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Subject:	Regulation on the transparency and targeting of political advertising - Comments from Member States: Chapter 2 and recitals

Delegations will find attached the comments received from Austria, Croatia, Estonia, Germany, Latvia, Poland, Malta, Slovakia, Slovenia, Spain and Sweden following the discussions at the meeting of the Working Party on General Affairs on 25 February 2022.

Member States' replies
Regulation on the transparency and targeting of political advertising
- Comments from Member States: Chapter 2 and recitals
(following the discussion in the GAG meeting on 25 February 2022)

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General Statement:

- The provisions in Chapter II are not limited to the minimum necessary; especially the different obligations for the „publisher” in Art. 7 but also for the „service provider” in Art. 10 do not seem to be proportionate.
- Again: Also Chapter II should be checked thoroughly with respect to an accurate and consistent use of (sufficiently) predetermined terminology and to a precise wording by avoiding undetermined definitions and conditions. A clear and precise wording especially in Article 7 and 10 and 11 is indispensable as sanctions (according to Art. 16) would have to be imposed if a violation of the provisions were to be found.

On Art. 4:

The provision could easily be deleted: it is without any added value as it just repeats the fact that other Articles are applicable; in case that there should be a convincing reason to retain it: why would the explicit reference to Art 14 be necessary and why is Art. 12 – which is also directed to „political advertising publishers” (being political advertising service providers) missing?

On Art. 5:

There is no definition of a „provider of advertising services”; why is the main obligation in para. 1 directed (only) to the „service provider” who would be responsible to actively request an information instead of putting the obligation primarily on the „sponsor” to deliver the information. There is no efficient sanction for the sponsor not or not sufficiently delivering the information.

On Art. 6:

It is still not clear, why the regulation would have to be applied to each and every service „involved” in the mere preparation of a political advertisement; Just an example: why would it be necessary that a mere graphic-designer or a mere advertising copywriter would (because falling under the definition of Art. 2 No 5) have to gather, retain and submit all the points of information enlisted in Art. 6? Why would according to letter d) the identity of the „sponsor” and „its” contact details only have to be provided „where applicable” if the main and central regulatory intention is to make the „sponsor” transparent?

The draft should be checked with respect to an accurate and consistent use of predetermined terminology – see e.g. para 3 where the publisher „disseminates” an advertisement, while the definition in Art. 2 No 11 uses „makes available” and „brings to the public domain”.

On Art. 7:

The provisions (and the required information) should be reworded and reduced to the minimum necessary in the interest of transparency. It is not clear whether the „making available of information” according to para 1 is a different obligation from the „transparency note” (according to para 2). Partly the formulations are identical.

The provisions in **para 1** letter b and letter c and **para 2** oblige the „publisher” to provide more information than the service provider (according to Art. 6) would have to collect and communicate to the publisher. So where does the rest of information come from?

In **para 1** it is not clear what the difference between the three cumulative conditions „*clear, salient and unambiguous*” might be and what would have to be understood under „*the entity ultimately controlling the sponsor*”.

It is questionable that the provision when applied in the offline world would really be feasible as the whole list of information cannot be easily retrievable from an advertisement. In this respect the wording of Recital 40 should be transferred to the legal text („on the basis of an indication provided”).

It is not clear what the difference between „*published*” and „*disseminated*” might be (in **para 2** letter b). What is the added value of the information required by **para 2** letter b) and d) and how could it be assessed during which period an advertisement is „intended to be published” or with which election an advertisement „is linked”?

Para 2 letter g should be put to an own paragraph as it does not relate to the content of the transparency notice but to the form.

Neither the recitals nor the legal text explain what might be meant by „reasonable effort” in **para 3**.

A clear and precise wording in the whole Article 7 is indispensable, as sanctions (according to Art. 16) would have to be imposed if a violation of one of the manifold provisions in para. 1, 2, 3, 4, 5 and 6 is found.

The „codes of conduct” mentioned in **para 7** cannot be a substitute for clearly determined provisions in the regulation. Neither it is clear, which legal quality those „codes of conduct” would have when it comes to the question of sanctioning a violation. According to the legal text there might be different „codes of conduct” – this would not contribute to legal certainty and clarity.

In connection with Art. 7 – Recital 28: What is the meaning of „shared organically”?

On Art. 8:

There is no definition of „advertising publisher” as it is used in the first sentence in para 1. The term „*aggregated by campaign*” is unclear. Can it really be considered to be proportionate to be obliged to include the information (according to Art. 8) in the management reports in the financial statements?

On Art. 9:

The numbering of the paragraphs in the English version starts with „3.”.

What is meant by the wording „*including from the transparency note*” in para „4.” (2!)?

Is this an additional requirement for the form and format of the transparency note?

It would be preferable if the text made an accurate and consistent use of (sufficiently) predetermined terminology. What is the difference between „notify” in para „3.” (1!) and „submit information” in para „5.” (3!)?

On Art 10:

The references to Art. 6, 7 and 8 should be formulated in a more precise manner (which concrete paragraphs are meant? „Art. 6 para 1, Art. 7 para 1 and 2 and Art. 8 para 1”?).

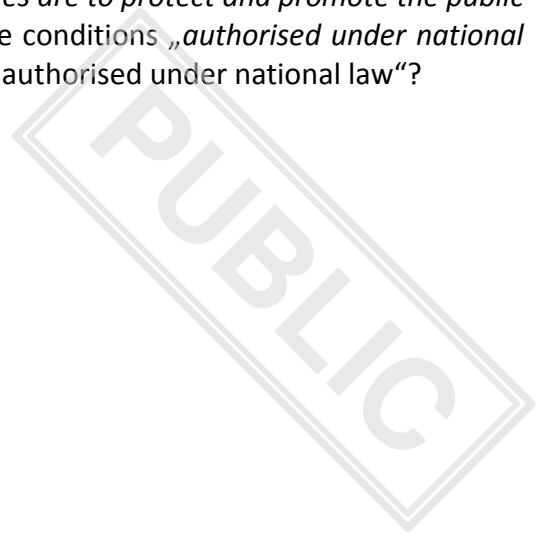
If Art. 7 and 8 constitute obligations for the „***publisher***” to provide specific data how might then an authority according to Art. 10 para 1 request the „***service provider***” to transmit the information „referred to in Art. 7 and 8”?

Bearing in mind that sanctions might have to be imposed, it must be clear what is meant by „trustworthy” and „clear, coherent, consolidated” in Para. 1.

Does it follow from the formulation about the „redress available” (in para 1 letter b) that the request of the authority has to be „designed” as a formal decision with an appeals procedure.

On Art. 11:

The formulation (in para 2) „*whose statutory objectives are to protect and promote the public interest*” is not determined sufficiently. What do the conditions „*authorised under national law/ Union law*” mean? What are “political actors as authorised under national law”?



Chapter II. (Articles 4-11)

I.

Article 6 (1) (d) and Article 7 (1) (b) and (2) c

It is stated "where applicable, the identity of the sponsor and its contact details. There is no explanation as to which cases are not applicable, as Article 7 (1) (b) states that each advertisement must contain information about the identity of the sponsor of the political advertisement, and Article 7 (2) (c) states that the transparency notice must also contain such information.

Are there different systems or are the obligations in these articles not aligned?

Article 7 (2) (d)

Does this mean that a political advertisement is not always tied to an election or a referendum, so the possibility of "where applicable" is left?

Article 11 (2)

Are citizens the interested entities or do they fall outside the scope of the text of the Proposal for a Regulation?

II.

It should be clarified how and within what deadline the authority supervising the financing of political activities, election campaigns and referendums (in Croatia, it is the State Election Commission – SEC) can obtain complete information on a paid advertisement (which includes e.g. contracts, invoices or other accounting documents, and not only the information referred to in Article 10 of the Regulation).

Our national legal framework stipulates that the SEC has a period of 60 days from the date of publication of the final election results to prepare a supervision report, and that all relevant information regarding the financing of election campaigns should be received and analysed within that period.

We hold that the deadlines for the transmission of information to competent authorities referred to in Art. 10 of the Proposal for a Regulation are too long (12 working days from receipt of the request). Additionally, we refer to Art. 15 (4) of the Proposal for a Regulation, which empowers supervisory authorities to request the providers of political advertising services to provide access to data, documents or any necessary information for the performance of their supervisory tasks, however, no deadline is set for their transmission by analogy with Art. 10 of the Proposal for a Regulation.

We also point out that it is not clear from Art. 6 (1) (b) of the Proposal for a Regulation what is meant by specific service or services provided in connection to the political advertising, or what is meant by other benefits in Art. 6 (1) (c) of the Proposal for a Regulation. We would also like to point out the inconsistency in relation to Art. 6 (1) (d) of the Proposal for a Regulation, stating that where applicable, the identity of the sponsor should be indicated, while under Art. 7 (1) (b) of the Proposal for a Regulation the identity of the sponsor should be indicated in any case.

With regard to Art. 7 (1) (b) of the Proposal for a Regulation, we hold that, in addition to the identity of the sponsor of the political advertisement and the entity ultimately controlling the sponsor, it should also be indicated for which political actor a specific political advertisement has been placed, unless that political actor is meant by "the entity ultimately controlling the sponsor".

In Article 7 (2) (d) of the Proposal for a Regulation, it is proposed to clearly indicate for which purpose the advertisement was placed (elections, referendums, advertising of regular political activities during the year other than elections and referendums).

Art. 7 (6) of the Proposal for a Regulation states that political advertising publishers which are very large online platforms will ensure that the repositories they make available pursuant to Article 30 of the Digital Services Act make available transparency-related information. We hold that the deadline for placing data in the repository should be indicated, especially with regard to political advertising during election campaigns, when the availability of up-to-date and timely information is of the essence.

We hold that it should be ensured already at the level of the Proposal for a Regulation that, in case of publication of a political advertisement, there is an obligation on the part of the political advertising publisher or the provider of political advertising services to provide at least a notification, if not the accompanying documentation, to the relevant authority of the Member State. The delivery of information on request, as provided for in Art. 10 of the Proposal for a Regulation, is not sufficient in this respect, as it is not clear from which sources any national authority can learn which political advertisement has been placed for which political actor, especially considering the cross-border use of services.

Article 7

Position: We consider it important that the regulation takes into account the nature of the political advertising service and the capacity of service providers when imposing obligations. It is equally important to ensure that service providers are not burdened disproportionately.

1. The Regulation requires information to be included in every presentation of political advertising. The question is whether and how, under this Regulation, such information must also be included, for example, in pens, balloons etc. distributed to persons on the street during the election campaign. It is a tradition in Estonia to distribute the above-mentioned things to persons on the street during election campaigns, and as a rule, the details of the political party or individual candidate can be found on these items. If these items are also within the scope of the Regulation, please explain how all the required transparency notices should be attached to these items, and keeping this in mind, can this requirement be considered proportionate?
2. According to the Regulation, the provider of political advertising may also be an individual candidate - are all the requirements applicable to the providers of political advertising also applicable to an individual candidate? If it so, is this proportionate as we have to consider that it might have a negative impact on local democracy? The danger here is that people might become reluctant to participate in elections as candidates, as they fear of becoming overwhelmed by all the obligations set out in the Regulation. We see that this might have a negative impact on democratic participation as such. For example, individual candidates should be able to establish mechanisms through which individuals can notify them free of charge if the specific political advertisements they publish do not meet the requirements of the Regulation. In Estonia, not all individual candidates may have their own website.
3. How often and what efforts must the service provider make to comply with Article 7 (2) d), i.e. the obligation to include an indication of the election or referendum to which the advertisement relates to?
4. Article 7(3) of the Regulation requires publishers of political advertising to make reasonable effort to ensure that the information they publish is complete and if they consider it incomplete, political advertisement may not be published. Is the publisher liable if the information disclosed is complete but incorrect?
5. What efforts do the service providers have to make in order to comply with the obligation to update transparency notices set out in Article 7(4)?

In general, we would like to point out that the provisions of chapter 2 stand and fall with the scope and definitions of the proposal laid down in chapter 1.

Zu Artikel 4 – “Transparency“

- From our understanding, Art. 4 only serves the purpose of clarification and has no separate regulatory content or legal significance. Therefore, we don't have further comments or questions regarding this Article.

Zu Artikel 5 – “Identification of political advertising services“

- In our view, the obligations laid down in Art. 5 and 6 seem suitable to ensure transparency regarding all steps of political advertising services.
- On the other hand, the term “providers of advertising services” used in Art. 5(1) is an unspecified term not defined in Art. 2, which further broadens the already very broad scope of the proposal.
- This may lead to legal uncertainties for advertisement services and entrepreneurs in general, because they could be a potential subject to sanctions according to Art. 16(1).
- Furthermore, the obligation under Art. 5(1) involves the risk that providers of advertisement services will always request a statement about the political character of the performed services from every client, even when there clearly is no political advertising involved. This again may lead to unnecessary administrative burden.
- A more practical approach might be that the sponsor who approaches an advertising service provider with a request to prepare, place, promote, or disseminate a political advertisement has to inform the advertising service provider on its own initiative that the request is for political advertising.

Zu Artikel 6 – “Record-keeping and information transmission“

- Art. 6 establishes quite extensive information recording and transmission obligations, which impose financial and administrative burden on service providers. It is therefore necessary to keep the scope of the obligations as precise as possible.
- With regard to Art 6 (1) (d), we would like to ask whether this Article constitutes a legal basis for the processing of personal data.
- We would like to note that Art. 6(2) sentence 1 (*“The information [...] shall be in writing and may be in electronic form.”*) is worded unclearly.
- We believe that it should rather read *“the information [...] shall be in written or electronic form.”*.
- In the second sentence of Art. 6(2), the term “promotion” referred to in Art. 2(2) of the proposal is missing. In the interest of a uniform legal system and the avoidance of ambiguities, the term should also appear in Art. 6(2).
- In Art. 6(3) it remains unclear whether the obligation to communicate the information to the publisher applies only to the service provider contracting directly with the publisher, or to any involved provider of political advertising.
- Should the latter be the case, it seems questionable whether it is appropriate to burden service providers who, for example, only assist in the preparation of the

political advertisement with this obligation. This is because the person of the publisher will often not even be known at the time the advertisement is prepared, so that the service provider would have to ask afterwards to whom he must communicate the information.

Zu Artikel 7 – “Transparency requirements for each political advertisement”

- Art. 7(1) does not yet make clear who is specifically responsible for compliance with the transparency requirements.
- The purpose of the provision and the recitals suggest that the political advertising publisher should be responsible for compliance with the transparency requirements because he makes the message publicly available and controls its dissemination. For the sake of legal clarity, this should also be reflected in the wording of Art. 7(1).
- Furthermore, recital 40 should clarify whether, particularly in the case of an offline medium, it is sufficient to refer to a transparency notice filed online by providing a web address or a QR code.
- Otherwise, we believe that providing a full transparency notice in a newspaper or on a billboard, for example, would not be feasible in practice.
- With regard to Art. 7(2) (c), we wonder to what extent the aspects mentioned there should be listed in detail.

Zu Artikel 8 – “Periodic reporting on political advertising services”

- We would like to ask the Commission what the specific reasons were for exempting SMEs from this obligation in order to better understand the purpose of this exemption.

Zu Artikel 9 – “Indicating possibly unlawful political advertisements”

- We welcome the fact that the proposal does not lay down detailed requirements for the operation and design of reporting mechanisms, but merely sets out general requirements in Art. 9.
- This gives the publishers certain technical and creative leeway in setting up and operating the reporting systems, which can contribute to a user-friendly design.
- The DSA will also contain a notice and action mechanism for illegal content. How does the Commission assess the correlation with this mechanism with regard to illegal political advertising content in the online sector?

Zu Artikel 10 – “Transmission of information to competent authorities”

- Germany is open to discussing the establishment of so-called "ad libraries", i.e. central databases to which service providers can automatically transfer the required information and authorities and interested bodies can retrieve it in real time.
- We believe this model could be easier to handle and significantly more cost efficient than the proposal laid down in Art. 10 and 11, which may result in administrative burden for businesses as well as public authorities and other interested entities like CSOs.

Zu Artikel 11 – “Transmission of information to other interested entities”

- We understand that Art. 11 is intended to give “other interested entities” a material claim to access information unless an exception in para. 7 applies. We ask that this is clarified in the wording, e.g. *“upon request, providers of political advertising services transmit the information referred to in article 6”*
- We ask to consider further aligning the information accessible to other entities (Art. 11) with the information to be transmitted to public authorities (Art. 10) in order to increase transparency in particular through research.
- We would like to point out that Germany’s constitutional and legal order does not allow for any state accreditation or authorisation of political actors, electoral observers or journalists. Making the admission of political actors, electoral observers or journalists dependent on state accreditation is inadmissible under German constitutional law.
- For this reason, we would need the specifications of “interested entities” in Art. 11(2) to be revised. An interpretation of these rules in conformity with the German Basic Law does not seem conceivable.

As mentioned in today's meeting, Latvia is kindly sending its written comments regarding articles discussed in today's GAG meeting and as well our written comments regarding all Chapter II of the Regulation on the transparency and targeting of political advertising.

I would like to underline that we are still having our scrutiny reserve.

Article 5

Identification of political advertising services

Latvia considers that Article 5 (2) should be clarified, specifying what is to be stated in the contractual arrangement - whether the specific articles of the regulation that will affect the application of the contract or that the regulation will be complied in general.

Article 6

Record-keeping and information transmission

Latvia points out that in Article 6 is important to specify the subject who is obliged to retain data on the relevant political advertising, assessing which of the service providers involved has all the necessary information, i.e. whether this obligation falls on the owners of advertising servers or political actor as an advertising subscriber. The proposal for a regulation should specify who is responsible for retaining all information (taking into account the wide range of service providers and intermediaries involved) in order to achieve the regulation's objective of retaining complete information on the political campaign in question. The procedure of retaining information, in the case of the information holder gets bankrupt, whether it will be a political actor or a service provider should be incooperated in the Regulation to retain information.

An explanation within Article 5(2) and justification for the choice of a 5-year period for retaining would be needed, justifying whether this will not be an excessive burden on political advertising providers.

Article 7

Transparency requirements for each political advertisement

Latvia points out that the Regulation (or at least the recitals of the Regulation) should specify the political actor, sponsor or, if necessary, the entity with ultimate control over the sponsor is also responsible for the content of the political advertisement, and the political actor and sponsor the provider must provide all the necessary information contained in the regulation, as the advertiser has all the necessary information and must take responsibility for providing truthful and complete information (as is the case for EPP, see the proposal for a statute for EPP and European political foundations and financing (Article 5)).

Latvia points out that it would be useful to strengthen the self-declaration of political actors in the text of the Regulation (Articles 5-7), in which the advertiser would indicate his exact identity, as well as declare that he carries out political advertising and provide true information. The regulation would be improved if the political actor, as the subscriber of the advertisement, were to provide the complete and truthful information required by the media in order for the downstream media to be able to meet the transparency requirements imposed on them by the advertisement.

1) **Paragraph 1 (b)** - further clarification on what is meant by "entity ultimately controlling the sponsor" is needed in order for the Regulation to have a common understanding of this term (e.g. whether it is the beneficial owner, ie the person in whose interests the sponsor is acting).

2) **Paragraph 2** - Latvia generally supports the approach regarding political advertising published on the Internet, however, attention should be paid to the fulfillment of such requirements for political advertising published in printed form (e.g. press publications, posters, billboards and etc.). If only an indication is published in such advertisements in which the information contained in the transparency report can be obtained, then such an indication will not achieve the objective of transparency of political advertising, nor will it correspond to the "easy to obtain" option. In this case, in order to obtain the information contained in the transparency statement, it will be necessary to memorize the reference (link) and then access the relevant information by electronic means, as appropriate.

Thus, Latvia considers that the reference to the information included in the transparency notices could be applied only to such political advertisements that are placed on the Internet, but to other political advertisements, it would be necessary to stipulate that the relevant information is published together with the advertisement itself.

3) **Paragraphs 5 and 6** – taking into account Article 7(6) of the regulation and Article 30(1) of the Digital Services Act (DSA) it needs to be clarified so that there is no doubt that large online platforms also keep transparency notices in their repositories for five years (Article 6(2)), thus ruling out the possibility of inconsistencies between this Regulation and DSA as it is mentioned in.

The transparency requirements in Article 7 partially duplicate or overlap with those already contained in Article 24 of the DSA, which sets out general transparency requirements for commercial and political online.

Taking into account all above mention, Latvia considers that it is necessary to harmonize this Regulation and the DSA.

Article 10

Transmission of information to competent authorities

Latvia considers that the provisions of the Regulation are aimed at the post factum verification. Latvia points out that, applying the current version of the Regulation, Latvia will have to abandon the regime of control over political advertising, which is currently working well, thus possibly reducing the control over the placement of political advertising. In view of the above, Latvia asks to inclusion in the Regulation of a condition allowing Member States to apply (national) procedures.

Also, given the dynamic nature of pre-election time, the 10 working days for providing the information mentioned in Article 10(2) could be too long to prevent a possible breach of political advertising. The exercise of the right of the controlling authority to make a request to the service provider under Article 10 may be hampered by the fact that the information against or to whom the request for information should be submitted won't be known or available to the Competent authority.

The transmission of requests will require additional resources for the competent national authority, significantly extending the time limit for obtaining information and the possibility of obtaining information, as the request is sent about the identified advertising. Latvia

believes that this will significantly reduce the level of transparency of political advertising compared to the current one.

In addition, we draw attention to Article 38 of the DSA provided for in Article 41 of the DSA, including requesting the necessary information. Given that Article 10 of the Regulation also provides powers to the competent authorities to request the necessary information from advertising services and that the competent authorities referred in this Regulation are "competent national authorities" and as well within the meaning of the DSA, it is necessary to harmonize this Regulation and DSA.

Article 11

Transmission of information to other interested entities

Latvia considers that Article 11 (2) (b) and (c) do not understand what is meant by "authorized under national law or Union law", therefore we invite to add the recitals in which the explanation of such organizations and political actors will be provided.

In principle, Malta agrees with the objective of this proposal, namely that transparency in political advertising is necessary. However, Malta is concerned that in order to achieve this objective, the onus is put on service providers, thus putting disproportionate burdens on smaller service providers.

Malta has carried out an initial assessment on the impact of this proposal on Small and Medium Enterprises (SMEs). In particular, for the time being, an analysis was made on Chapter II of the Proposal.

Without prejudice to further feedback which Malta might have, for the time being we have the following points to make:

Article 5 (Identification of political advertising services); Article 6 (Record-keeping and information transmission); and Article 7 (Transparency requirements for each political advertisement):

Malta is concerned regarding the possibly disproportionate and burdensome impact of these Articles on micro, small and medium sized service providers, particularly those self-employed service providers, or service providers consisting of 1 or 2 persons.

Article 8 (Periodic reporting on political advertising services)

Paragraph 2:

Recital 44, with reference to this article, states that – “... To avoid disproportionate burdens, those transparency reporting obligations should not apply to enterprises qualifying under Article 3(3) of Directive 2013/34/EU.”

In view of this Malta is proposing to also hereby include enterprises qualifying under Article 3(1) (Micro) and Article 3(2) (Small) of Directive 2013/34/EU.

Article 9 (Indicating possibly unlawful political advertisements):

Malta proposes that this Article places the role of providing for the indication of possibly unlawful political advertisements on national authorities, and not on advertising publishers who are providing political advertising services.

This will help in creating a more streamlined system which would ensure better exchange of information, particularly when dealing with cross-border providers and would also help to reduce the burden on Advertising Publishers.

Article 11 (Transmission of information to other interested entities):

Paragraph 2:

Malta would prefer if the word *accredited* is replaced by the word *recognised* in the sub-paragraph after point (d).

The suggested text therefore would be as follows:

Such interested entities shall also include journalists ~~accredited~~ recognised in a Member State by national, European or international bodies.

Paragraph 7:

Malta considers that putting the burden of proof on service providers would create an added burden for SMEs.

In this regard, Malta proposes a new paragraph:

[new para] - 7A - with regard to undertakings qualifying under Article 3 (1)-(3) of Directive 2013/34/EU, interested entities (as listed in paragraph 2) requesting the transmission of information pursuant to paragraph 1, shall bear the burden of demonstrating that a request is not manifestly unfounded, unclear or excessive, or that a request is not repetitive or involves significant costs to process.

Please find below the recital of the preamble:

The application of transparency requirements in political advertising should also serve to ensure the unhindered course of the democratic electoral process. To this end, it should be guaranteed, at the European level, the impossibility to block the internet profiles of legitimate civil society organizations, as well as legitimate political parties, inter alia by publishers of political advertising or providers of intermediary services. The information requirements imposed on providers ensure that users have access to standardized and reliable information. The user must also be provided with a communication channel. Increasingly, this channel is a profile in social media. Only both of these elements: standardized information and an open communication channel will allow the user to make the most appropriate election decision based on the most comprehensive information available to the user.

Chapter 2

Article 6:

In Art. 6 para 1 letter d) we suggest deleting the word "where applicable". We believe the identity of the advertiser must always be retained and provided to the publisher of the political advertisement.

Article 7:

We consider Art. 7 para 3 to be an important provision that states the obligation of political advertising publishers not to publish political advertisement in case that the information provided by sponsors or political advertisement service providers is not complete.

We request that this obligation be explicitly imposed also on sponsors, who prepare, place, promote, publish or disseminate political advertisement on their own or by themselves, without necessarily using the services of providers or publishers. This is a common phenomenon in practice, especially in municipal elections. By this we seek to close any possible loophole (as it is already ensured in Slovakia's national legislation).

Questions for the European Commission concerning articles 5 to 11 (II. chapter) in proposal on the transparency and targeting of political advertising

Firstly, we would like to point out that, from the point of view of legal certainty and transparency, it would be useful to clarify the term "**provider of political advertising services**" as the term "**political advertising publisher**" is already defined in Article 2. This is important as the Regulation prescribes obligations for *providers of political advertising services* and later separately also obligations for political advertising publishers. Could the COM please explain the differences between these two terms? *As we understand there are situations where both of these services are provided within the same legal subject (Article 9, para 1) but more often this would entail different legal subjects.*

We would like to emphasize that one of the principles of the regulation that should always be kept in mind is the least interference with free economic initiative and the lowest possible cost for companies.

- Article 5

With regard to the obligation of **providers of political advertising services** to require declaration from sponsors, we understand that this entails the obligation for the provider to first detect/identify the political advertising. If this is detected then the declaration would be requested. We believe that such provisions does not seem to provide for equal criteria with regard to ascertaining whether something constitutes political advertising. We fear that some providers may in practice implement less restrictive policy to that and in less obvious cases rather not request a declaration in order not to lose clients. In order to avoid such situations, we believe that it would be better for providers of political advertising to always request a declaration from the sponsor on whether something is or is not political advertising. This would place the core responsibility for identifying political advertising on sponsors.

- Article 6

What is meant by the phrase "where applicable, " in point (d) of the first paragraph? Here, the proposal for a regulation stipulates that providers of political advertising service shall, where appropriate, keep the information they collect in the course of providing their services on the identity of the sponsor and its contact details. There seems to be no reason whatsoever for the provider not to keep the information on the »customer«.

- Article 7

According to Article 7, Para 3, political advertising publishers shall make reasonable efforts to ensure that the information referred to in paragraph 1 and 2 is complete, and where they find this is not the case, they shall not make available the political advertisement. Such provision places all the responsibility for the accuracy of the information on the publisher. One could imagine situations, when even sponsor would not agree with the information that will be published by the publisher or would detect some mistakes etc (eg. on the period of an ad being published etc). We believe that the sponsor should get the chance to see the information prior to it being published and provide comments. It could be even prescribed as a presumption that if in the period of three days the sponsor does not request any changes to the draft transparency notice, there is a presumption of a tacit agreement regarding the accuracy of information.

- Article 8

Why is the obligation on providing information on political advertising in the management reports envisaged only for the advertising publishers and not for the advertising providers?

- Article 9

According to Article 9 the political advertising publisher shall, in case of notification of unlawful advertising, act accordingly. What exactly would be expected of the publisher? What could the citizens filling such notification expect?

- Article 10

Why does Article 10, Para 1, impose an obligation to provide information to the competent authorities only on providers of political advertising services and not on publishers? According to Article 7, the transparency notice will be finalised by the publisher so it is not clear why would the authorities be authorized to demand this information only from the providers and not from the publishers.

Moreover, it seems rather unusual that the national authorities which act according to the lawfully prescribed competences and procedures (e.g. inspection bodies, i.e. not criminal offenses, but e.g. misdemeanours) would need to explain in the request (point 1 a) »a statement of reasons explaining the objective for which the information is requested« and in particular »why the request is necessary and proportionate«? What is the reason for such safeguards with regard to the entities that operate on the market in case an infringement of a law has been detected by the authorities? One has to take into consideration that such proceedings would often necessitate quick action to be effective, especially if it would be related to the specific election period for example.

- Article 11

Regarding the request for information to other interested parties, paragraph 7 stipulates that service providers bear the burden of proof, that the request is manifestly unfounded, unclear or excessive, or that requests are repeated or that its processing entails significant costs. Given that the proposal for a regulation does not provide for an appeal in such cases, the questions arise who will verify this.

- **On article 5** (Identification of political advertising services): This article deals with the identification of political advertising services. However, only article 5 paragraph 1 deals really with this issue of identification. The second paragraph of article 5 refers to the duty that providers of political advertising services have to ensure that the contractual arrangements concluded for the provision of this kind of services specify how to comply with the provisions of this Regulation.

In our view, that second paragraph is not placed correctly in article 5, and should be placed in some other place in the Regulation, or perhaps should become a separate article, which would express this specific obligation in a separate manner.

- **Article 8** refers to the financial information to be provided by political advertising services as part of their management report in their annual financial statements.

However, we see a lack of legal coherence when its paragraph 2 refers to an exception concerning undertakings qualifying under article 3(3) of Directive 2013/34/EU. In fact, this article 3(3) refers only to medium sized enterprises, but does not refer to microenterprises or small enterprises. We see therefore a lack of coherence, which we think should be corrected.

- **Article 10.3.** uses the expression SMEs, within the meaning of article 3 of Directive 2013/34/EU. However article 3 of this Directive does not use the terminology “SMEs”. The terms being used in article 3 of this Directive are either “microenterprise”, “medium-sized enterprise” or “small enterprise”, but not SMEs.

We therefore think it would be convenient to adjust the expression SMEs, and to use instead the terminology being used in article 3 of Directive 2013/34/EU.

General comment: Sweden is still analysing chapter II, as the proposed provisions seem quite far-reaching.

On the articles concerned:

Art 6.1 d): what is the implication of “where applicable”, i.e. which cases are concerned?

Art 7 (general comment): as there is a link with the definition in chapter I, we must look at the text in its entirety, from the perspective of our constitution, once the implication of it is completely clear to us. We will probably have further comments on this article in the future.

Art 7: it needs to be clarified that the article refers to “publishers”.

Art 7: it is a bit hard to understand, from the text, how the “transparency notices” should be made accessible when we talk about off-line and printed media.

Art 7.1 b): is the requirement concerning “the entity ultimately controlling the sponsor” in this article new? This may be hard to accomplish, especially if we talk about obligations for every part of the chain and not only about the publisher.

Art 7.2 e): what is the exact meaning of “repositories of advertisements”?

Art 7.3: generally, we are hesitant towards this requirement, which is by the way rather unclear. Is the implication of this article an outright ban?

Art 11: from a Swedish perspective we would like to avoid mentioning “journalists accredited” as we have no general accreditation or register for journalists in our country.