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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 - Commission informal suggestions

Delegations will find, annexed to this note, informal suggestions from the Commission on the following:

- Article 1a(1) (row 101e).
- Definitions of targeting and amplification / ad delivery (rows 121, 121a, 121b).
- Recital on engagement and reach (row 163m).
- Article 7a paragraphs (1)(g) (row 163i), (2) (row 163o) and (3) (row 163p).
- Article 12a.
- Article 18(1)(d) (row 246d).
- Article 20 - early entry into force.

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

1) Early entry into application

Article 20

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 1 January 2025.

However, [**Article 2 and Article 3a (1): Council**] [**Article 2, Article 3a, Article 5(1) and (2a), Article 7(1a) and (1b), Article -12, Article 12(1), (2), (2a), and (2b): EP**] [**Article 2, Article 3a (1), [Article -12], Article 12 (1), (2), (3): Alternative**] shall apply from 3 months following its entry into force.

2) Recital on engagement and reach (row 163 m)

In order to ensure increased transparency of political advertising, it is necessary to collect and present in the relevant transparency notice information on the reach of political advertising, and individuals' engagement with it. The reach of the message relates to data which enables quantifying geographical distribution and number of individuals who viewed, received or otherwise interacted with the political advertising, including the number of views, impressions and clicks. Engagement with the message relates to data which enables quantifying the interactions of individuals with online political advertising, measured by various means, including the period of interaction with the political advertisement. Relevant standards for the preparation of labelling and transparency notices of political advertisements should address the quantification of reach and engagement.

3) Article 7a(1), point (g) (row 163 i)

(g) *where applicable*, whether the advertisement has been suspended or discontinued due to violation of this Regulation;

Recital text: *To ensure that citizens are made appropriately aware of political advertising which has been suspended or discontinued, it is necessary that transparency notices provide information about this, including where the suspension or discontinuation is due to a violation attributable to the sponsor or to a service provider other than publisher.*

4) Article 1a(1) (Row 101 e)

1. This Regulation shall apply to political advertising where the political advertisement is disseminated in the Union, or is brought to the public domain in one or several Member States or is directed to Union citizens, irrespective of the place of establishment of the provider of political advertising services *or of place of residence or establishment of [Alternative] the sponsor*, and irrespective of the means used.

5) Definitions of targeting and amplification or ad delivery techniques (rows 121, 121a, 121b)

[targeting techniques] means techniques that are used to address a political advertisement only to a specific person or group of persons or to exclude them on the basis of the processing of personal data;

[amplification/ad delivery techniques] means optimisation techniques that rely on the automated processing of data that are used to increase the circulation, reach or visibility of a political advertisement on the basis of the processing of personal data and which may serve to deliver the political advertisement only to a specific person or group of persons.

6) Article 18, first paragraph, point (d) (Row 246d)

(b) the effectiveness and suitability of the rules in this Regulation restricting the processing of personal data for the purposes of the targeting and amplification techniques, including the possible need to make them more or less restrictive;

7) Article 7a(2) (Row 163o)

In order to align the references to the responsibilities of the sponsors Article 5(2) and 7a(2), the following could be added to the text in Article 5(2) (taken from EP text in Article 7a(2):

2a. Sponsors shall ensure the accuracy of, and provide the information necessary for the providers of political advertising services to comply with Article 6(1), points (a), (ca), (d) and (da), Article 7(1), points (a), (b) and (ba), and Article 7a(1), points (a), (b), (d) and (e) before and during the period of publication, delivery, or dissemination of the political advertisement.

8) Elaboration of the reference to the needs of people with disabilities

Article 7a(3) - Row 163p

Transparency notices shall be included in each political advertisement or be easily retrievable at all times during the period from their first publication until the end of their publication.

Transparency notices shall be kept up to date, presented in a format which is easily accessible and, where technically feasible, available in a machine-readable format. They shall be written in the language of the political advertisement. Political advertising publishers who offer services in the Union shall ensure that transparency notices [are designed and published in such a way as to support their use by persons with disabilities, including by complying, where applicable with the accessibility requirements set out in Directive (EU) 2016/2102 [alternative 1]/ follow the accessibility criteria for persons with disabilities or design for all users, including by complying where applicable with the accessibility requirements set out in Directive (EU) 2016/2102 [alternative 2]. ~~comply with the accessibility requirements set out in Directive (EU) 2019/882.~~

Transparency notices shall be clearly visible, user friendly, including through the use of plain language."

9) Article 12a (rows 196c-205)

	<i>COM proposal</i>	<i>EP mandate</i>	<i>Council approach</i>	<i>Possible compromise</i>
196c			Article 12a Specific requirements related to targeting and [amplification][ad delivery]	
197	3. When using targeting or amplification techniques in the context of political advertising involving the processing of personal data, controllers shall, in addition to the requirements laid down in Regulation (EU) 2016/679 and Regulation (EU) 2018/1725, as applicable, comply with the following requirements:	3. When using targeting or amplification techniques in the context of political advertising <u>services</u> involving the processing of personal data, controllers shall, in addition to the requirements laid down in Regulation (EU) 2016/679, <u>Regulation (EU) 2018/1725</u> and Regulation (EU) 2018/1725, as applicable, comply with the following requirements:	31. When using targeting or amplification techniques in the context of political advertising involving the processing of personal data, controllers shall, in addition to the requirements laid down in Regulation (EU) 2016/679 and Regulation (EU) 2018/1725, as applicable, comply with the following requirements:	3. When using targeting or [amplification][ad delivery] techniques in the context of political advertising <u>services</u> involving the processing of personal data, controllers shall, in addition to the requirements laid down in Regulation (EU) 2016/679, Regulation (EU) 2018/1725, and <u>Regulation 2022/2065</u> as applicable, comply with the following requirements:

198	(a) adopt and implement an internal policy describing clearly and in plain language, in particular, the use of such techniques to target individuals or amplify the content, and retain such policy for a period of five years;	(a) adopt, <u>implement and make publicly available</u> and implement an internal policy describing clearly and in plain language, in particular, the use of such techniques to target individuals or amplify the content , and retain such policy for a period of five <u>ten</u> years;	(a) adopt, implement and make publicly available and implement an internal policy describing clearly and in plain language, in particular, the use of how such techniques to target individuals or amplify the content are used , and retain such policy for a period of five years from the last use of these techniques ;	(a) adopt, implement and make publicly available an internal policy describing clearly and in plain language, in particular, the use of such techniques to target individuals, and retain such policy for a period [six][seven] years from the last use of these techniques ;
199	(b) keep records on the use of targeting or amplification, the relevant mechanisms, techniques and parameters used, and the source(s) of personal data used.	(b) keep records on the use of targeting or amplification , the relevant mechanisms, techniques and parameters used, and the source(s) of personal data used.	(b) keep records on the use of targeting or amplification, the relevant mechanisms, techniques and parameters used, and the source(s) of personal data used.	(b) keep records on the use of targeting or [amplification][ad delivery] , the relevant mechanisms, techniques and parameters used, and the source(s) of personal data used.
200	(c) provide, together with the political advertisement,	(c) provide, together with the <u>indication that it is</u> political	(c) provide ensure the provision , together with the indication	(c) provide , together with the indication that it is political

	additional information necessary to allow the individual concerned to understand the logic involved and the main parameters of the technique used, and the use of third-party data and additional analytical techniques. This information shall comprise the elements set out in Annex II.	advertisement, additional information necessary to allow the individual concerned to understand the logic involved and the main parameters of the technique used, and the use of third-party data and additional analytical techniques. This information shall comprise the elements set out in Annex II.	that it is a political advertisement, of additional information necessary to allow the individual concerned to understand the logic involved and the main parameters of the technique used, and the use of third-party data and additional analytical techniques. This The information shall comprise the elements set out in Annex II. include, at least, the following elements:	advertisement, additional information necessary to allow the individual concerned to understand the logic involved and the main parameters of the technique used, including whether an artificial intelligence system has been used to target the political advertisement, and the use of third-party data and additional analytical techniques. The information shall include the following elements:
200a			(i) the specific groups of recipients targeted, including the parameters used to determine the recipients to whom the advertising is disseminated;	(i) the specific groups of recipients targeted, including the parameters used to determine the recipients to whom the advertisement is disseminated;
200b			(ii) the categories and the sources of personal data used	(ii) the categories and the sources of personal data used

			for the targeting and amplification;	for the targeting and or amplification;
200 ba				Moved from EP text (row 201a) (iii) the targeting goals, mechanisms and logic including the inclusion and exclusion parameters, and the reasons for choosing those parameters; (iiia) meaningful information on the use of artificial intelligence systems in the targeting or amplification of political advertising;
200b b				Moved from EP text (row 201b) (iv) the period of dissemination, the number of individuals to whom the advertisement is disseminated;

200bc				Moved from EP text (row 201c) (v) a link to or a clear indication of where the policy referred to in paragraph 3(a) can be easily retrieved.
200c			The information to be included shall also contain the elements set out in Annex II.	Deleted
200d		<u>(ca) make an internal annual risk assessment of the use of those techniques on the fundamental rights and freedoms of individuals and the society as a whole; the results of these risk assessments shall be made publicly available.</u>		<u>(ca) prepare an internal annual risk assessment of the use of those techniques on the fundamental rights and freedoms of natural persons</u> individuals and the society as a whole; <u>the results of these risk assessments shall be made publicly available.</u>
200e				

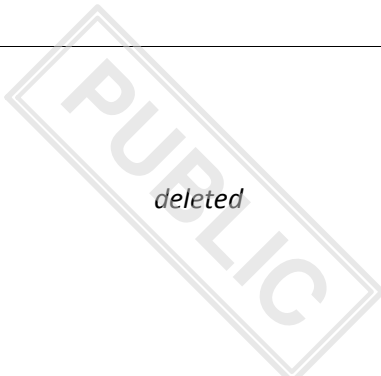
			(ca) provide, together with the advertisement, or in the transparency notice required under Article 7, a reference to effective means to support individuals exercise their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable, in particular, a reference to individuals' right to give or withdraw consent as applicable, and the right to object. Such reference shall include a link to an interface allowing for the exercise of such right.	(ca) provide, together with the advertisement, or in the transparency notice required under Article 7, a reference to effective means to support individuals exercise their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable, in particular, a reference to individuals' right to give or to withdraw consent as applicable, and the right to object. Such reference shall include a link to an easily accessible interface allowing for the exercise of such right.
201	4. Political advertising publishers making use of targeting or amplification techniques shall include in the transparency notice required under Article 7 the information specified in paragraph 3(c) and a link to the policy referred to in	4. Political advertising publishers making use of targeting or amplification techniques <u>techniques involving the processing of personal data</u> shall include in the transparency notice required under Article 7 <u>a(1), additional</u> the information specified in paragraph 3(c) and a	42. Political advertising publishers making use of targeting or amplification techniques shall include in the transparency notice required under Article 7 In the case the controller is different from the political advertising publisher, the controller shall transmit the	42. [In the case the controller is different from the political advertising publisher,] The controller shall <u>transmit the internal policy and</u> ensure that the information referred to in paragraph 1 point (c) and (ca) is communicated to the political advertising publisher to enable

	paragraph 3(a). In case the controller is different from the advertising publisher, the controller shall transmit the internal policy or a reference to it to the political advertising publisher.	link to the policy referred to in paragraph 3(a). In case the controller is different from the advertising publisher, the controller shall transmit the internal policy or a reference to it to the political advertising publisher. <u>necessary to enable the individual concerned to understand the logic involved and the main parameters of the technique used, and the use of third party data and additional analytical techniques.</u> <u>It shall include, in particular, the following information:</u>	internal policy and ensure that the information specified referred to in paragraph 3(c) and a link 1 point (c) and (ca) is communicated to the policy referred to in paragraph 3(a). In case the controller is different from the advertising publisher, the controller shall transmit the internal policy or a reference to it to the political advertising publisher. political advertising publisher to enable the political advertising publisher to comply with its obligations under this Regulation. The information shall be transmitted in a timely and accurate manner, in accordance with best practice and industry standards, by means of a standardised automated process where technically possible.-	the political advertising publisher to comply with its obligations under this Regulation. The information shall be transmitted in a timely and accurate manner, in accordance with best practice and industry standards, by means of a standardised automated process where technically possible.-
201a		<u>(a) the targeting goals, mechanisms and logic including</u>		Moved to 200 ba

		<u>the inclusion and exclusion parameters, and the reasons for choosing those parameters;</u>		
201b		<u>(b) the period of dissemination, the number of individuals to whom the advertisement is disseminated;</u>		Moved to 200bb
201c		<u>(c) a link to or a clear indication of where the policy referred to in paragraph 3(a) can be easily retrieved.</u>		Moved to 200bc
201d			3. Providers of political advertising services shall, as necessary, transmit to the controllers the information necessary to comply with paragraphs 1 and 2.	Covered in row 204
201e				

		<u>4a. Where the controller is different from the advertising publisher, the controller shall transmit the internal policy referred to in point (a) of paragraph 3 to the political advertising publisher and ensure that the information referred to in this paragraph or a reference to it is communicated to the political advertising publisher to enable the political advertising publisher to comply with its obligation under this Regulation. Information shall be transmitted in a timely and accurate manner, in accordance with best practice and industry standards, by means of a standardised automated process, where technically possible.</u>		Covered in row 201
202	5. Political advertising publishers making use of targeting or amplification techniques referred to in paragraph 3 shall include in or	5. Political advertising publishers making use of targeting or amplification ad delivery techniques referred to in paragraph 3 shall include in or	deleted	Covered in row 200e

	together with the advertisement and in the transparency notice required under Article 7 a reference to effective means to support individuals exercise their rights under Regulation (EU) 2016/679.	together with the advertisement and in the transparency notice required under Article 7a(1) a reference to effective means to support individuals exercise their rights under Regulation (EU) 2016/679. <u>The transparency notice shall visibly link to an easily accessible interface in which users can withdraw their consent or modify the personal data they provided for the sole purpose of online political advertising as referred to in paragraphs 1c and 1d.</u>		
203	6. Information to be provided in accordance with this provision shall be presented in a format which is easily accessible and, where technically feasible, machine readable , clearly visible and user-friendly, including through the use of plain language.	6. Information to be provided in accordance with this provision shall be presented in a format which is easily accessible and, where technically feasible, machine readable-, clearly visible and user-friendly, including through the use of plain language.	64. Information to be provided in accordance with this provision paragraphs 1 to 3 shall be presented in a format which is easily accessible and, where technically feasible, machine readable-, clearly visible and user-friendly, including through the use of plain language.	3. Information to be provided in accordance with this paragraphs 1 to 3 shall be presented in a format which is easily accessible and, where technically feasible, machine readable-, clearly visible and user-friendly, including through the use of plain language.

204	7. Providers of advertising services shall, as necessary, transmit to the controller the information necessary to comply with paragraph 3.	7. Providers of advertising services shall, as necessary, transmit to the controller the information necessary to comply with paragraph 3 <u>paragraphs 3, 4 and 4a.</u>	 deleted	4. Providers of advertising services shall transmit to the controller the information necessary to comply with <u>paragraphs 1 and 2.</u>
205	8. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex II by modifying or removing elements of the list of information to be provided pursuant to paragraph 3(c) of this Article in light of technological developments in relevant scientific research, and developments in supervision by competent authorities and relevant guidance issued by competent bodies.	8. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex II by modifying or removing elements of the list of information to be provided pursuant to paragraph 3(c) of this Article in light of technological developments in relevant scientific research, and developments in supervision by competent authorities and relevant guidance issued by competent bodies.	85. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex II by modifying or removing adding or modifying elements of the list of information to be provided pursuant to paragraph 3(c) of this Article therein in light of technological developments in, relevant scientific research, and developments in supervision by competent authorities and relevant guidance issued by competent bodies and provided that the elements set out in	85. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex II this Article by adding or modifying elements of the list of information to be provided pursuant to paragraph 1(c) in light of technological developments, relevant scientific research, and developments in supervision by competent authorities and relevant guidance issued by competent bodies and provided that the elements set out in paragraph 1(c) of this Article are maintained.

			paragraph 1(c) of this Article are maintained..-	
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