for ensuring coordination at national level in respect of providers of intermediary services.

Cooperation between authorities within a MS (II)

- Member States will have to ensure cooperation among competent authorities, in particular in the framework of national elections networks.
- To facilitate the swift and secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks, including by:
 - jointly identifying infringements,
 - sharing findings and expertise,
 - and liaising on the application and enforcement of relevant rules.

Cooperation between authorities within a MS (III)

To ensure cooperation, Member States could:

- Designate the national contact point to assist with national cooperation;
- Make use of the national election network or other national cooperation networks, including the anticorruption framework;
- Rely on arrangements or protocols concluded between competent authorities;
- Adopt specific legislative changes.

Practical example A (I)

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The transparency notice does not include information on the sources spent on the advertisement following Article 7(2)(c) and the information necessary to allow the individual concerned to understand the logic involved and the main parameters of the targeting following Article 12(4).

Practical example A (II)

- Data Protection Authority and an electoral authority need to cooperate in relation to a conduct by a service provider that breaches at the same time Article 7 and Article 12.
- For example:
 - Appeal to the national contact point to assist with their requests for information, regarding the identity of the service provider;
 - Share their findings regarding infringements within the national election network or another national cooperation network, including the anticorruption framework;
 - Rely on arrangements or protocols concluded between them to rapidly find out more information on the contractual arrangements between the sponsor and the service provider;
 - Resort to formalised inter-authority communication to gather data on the publisher.

Cooperation between data protection authorities from different MS

- For the coordination and cooperation among DPAs, the relevant rules of the GDPR will apply.
- Cooperation will rely primarily on:
 - mutual assistance, which covers in particular information requests and supervisory measures, such as requests to carry out prior authorizations and consultations, inspections and investigations;
 - joint operations, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.

Practical example B



Political advertisements using targeting techniques are disseminated from Member State B to citizens in Member State A for a regional election.

Practical example B (II)

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- If a DPA of Member State A deems necessary certain action by a DPA of Member State B, it will send it a request for assistance including the purpose and the reasons for the request.
- The DPA of Member State B will not be able to refuse such request, unless it is not competent or compliance with it would infringe the GDPR, the proposed Regulation or other Union legislation, or Member State law to which the supervisory authority receiving the request is subject.
- The DPA of Member State B would be required to inform the DPA of Member State A of the results or, as the case may be, of the progress of the measures taken in order to respond to the request.

Cooperation between different MS under the DSA

- The relevant provisions on cross-border cooperation among Digital Services Coordinators and joint investigations under DSA apply.
- DSCs from the relevant states exchange to assess alleged infringements and take the necessary investigatory and enforcement measures.

Practical example C

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Service provider from outside the EU prepared political advertisements that had been published in Member State A and has its legal representative in Member State B.

- If an electoral authority of Member State A needs to cooperate with an electoral authority of Member State B it shall send a request to the national contact point of Member State B (which may be, for instance, the media regulator).
- The national contact point would then transmit such request to the electoral authority of Member State B, which would need to provide the electoral authority of Member State A with assistance.

Thank you

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Nothing in this presentation should be regarded as representing the position of the European Commission

