



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0381 (COD)**

Brussels, 26 October 2023

WK 13892/2023 INIT

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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 - compromise proposals from the European Parliament on Articles 12 and 15

Delegations will find, in the annex, compromise proposals from the European Parliament on Articles 12 and 15.

Final set of Compromises on targeting and ad delivery

From the European Parliament

The text below intends to bridge the positions expressed by the EP and Council on the last trilogue.

The intended effect of these provisions are as follows:

- Accepts the Council's position that Art 12 should be applicable only online.
- Accepts the deletion of Art -12 as suggested by Council, so there should be no complication about the enforcement of Art 12 between the authorities defined by the DSA and the national DPAs.
- Ban all targeting using profiling based on personal data. However, proposes a list of exception. These rules are rather simple and would make enforcement easier, since the DPAs do not need to evaluate different sets of (non-sensitive) data, whether they might reveal sensitive data of an individual. The latter could result difference in enforcement in Member States.
- Accepts the Council's position to delete the number of categories of personal data from the legislative text.
- Accepts the Council's/Commission's proposal on having a recital on data minimisation with minor changes.
- Accepts the Commission's suggestion on the definitions.
- Accepts the suggested compromise by the Commission and Council on Art 15 and the emergency procedure.

Article 12

1. Targeting or amplification techniques that involve the processing of personal data in the context of online political advertising ~~shall~~ may be permitted *only where the subject to the following conditions are fulfilled*:
 - a. the controller collected the personal data from the data subject;
 - b. the data subject has provided explicit consent within the meaning of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 to the processing of personal data separately for the purpose of political advertising;
 - c. *those targeting or amplification techniques are not based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 and in Article 5, point (4), of Regulation (EU) 2018/1725*
2. *The condition laid down at point 1 c) shall not apply in situations where the profiling is based exclusively on the following personal data:*
 - (a) gender,*
 - (b) age,*
 - (c) location at the level of the local administrative units,*
 - (d) languages spoken.*
2. Targeting or amplification techniques that involve the processing of personal data of a data subject that is known by the controller with reasonable certainty to be at least one year under the voting age established by national rules in the context of political advertising, are prohibited. Compliance with the obligations set out in this paragraph shall not oblige the controller to process additional personal data in order to assess whether the data subject is one year under the voting age.

3. Articles 12 and -12 shall not apply to communications of any political party, foundation, association or any other non-profit body, to their members and former members and to communications, such as newsletters, linked to their political activities, as long as those communications are solely based on subscription data.

Compromise explanations to add to Recital 48:

[On consent]

Consent to processing of personal data is given and withdrawn in accordance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Such consent should be given by a clear affirmative action or statement establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data for the purpose of political advertising.

In addition, for the purpose of this Regulation consent should be explicit and given separately for the purpose of political advertising.

For the purpose of this Regulation, including in particular where consent to the processing of personal data to target or deliver political advertising is obtained during the provision of an online service, consent should be obtained by controllers presenting a user-friendly solution to the data subject to provide, modify or withdraw consent in an explicit, clear and straightforward manner. Controllers should not design, organise and operate interfaces in a way that deceives, manipulates or otherwise materially distort or impairs the ability of data subject to freely give consent for this specific purpose. For the purposes of this Regulation the requirement to obtain consent to the processing of personal data cannot be avoided by establishing that the personal data in question was made accessible to the general public by the data subject.

It should be as easy to withdraw consent to the processing of personal data to target or deliver political advertising as to give it. Refusing to give consent or withdrawing consent should not be more difficult or time-consuming to the data subject than giving consent.

Electronic signals signifying individual's wish not to receive political advertising should be respected.

[On mixing data and data minimization]

Data controllers should not use personal data obtained from third parties to target or deliver political advertising. To help prevent manipulative microtargeting, it is essential service providers should take specific measures to ensure that the personal data which is collected and processed for the purposes of targeting and ad delivery of political advertising is limited to what is strictly necessary in relation to this for that purpose, for instance by restricting the availability of options for targeting and ad delivery of political advertising offered to service recipients to those which require only the combination of four or five criteria.

- **Definitions of amplification, of ad-delivery and of targeting techniques**

Compromise text suggested, merging elements from the existing definitions:

[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;

[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.

- **Article 15 - Role of European Data Protection Board**

To add:

The Commission shall request the European Data Protection Board prepare guidelines for the purpose of assisting the supervisory authorities referred to in Regulation (EU) 2016/679 in assessing compliance with the requirements of this Regulation.

To relevant recital add:

In order to support the supervisory authorities with their tasks, the Commission should request the European Data Protection Board to issue guidelines addressed to the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 on the processing of special categories of personal data to target or deliver political advertising, including on the conditions to obtain consent for the purpose of targeting or delivering of political advertising and the cooperation between such authorities and other authorities responsible for the application and enforcement of the requirements laid down in this Regulation.

On Emergency powers

To the relevant recital add

Independent supervisory authorities under Regulation (EU) 2016/679 should be supported to make full use of their powers under that Regulation to supervise the protection of personal data provided under this Regulation, including of cooperation and consistency and in particular of urgency. The period preceding elections or referendums is particularly important in political campaigning, in influencing citizens to form political opinions and exercise their voting rights. It is also particularly sensitive to infringements of applicable rules, because remedial action will usually need to be in place before the electoral event in order to be effective. That is why infringements of the rules applicable to the processing of personal data for targeting political advertising in this period is liable to have a particularly significant negative effects on citizens' rights including their freedoms to form opinions without undue inference and of information. [In the interests of ensuring prompt action to protect the rights and freedoms of individuals during the critical period before voting occurs in an election, data protection authorities should ensure that they are able to act promptly to enforce the rights of the concerned data subjects. In this spirit, Data Protection Authorities should make use of the range of tools provided in the GDPR to cooperate and assist each other, including as the case may be the process laid down in Article 66 GDPR.