



Council of the European Union  
General Secretariat

Brussels, 01 June 2022

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

WK 7902/2022 INIT

**LIMITE**

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## WORKING DOCUMENT

|                |                                                                                                                                                                    |
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| From:          | General Secretariat of the Council                                                                                                                                 |
| To:            | Working Party on General Affairs                                                                                                                                   |
| N° prev. doc.: | 7650/22 INIT; 8647/22 INIT+COR1; 7385/22 INIT +REV1 +REV2                                                                                                          |
| N° Cion doc.:  | ST 14374 2021 INIT +COR1 REV1, ADD1 COR1 REV1, ADD2, ADD3, ADD4                                                                                                    |
| Subject:       | Regulation on the transparency and targeting of political advertising (chapter 3)<br>- Comments from Member States on the Presidency compromise text of 3 May 2022 |

Delegations will find attached the comments from Austria, Denmark, Estonia, Germany, Latvia, the Netherlands and Poland on chapter 3 of the Presidency compromise text of 3 May 2022 received following the discussions at the meeting of the Working Party on General Affairs on 1st June 2022.

Please take note that the comments of the Estonian delegation included in the present document cover all chapters of the proposal and are provided in track changes.

The comments of the Italian delegation on all chapters, including chapter III, are included in WK 7650/22 issued on 30 May 2022.

**Regulation on the transparency and targeting  
of political advertising (Chapter 3)  
- Comments on the Presidency compromise text  
of 3 May 2022 received following the  
GAG meeting of 1st June 2022**

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Art. 12/Recital 49:

As stated before, as far as automated processing is used for the targeting or amplification of political advertising Recital 49 should explain the **relationship between Article 22 GDPR and Article 12** of the draft.

For instance, Article 22 para 4 GDPR allows for automated decision making processes based on special categories of personal data only on the ground of litera (a) or (g) of Article 9 para 2 GDPR. Article 12 of the draft allows for the processing of special categories of personal data only on the grounds of litera (a) or (d) of Article 9 para 2 GDPR.

The Recitals should explain how these provisions interact and if it can be ruled out that targeting according to Article 12 of the draft may in some cases contain automated decision making according to Article 22 GDPR.

Art. 12 para 3 – 8:

It is still very important to us that the Recitals should clarify that Article 12 para 3 to 8 of the draft **does not serve as a legal basis** for the use of automated processing of personal data according to Article 22 para 2 lit b GDPR.

Art. 12 para 4:

We very much appreciate the clarification in **para 4 lit. a on the concrete categories** of information that have to be provided in cases where targeting or amplification techniques involving the processing of personal data are used.

Denmark appreciates the presentation of the interactions of the provisions of Chapter 3 with other EU legislation (in particular DSA and GDPR) and hope that this will provide a background for further discussion of this chapter.

Denmark maintains the parliamentary scrutiny reservation.

Denmark continues to have questions concerning chapter 3.

- Article 12 in general: The Commission has previously said that the provisions in chapter 3 does not exclusively apply to political advertising services but rather all cases of political advertising that involves processing of personal data when using targeting and amplification techniques regardless of whether it includes a service. According to the Commission, chapter 2 on the other hand applies only in cases of political advertising *services*, meaning where payment is normally involved. Article 12 includes both obligations for *controllers* and for political advertising *publishers*. The Commission has previously explained that political advertising publishers is a subcategory of providers of political advertising services. Therefore, we assume that political advertising publishers must be a provider of political advertising services that is normally provided for remuneration. Is it correctly understood that the obligations in article 12 differ depending on whether or not payment is involved? For example, article 12(4) that only apply to political advertising publishers and which, in the Presidency's compromise text, contains the obligations to provide the information about the used targeting and amplification techniques along with the political advertisement. Does the Presidency believe that these obligations (in article 12(4)) should only apply in cases of political advertising *services* and *not* all cases of political advertising that use targeting techniques that involve processing of personal data?
- We would furthermore appreciate a confirmation that a political advertising publisher is necessarily a provider of a political advertising service. If this is the case,

we will once again ask that it is included in the definition of political advertising publishers in article 2(11) that the term relates to the definition of providers of political advertising services.

- Regarding article 12(4)a, Denmark is supportive that the information that should be contained in the transparency notice when making use of targeting and amplification techniques are now listed in the article rather than exclusively in the annex. From a Danish perspective we are interested to hear if the Commission finds this change problematic and in that case why.
- How does the provisions in the proposal apply to the processing of data that are inferred from behavior on online intermediary services? For example through group memberships, likes or searches?
- Which parts of the production chain are usually the "controllers" in case of processing personal data relating to political advertising?
- Regarding article 13, Denmark is supportive of the addition of "without cost" in order to align with the wording in article 11(1).

Finally, in addition to remarks previously sent, Denmark has questions relating to other parts of the proposal:

- Relating to the question of whether political advertising publishers are necessarily providers of political advertising services, we are interested to have an elaboration on whether a publication of a political advertisement that is not published against remuneration but where the preparation has been provided for remuneration will be covered by the obligation to provide a transparency notice in article 7. We understand that in this case, article 7 will not apply but articles 4-6a will. Is this correct?
- According to article 7(1)a the transparency notice shall, where applicable, include information on the entity ultimately controlling the sponsor. How will it be determined whether another entity ultimately controls the sponsor or whether another entity is ultimately the sponsor of a specific political advertising? Will regular

financial support for a political party or another political actor potentially need to be disclaimed in the transparency notice?



**ANNEX**

Proposal for a  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on the transparency and targeting of political advertising**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) The supply of and demand for political advertising are growing and increasingly cross-border in nature. A large, diversified and increasing number of services are associated with that activity, such as political consultancies, advertising agencies, “ad-tech” platforms, public relations firms, influencers and various data analytics and brokerage operators. Political advertising can take many forms including paid content, sponsored search results, paid targeted messages, promotion in rankings, promotion of something or someone integrated into content such as product placement, influencers and other endorsements. Related activities can involve for instance the dissemination of political advertising upon request of a sponsor or the publication of content against payment.
- (2) Political advertising can be disseminated or published through various means and media across borders. It can be disseminated or published via traditional offline media such as newspapers, television and radio, and also increasingly via online platforms, websites, mobile applications, computer games and other digital interfaces. The latter are not only particularly prone to be offered cross-border, but also raise novel and difficult regulatory and enforcement challenges. The use of online political advertising is strongly increasing, and certain linear offline forms of political advertising, such as radio and television, are also offered online as on-demand services. Political advertising campaigns tend to be organised to make use of a range of media and forms.
- (3) Given that it is normally provided against remuneration, advertising, including political advertising, constitutes a service activity under Article 57 of the Treaty on the Functioning of the European Union (‘TFEU’). In Declaration No 22, regarding persons with a disability, annexed to the Treaty of Amsterdam, the Conference of the Representatives of the Governments of the Member States agreed that, in drawing up measures under Article 114 of the TFEU, the institutions of the Union are to take account of the needs of persons with disabilities.



- (4) The need to ensure transparency is a legitimate public goal, in conformity with the values shared by the EU and its Member States pursuant to Article 2 of the Treaty on European Union ('TEU'). It is not always easy for citizens to recognise political advertisements and exercise their democratic rights in an informed manner. A high level of transparency is necessary, among other reasons, to support an open and fair political debate **in order to ensure democratic political campaigns**, and free and fair elections and referendums, and to combat disinformation and unlawful interference including from abroad. Political advertising can be a vector of disinformation in particular where the advertising does not disclose its political nature, and where it is targeted **or amplified**. Transparency of political advertising contributes to enabling voters to better understand when they are being presented with a political advertisement on whose behalf that advertisement is being made, and how they are being targeted by an advertising service provider, so that voters are better placed to make informed choices.
- (5) In the context of political advertising, targeting and amplification techniques are frequently used. Targeting or amplification techniques should be understood as techniques that are used either to address a tailored political advertisement only to a specific person or group of persons or to increase the circulation, reach or visibility of a political advertisement. Given the power and the potential for the misuse of personal data of targeting, including through microtargeting and other advanced techniques, such techniques may present particular threats to legitimate public interests, such as fairness, equal opportunities and transparency in the electoral process and the fundamental right to be informed in an objective, transparent and pluralistic way.

- (6) Political advertising is currently regulated heterogeneously in the Member States, which in many cases tends to focus on traditional media forms. Specific restrictions exist including on cross-border provisions of political advertising services. Some Member States prohibit EU service providers established in other Member States from providing services of a political nature or with a political purpose during electoral periods. At the same time, gaps and loopholes in national legislation are likely to exist in some Member States resulting in political advertising sometimes being disseminated without regard to relevant national rules and thus risking undermining the objective of transparency regulation for political advertising.
- (7) To provide enhanced transparency of political advertising including to address citizens' concerns, some Member States have already explored or are considering additional measures to address the transparency of political advertising and to support a fair political debate and free and fair elections or referendums. These national measures are in particular considered for advertising published and disseminated online and may include further prohibitions. These measures vary from soft to binding measures and imply different elements of transparency.
- (8) This situation leads to the fragmentation of the internal market, decreases legal certainty for providers of political advertising services preparing, placing, publishing or disseminating political advertisements, creates barriers to the free movement of related services, distorts competition in the internal market, including between offline and online service providers, and requires complex compliance efforts and additional costs for relevant service providers.
- (9) In this context, providers of political advertising services are likely to be discouraged from providing their political advertising services in cross-border situations. This is particularly true for microenterprises and SMEs, which often do not have the resources to absorb or pass on the high compliance costs connected to the preparation, placement, publication or dissemination of political advertising in more than one Member State. This limits the availability of services and negatively impacts the possibility for service providers to innovate and offer multi-medium and multi-national campaigns within the internal market.

- (10) A consistent and high level of transparency of political advertising throughout the Union should therefore be ensured when political advertising services are provided, while divergences hampering the free circulation of related services within the internal market should be prevented, by laying down uniform transparency obligations for providers of political advertising services guaranteeing the uniform protection of rights of persons and supervision throughout the internal market based on Article 114 of the TFEU.
- (11) Member States should not maintain or introduce, in their national laws, provisions on the transparency of political advertising that are diverging from those laid down in this Regulation, in particular more or less stringent provisions to ensure a different level of transparency in political advertising. Full harmonisation of the transparency requirements linked to political advertisement increases legal certainty and reduces the fragmentation of the obligations that service providers meet in the context of political advertising.
- (12) Full harmonisation of the transparency requirements should be without prejudice to the freedom of providers of political advertising services to provide on a voluntary basis further information on political advertising, for instance, the clickthrough rate of a specific online political advertisement, as part of the freedom of expression and information protected under Article 11 of the Charter of Fundamental Rights.
- (13) This Regulation should not affect substantive content of political advertising nor Union or Member States rules regulating the presentation of political advertising, nor rules regulating the display of political advertising including so-called silence electoral periods and the conduct of political campaigning preceding elections or referendums.

- (14) The Regulation should provide for harmonised transparency requirement applicable to economic actors providing political advertising and related services (i.e. activities that are normally; those services consist in particular of the preparation, placement, promotion, publication and dissemination of political advertising. The rules of this Regulation that provide for a high level of transparency of political advertising services are based on Article 114 of the TFEU. This Regulation should also address the use of targeting and amplification techniques in the context of the **promotion**, publication, **or** dissemination ~~or promotion~~ of political advertising that involve the processing of personal data. The rules of this Regulation that address the use of targeting and amplification are based on Article 16 of the TFEU. Political advertising directed to individuals in a Member State should include advertising entirely prepared, placed, **promoted**, ~~or~~ published **or disseminated** by service providers established outside the Union but disseminated to individuals in the Union. To determine whether a political advertisement is directed to individuals in a Member State, account should be taken of factors linking it to that Member State, including language, context, objective of the advertisement and its means of dissemination.
- (15) There is no existing definition of political advertising or political advertisement at Union level. A common definition is needed to establish the scope of application of the harmonised transparency obligations and rules on targeting and amplification. This definition should cover many forms that political advertising can take and any means and mode of publication or dissemination within the Union, regardless of whether the source is located within the Union or in a third country.
- (16) The definition of political advertising should include advertising **promoted**, published or disseminated directly or indirectly by or **promoted**, published or disseminated directly or indirectly for or on behalf of a political actor. Since advertisements by, for or on behalf of a political actor cannot be detached from their activity in their role as political actor, they can be presumed to be liable to influence the political debate, except for messages of purely private or purely commercial nature.

- (17) The **promotion**, publication or dissemination by other actors of a message that is liable **and intended** to influence the outcome of an election or referendum, legislative or regulatory process or voting behaviour **at Union, national, regional, local or at a political party level**, should also constitute political advertising. In order to determine whether the **promotion**, publication or dissemination of a message is liable **and intended** to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, account should be taken of all relevant factors such as the **sponsor of the message, the** content of the message, the language used to convey the message, the context in which the message is conveyed, the objective **and purpose** of the message and the means by which the message is **promoted**, published or disseminated. **A clear and substantial link should exist between the message and its potential to influence the outcome of an election or referendum, a legislative or regulatory process or voting.** Messages on societal or controversial issues may, as the case may be, have the potential to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.
- (18) Practical information from official sources regarding **exclusively** the organisation and modalities for participation in the elections or referendums should not constitute political advertising.
- (19) Political views expressed **under the editorial responsibility of a service provider**, in the programmes of audiovisual **media including** linear **and non linear** broadcasts or published in printed media, **unless the service provider has been remunerated by a third party for the political advertisement** ~~without direct payment or equivalent remuneration~~ should not be covered by this Regulation.
- (20) For the purpose of this Regulation, election should be understood as the elections to the European Parliament as well as all elections or referendums organised at national, regional and local level in the Member States and elections to establish political party leadership. It should not include other forms of elections such as **professional or** privately organised ballots.

- (21) It is necessary to define political advertisement as an instance of political advertising. Advertisements include the means by which the advertising message is communicated, including in print, by broadcast media or via an online platforms service.
- (22) Political actors within the meaning of this Regulation should refer to concepts defined under Union law, as well as under national law in line with international legal instruments such as those of the Council of Europe. The concept of political ~~parties~~ **actors** should include ~~their~~ affiliated and subsidiary entities **of a political party** established, with or without legal personality, in order to support ~~them~~ **it** or pursue ~~their~~ **its** objectives, for instance by engaging with a specific group of voters or for a specific electoral purpose.
- (23) The concept of political actors should also include **candidates for or holders of any elected office**, ~~unelected officials, elected officials, candidates and members of a~~ **European institution or of the Government of Member States** at European, national, regional or local level. Other political organisations, **established to achieve a specific outcome in an election or referendum**, should also be included in that definition.
- (24) An advertising campaign should refer to the preparation, **placement, promotion**, publication and dissemination of a series of linked advertisements in the course of a contract for political advertising, on the basis of common preparation, sponsorship and funding. ~~It should include the preparation, placement, promotion, publication and dissemination of an advertisement or versions of an advertisement on different media and at different times within the same electoral cycle.~~
- (25) The definition of political advertising should not affect national definitions of political party, political aims or ~~campaign~~ **electoral** periods at national level.
- (26) In order to cover the broad range of relevant service providers connected to political advertising services, providers of political advertising services should be understood as comprising providers involved in the preparation, placement, promotion, publication ~~and~~ **or** dissemination of political advertising. **Providers that provide purely ancillary services in relation to political advertising services should not be understood as political advertising service providers in the meaning of this Regulation.**

- (26a) A sponsor should be understood as the person on whose behalf political advertising is prepared, placed, promoted, published or disseminated, for instance a individual candidate in an election or a political party.
- (27) The notion of political advertising services should not include messages that are shared by individuals in their purely personal capacity. Individuals should not be considered as acting in their personal capacity if they are publishing messages the dissemination or publication of which is paid for by ~~another~~ a third party.
- (28) Once the sponsor declares an advertisement is indicated as being connected to political advertising, this should be clearly indicated to other service providers involved in the political advertising services. In addition, once an advertisement has been identified as political, its further dissemination should still comply with transparency requirements. For instance, when ~~sponsored content~~ political advertising as defined in this regulation is shared organically, the advertising should still be labelled as political advertising.
- (28a) In view of the importance of guaranteeing, in particular, the effectiveness of the transparency requirements, sponsors should transmit relevant information in a timely, complete and accurate manner to ensure that providers of services comply with the Regulation. In the case of a declaration or information that is manifestly erroneous, providers of advertising services shall request the sponsors and the providers of advertising services acting on behalf of sponsors to correct their declaration.
- (28b) A declaration or information should be considered manifestly erroneous if this is apparent from the content of the advertising, the nature of the sponsor, or the context in which the relevant service is provided.

- (29) The rules on transparency laid down in this Regulation should only apply to political advertising services, i.e. political advertising that is normally provided against remuneration, which may include a benefit in kind. The transparency requirements should not apply to content uploaded by a user of an online intermediary service, such as an online platform, and disseminated by the online intermediary service without consideration for the placement, publication or dissemination for the specific message, unless the user has been remunerated by a third party for the political advertisement.
- (30) The transparency requirements should also not apply to the sharing of information through electronic communication services such as electronic message services or telephone calls, as long as no political advertising service is involved.
- (31) Freedom of expression and information as protected by Article 11 of the Charter of Fundamental Rights covers an individual's right to hold political opinions, receive and impart political information and share political ideas. Every limitation to these freedoms must comply with Article 52 of the Charter of Fundamental Rights, and these freedoms can be subject restrictions where they are justified by the pursuit of a legitimate public interest and comply with the general principles of EU law, such as proportionality and legal certainty. That is inter alia the case where the political ideas are communicated through advertising service providers.
- (32) As regards online intermediaries, Regulation (EU) 2021/XX [Digital Services Act] applies to political advertisements published or disseminated by online intermediaries through horizontal rules applicable to all types of online advertising, including commercial and political advertisements. Based on the definition of political advertising established in this Regulation, it is appropriate to provide additional granularity of the transparency requirements established for advertising publishers falling under the scope of Regulation (EU) 2021/XX [Digital Services Act], notably very large online platforms. This concerns in particular information related to the funding of political advertisements. The requirements of this Regulation leave unaffected the provisions of the Digital Services Act, including as regards risk assessment and mitigation obligations for very large online platforms as regards their advertising systems.



- (33) The preparation, placement, promotion, publication and dissemination of political advertising can involve a complex chain of service providers. This is the case in particular where the selection of advertising content, the selection of targeting **and amplification** criteria, the provision of data used for the targeting **and amplification** of an advertisement, the provisions of targeting **and amplification** techniques, the delivery of an advertisement and its dissemination may be controlled by different service providers. For instance, automated services can support matching the profile of the user of an interface with the advertising content provided, using personal data collected directly from the user of the service and from the users' online conduct, as well as inferred data.
- (34) In view of the importance of guaranteeing in particular the effectiveness of the transparency requirements including to ease their oversight, providers of political advertising services should ensure that the relevant information they collect in the provision of their services, including the indication that an advertisement is political, **is complete and accurate and** is provided to the political advertising publisher which brings the political advertisement to the public. In order to support the efficient implementation of this requirement, and the timely and accurate provision of this information, providers of political advertising services should **transmit that information at the same time with the provision of the relevant service** consider and support automating the transmission of information among providers of political advertising services. **When providers of political advertising services become aware that information which they have transmitted has been updated, they shall ensure that this updated information is communicated to the relevant political advertising publisher.**
- (34a) Political advertising service providers may become aware of a manifest error or inaccuracy in the declaration that advertising is or is not political, or in the information communicated, including by means of the notification process. Providers of political advertising services should make reasonable efforts to ensure that such manifest error or inaccuracy are corrected, in particular through confirmation of information provided by the service provider itself. Reasonable efforts may also be reflected in the contractual arrangements among service providers and with the sponsor, where relevant.**

- (35) Where an artificial commercial or contractual construction risks circumventing the effectiveness of the transparency obligations laid down in the Regulation, those obligations should apply to the entity or entities that in substance provide the advertising service.
- ~~(36) Steps could also include providing an efficient mechanism for individuals to indicate that a political advertisement is political, and taking effective action in response to such indications.~~
- (37) While providing for specific requirements, none of the obligations laid down in this Regulation should be understood as imposing a general monitoring obligation on intermediary service providers for political content shared by natural or legal persons, nor should they be understood as imposing a general obligation on intermediary service providers to take proactive measures in relation to illegal content or activities which those providers transmit or store.
- (38) Transparency of political advertising should enable citizens to understand that they are confronted with a political advertisement. Political advertising publishers should ensure the publication in connection to each political advertisement of a clear statement to the effect that it is a political advertisement and of the identity of its sponsor. Where appropriate, the name of the sponsor could include a political logo. Political advertising publishers should make use of labelling which is effective, taking into account developments in relevant scientific research and best practice on the provision of transparency through the labelling of advertising. They should also ensure the publication in connection to each political advertisement of information to enable the wider context of the political advertisement and its aims to be understood, which can either be included in the advertisement itself, or be provided by the publisher on its website, accessible through a link, **a QR code**, or equivalent clear and user-friendly direction included in the advertisement.

- (39) This information should be provided in a transparency notice which should also include the identity of the sponsor and, **where applicable, the entity ultimately controlling the sponsor,** in order to support accountability in the political process. The place of establishment of the sponsor and whether the sponsor is a natural or legal person should be clearly indicated. Personal data concerning individuals involved in political advertising, unrelated to the sponsor or other involved political actor should not be provided in the transparency notice. The transparency notice should also contain information on the dissemination period, any linked election, the amount spent for and the value of other benefits received in part or full exchange for the specific advertisement as well for the entire advertising campaign, the source of the funds used and other information to ensure the fairness of the dissemination of the political advertisement. Information on the source of the funds used concerns for instance its public or private origin, the fact that it originates from inside or outside the European Union. Information concerning linked elections or referendums should include, when possible, a link to information from official sources regarding the organisation and modalities for participation or for promoting participation in those elections or referendums. **The transparency notice should be available immediately when the advertising is published or disseminated, and the information it presents should be updated regularly, as relevant.** The transparency notice should further include information on how to flag political advertisements in accordance with the procedure established in this Regulation. This requirement should be without prejudice to provisions on notification according to Article 14, 15 and 19 of Regulation (EU) 2021/XXX [Digital Services Act]. **Providers of political advertising services should make a reasonable effort to ensure that the information is complete and accurate.**

- (40) The information to be included in the transparency notice should be provided in the advertisement itself or be easily retrievable on the basis of an indication provided in the advertisement. **The presentation of the information may vary depending on the means used. In order to easily retrieve the information in the transparency notice in offline advertisement, use could be made for instance of a dedicated webpage link, a QR code or equivalent user-friendly technical measures.** The requirement that the information about the transparency notice is to be inter alia clearly visible should entail that it features prominently in or with the advertisement. The requirement that information published in the transparency notice is to be easily accessible, machine readable where technically possible, and user friendly should entail that it addresses the needs of people with disabilities. Annex I of Directive 2019/882 (European Accessibility Act) contains accessibility requirements for information, including digital information that should be used to render political information accessible for persons with disabilities.
- (41) Transparency notices should be designed to raise user awareness and help the clear identification of the political advertisement as such. They should be designed to remain in place, **where technically possible**, or remain accessible in the event a political advertisement is further disseminated for instance posted on another platform or forwarded between individuals. The information included in the transparency notice should be published when the publication of the political advertisements start ~~and be retained for a period a period of one year after the last publication.~~ **Political advertising publishers shall retain their transparency notices together with any modification for a period of five years after the last publication.** The retained information should also include information about political advertising which was terminated or which was taken down by the publisher. **Providers of political advertising services which are not very large online platforms may decide the format to retain this information.**

- (42) Since political advertising publishers make political advertisements available to the public, they should publish or disseminate that information to the public together with the publication or dissemination of the political advertisement. **Where political advertising publishers become aware that political advertising does not fulfil the transparency requirements under this Regulation, for instance following an individual notification, they should make reasonable efforts to fulfil the requirements under this Regulation.** Political advertising publishers should not make available to the public those political advertisements not fulfilling the transparency requirements under this Regulation. **In such situation, political advertising publishers should inform the provider of services concerned and, where relevant the sponsor, of the reasonable steps taken to fulfil the requirements under this Regulation.**
- (42a)** In addition, political advertising publishers which are very large online platforms within the meaning of Regulation (EU) 2021/XXX [Digital Services Act] should make the information contained in the transparency notice available, **in real time,** through the repositories of advertisements published pursuant to Article 30 Regulation [Digital Services Act]. **It is appropriate to provide additional granularity of the transparency requirements established for the repositories referred to Article 30 Regulation (EU) 2021/XX [Digital Services Act. This concerns in particular, information about removed political advertisement and the reason for its removal. In addition, very large online platforms may publish other information regarding the influence of the advertisement including clickthrough rate information.** This will facilitate the work of interested actors including researchers in their specific role to support free and fair elections or referendums and fair electoral campaigns including by scrutinising the sponsors of political advertisement and analysing the political advertisement landscape.

- (43) Where the provider of the political advertising service which hosts or otherwise stores and provides the content of a political advertisement is separate from the provider of the political advertising service which controls the website or other interface which eventually ~~displays~~ **presents** the political advertisement, these should be considered together as advertising publishers, with respective responsibility in respect of the specific service they provide, to ensure that labelling is provided and that the transparency notice and relevant information is available. Their contractual arrangements should reflect the way they organise compliance with this Regulation.
- (44) Information about the amounts spent on and the value of other benefits received in part or full exchange for political advertising services can usefully contribute to the political debate. It is necessary to ensure that an appropriate overview of political advertising activity can be obtained from the annual reports prepared by relevant **providers of** political advertising ~~publishers~~ **services**. To support oversight and accountability, such reporting should include information about expenditure on the targeting of political advertising in the relevant period, aggregated to campaign or candidate. To avoid disproportionate burdens, those transparency reporting obligations should not apply to enterprises qualifying under Article 3, **paragraphs 1 to 3** of Directive 2013/34/EU.
- (45) Political advertising publishers providing political advertising services should put in place mechanisms to enable individuals to report to them that a particular political advertisement which they have published does not comply with this Regulation. The mechanisms to report such advertisement should be easy to access and use, and should be adapted to the form of advertising distributed by the advertising publisher. As far as possible, these mechanisms should be accessible from the advertisement itself, for instance on the advertising publisher's website. Political advertising publishers should be able to rely on existing mechanisms where appropriate. Where political advertising publishers are online hosting services providers within the meaning of the Digital Services Act, with regards to the political advertisements hosted at the request of the recipients of their services, the provisions of Article 14, **15 and 19** of the Digital Services Act continue to apply for notifications concerning non-compliance of such advertisements with this Regulation.

- (45a) The political advertising publishers shall take reasonable steps to address in a timely, diligent and objective manner the notifications received pursuant to paragraph 1, by contacting the relevant service providers and, as relevant, the sponsor. The political advertising publisher shall inform the author of the notification and the service providers concerned of the follow up given to the notification and provide information on the redress possibilities in respect of the advertisement to which the notice relates.**
- (45b) In order to ensure the effectiveness of the transparency requirements during an election or a referendum, political advertising publishers shall process, within the last month preceding the election or the referendum, any notice that they receive about advertisement linked to the election or referendum within 48 hours.**
- (46) In order to allow specific entities to play their role in democracies, it is appropriate to lay down rules on the transmission of information published with the political advertisement or contained in the transparency notice to interested actors such as vetted researchers, journalists, civil society organisations and ~~accredited~~ **recognised** election observers, in order to support the performance of their respective roles in the democratic process. Providers of political advertising services should not be required to respond to requests which are manifestly unfounded, **unclear** or excessive. Further, the relevant service provider should be allowed to charge a reasonable fee in case of ~~repetitive and~~ costly requests, taking into account the administrative costs of providing the information.

(47) Personal data collected directly from individuals, or indirectly such as inferred data, when grouping individuals according to their assumed interests or derived through their online activity, behavioural profiling and other analysis techniques, is increasingly used to target political messages to groups or individual voters or individuals, and to amplify their impact. On the basis of the processing of personal data, in particular **special categories of personal** data ~~considered sensitive~~ under Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>4</sup>, different groups of voters or individuals can be segmented and their characteristics or vulnerabilities exploited for instance by disseminating the advertisements at specific moments and in specific places designed to take advantage of the instances where they would be sensitive to a certain kind of information/message. That has specific and detrimental effects on citizens' fundamental rights and freedoms with regard to the processing of their personal data and their freedom to receive objective information, to form their opinion, to make political decisions and exercise their voting rights. This negatively impacts the democratic process. Additional restrictions and conditions compared to Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 should be provided. The conditions set out in this Regulation on the use of targeting and amplification techniques involving the processing of personal data in the context of political advertising should be based on Article 16 TFEU.

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<sup>3</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>4</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).



- (48) Targeting and amplification techniques in the context of political advertising involving the processing of data referred to in Article 9(1) of Regulation (EU) 2016/679 and Article 10(1) of Regulation (EU) 2018/1725 should therefore be prohibited. [The use of such techniques should only be allowed when carried out by the controller, or someone acting on its behalf, on the basis of the explicit consent of the data subject or in the course of their legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical or religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects. This should be accompanied by specific safeguards. Consent should be understood as consent within the meaning of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Therefore, it should not be possible to rely on the exceptions as laid down in Article 9(2), points(b), (c), (e), (f), (g), (h), (i) and (j) of Regulation (EU) 2016/679 and Article 10(2), points(b), (c), (e), (f), (g), (h), (i) and (j) of Regulation (EU) 2018/1725 respectively for using techniques targeting and amplification techniques to publish, promote or disseminate political advertising involving the processing of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and 10(1) of Regulation (EU) 2018/725.]

- (49) In order to ensure enhanced transparency and accountability, when making use of targeting and amplification techniques in the context of political advertising involving the processing of personal data, controllers should implement additional safeguards. **Those additional safeguards should complement existing safeguards including those concerning automated decision-making in accordance with Article 22 of Regulation (EU) 2016/679 and Article ? of Regulation (EU) 2018/1725.** They should adopt and implement a policy describing the use of such techniques to target individuals or amplify their content and keep record of their relevant activities. When publishing, promoting or disseminating a political advertisement making use of targeting and amplification techniques, controllers should provide, together with the political advertisement, meaningful information to allow the concerned individual to understand the logic involved and main parameters of the targeting used, and the use of third-party data and additional analytical techniques, including whether the targeting of the advertisement was further optimised during delivery.
- (50) Political advertising publishers making use of targeting or amplification techniques should include in their transparency notice information necessary to allow the concerned individual to understand the logic involved and main parameters of the technique used, and the use of third-party data and additional analytical techniques used and a **clear indication of where** ~~link to~~ the relevant policy of the controller **can be easily retrived.**
- (50a)** In case the controller is different from the advertising publisher the controller should transmit to political advertising publisher the internal policy ~~or a reference to it~~ **and ensure that the necessary information are communicated to the political advertising publisher. Information shall be transmitted in a timely and accurate manner.**
- (50b)** Providers of advertising services should, ~~as necessary,~~ transmit to the political advertising publisher the information necessary to comply with their obligations under this Regulation. The provision of such information could be automated and integrated in the ordinary business processes on the basis of standards.

- (51) In order to further empower individuals to exercise their data protection rights, political advertising publishers should provide additional information and effective tools to the concerned data subject to support the exercise of their rights under the EU data protection legal framework including to object or withdraw their consent when targeted with a political advertisement. This information should also be easily accessible directly from the transparency notice. The tools made available to the individuals to support the exercise of their rights should be effective to prevent an individual from being targeted with political advertisements, as well as to prevent targeting on the basis of specific criteria and by one or several specific controllers.
- (52) The Commission should encourage the drawing up of codes of conduct as referred to in Article 40 of Regulation (EU) 2016/679 to support the exercise of data subjects' rights in this context.
- (53) Information to be provided in accordance with all requirements applicable to the use of targeting and amplification techniques under this Regulation should be presented in a format which is easily accessible, clearly visible and user-friendly, including through the use of plain language.
- (54) It is appropriate to lay down rules on the transmission of information on targeting to other interested entities. The applicable regime should be consistent with the regime for the transmission of information linked to the transparency requirements.
- (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].

- (56) In the interest of the effective supervision of this Regulation, it is necessary to entrust oversight authorities with the competence to monitor and enforce the relevant rules. Depending on the legal system of each Member State and in line with existing Union law including Regulation (EU) 2016/679 and Regulation (EU) 2021/xxx [Digital Services Act], different national judicial or administrative authorities may be designated to that effect.
- (57) As regards the supervision of online intermediary services under this Regulation, Member States should designate competent authorities and ensure that such supervision is coherent with the competent authorities designated pursuant to Article 38 of Regulation (EU) [Digital Services Act]. Digital Services Coordinators, pursuant to Regulation (EU) Digital Services Act, in each Member State should in any event be responsible for ensuring coordination at national level in respect to those matters and engage, where necessary, cross-border cooperation with other Digital Services Coordinators following the mechanisms laid down in Regulation (EU) [Digital Services Act]. In the framework of application of this Regulation, this mechanism should be limited to the national cooperation across Digital Services Coordinators [and should not include the escalation to the Union level as provided by the Regulation (EU) [Digital Services Act].
- (58) For the oversight of those aspects of this Regulation that do not fall within the competence of the supervisory authorities under Regulation (EU) 2016/679, Regulation (EU) 2018/725 Member States should designate competent authorities. To support the upholding of fundamental rights and freedoms, the rule of law, democratic principles and public confidence in the oversight of political advertising it is necessary that such authorities are structurally independent from external intervention or political pressure and are appropriately empowered effectively monitor and take the measures necessary to ensure compliance with this Regulation, in particular the obligations laid down in Article 7. Member States may designate, in particular, the national regulatory authorities or bodies under Article 30 of Directive 2010/13/EU of the European Parliament and of the Council<sup>5</sup>.

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<sup>5</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

- (59) Where rules already exist under Union law regarding the provision of information to competent authorities and cooperation with and between those authorities such as Article 9 of Regulation (EU) 2021/xxx [Digital Services Act], or those contained in Regulation (EU) 2016/679, those rules should apply *mutatis mutandis* to the relevant provisions of this Regulation.
- (60) Authorities competent for the oversight of this Regulation should cooperate with each other both at national and at EU level making best use of existing structures including national cooperation networks, the European Cooperation Network on Elections as referred to in Recommendation C(2018) 5949 final, and the European Regulators Group for Audiovisual Media Services established under Directive 2010/13/EU. Such cooperation should facilitate the swift, secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks pursuant to this Regulation, including by jointly identifying infringements, sharing findings and expertise, and liaising on the application and enforcement of relevant rules.

- (61) With a view to facilitating the effective application of the obligations set out in the regulation, it is necessary to empower national authorities to request from the services providers the relevant information on the transparency of political advertisement. Information to be transmitted to competent authorities could concern an advertising campaign, be aggregated by years or concern specific advertisements. In order to ensure that the requests for such information can be complied with in an effective and efficient manner, and at the same time that the providers of political advertising services are not subject to any disproportionate burdens, it is necessary to set certain conditions that those requests should meet. In the interest of the timely oversight of an election process in particular, providers of political advertising services should quickly respond to requests from competent authorities, and always within ~~10~~**ten** working days upon receipt of the measure. **During the last month of the electoral campaign, infringement of these provisions should be considered to negatively and severely affect citizen's right and therefore political advertising services should provide the requested information within 48 hours.** In the interest of legal certainty and in compliance with the rights of defence, requests to provide information from a competent authority should contain an adequate statement of reasons and information about available redress. Providers of political advertising services should designate contact points for the interaction with the competent authorities. Such contact points could be electronic.
- (62) Member States should designate a contact point at Union level for the purpose of this Regulation. The contact point should, if possible, be a member of the European Cooperation Network on Elections. The contact point should facilitate cooperation among competent authorities between Member States in their supervision and enforcement tasks, in particular by intermediating with the contact points in other Member States and with the competent authorities in their own.

- (63) Member States authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by administrative fines or financial penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In that context, the crucial role played by the obligations laid down in Article 7 for the effective pursuit of the objectives of the present Regulation should be taken into account. Furthermore, they should take into account whether the service provider concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, including by delaying the provision of information to interested entities, as well as, where relevant, whether the provider of political advertising services is active in several Member States. Financial penalties and administrative fines shall in each individual case be effective, proportionate and dissuasive, with due regard to the provision of sufficient and accessible procedural safeguards, and in particular to ensure that the political debate remains open and accessible.
- (64) The exercise by the competent authorities of their powers under this Regulation should be subject to appropriate procedural safeguards in accordance with Union and national law, including effective judicial remedy and due process.
- (65) Member States should publish the exact duration of their electoral periods, established according to their electoral traditions, sufficiently in advance of the beginning of the electoral calendar.

- (66) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Article 7(7) to further specify the form in which the requirements for the provision of information in the transparency notices according to that Article should be provided; and in respect of Article 12(8) to further specify the form in which the requirements of the provision of information about targeting should be provided. It is of particular importance that the Commission carries out appropriate consultations, including of experts designated by each Member State, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (67) Within two years after each election to the European Parliament, the Commission should submit a public report on the evaluation and review of this Regulation. In preparing that report the Commission should also take into account the implementation of this Regulation in the context of other elections and referendums taking place in the Union. The report should review inter alia the continued suitability of the provisions of this Regulation's annexes and consider the need for their revision.
- (68) Complementary obligations on the use of political advertising by European political parties are provided in Regulation (EU) 1141/2014 on the statute and funding of European political parties and foundations.



- (69) Since the objectives of this Regulation, namely the contribution to the proper functioning of the internal market for political advertising and related services and the establishment of rules on the use of targeting in the context of the publication and dissemination of political advertising, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt this Regulation, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (70) This Regulation is without prejudice to the rules laid down in particular by Directive 2000/31/EC, including the liability rules for intermediary service providers in Articles 12 to 15 of that Directive as modified by Regulation (EU) 2021/xxx [the Digital Services Act], Regulation (EU) 2021/xxx [the Digital Markets Act], Directive 2002/58/EC and Regulation (EU) XXX [ePrivacy Regulation], as well as Directive (EU) 2010/13, Directive 2000/31/EC, Directive 2002/58/EC, Directive 2005/29/EC, Directive 2011/83/EU, Directive 2006/114/EC, Directive 2006/123/EC and Regulation (EU) 2019/1150.
- (71) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on XX XX 2022.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I – GENERAL PROVISIONS

### *Article 1*

#### **Subject matter and ~~scope~~ objectives**

1. This Regulation lays down:
  - (a) harmonised transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services;
  - (b) harmonised rules on the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the use **processing** of personal data.
- ~~2. This Regulation shall apply to political advertising prepared, placed, promoted, published or disseminated in the Union, or directed to individuals in one or several Member States, irrespective of the place of establishment of the advertising services provider, and irrespective of the means used.~~
- ~~3.~~ 2. The aims of this Regulation are:
  - (a) to contribute to the proper functioning of the internal market for political advertising and related services;
  - (b) to protect natural persons with regard to the processing of personal data.

1. ~~This Regulation is without prejudice to the rules laid down in the following:~~
- ~~(a) Directive 2000/31/EC;~~
  - ~~(b) Directive 2002/58/EC and Regulation (EU) XXX [ePrivacy Regulation];~~
  - ~~(c) Directive 2005/29/EC;~~
  - ~~(d) Directive 2006/114/EC;~~
  - ~~(e) Directive 2006/123/EC;~~
  - ~~(f) Directive (EU) 2010/13;~~
  - ~~(g) Directive 2011/83/EU;~~
  - ~~(h) Regulation (EU) 2019/1150;~~
  - ~~(i) Regulation (EU) 2021/xxx [the Digital Services Act].~~

#### **Article 1a**

##### **Scope**

1. This Regulation shall apply to political advertising prepared, placed, promoted, published or disseminated in the Union, or directed to individuals in one or several Member States, irrespective of the place of establishment of the advertising services provider, and irrespective of the means used.
2. This Regulation shall not affect the content of political advertising nor Union or Member States rules regulating the presentation of political advertising, electoral periods and the conduct of political campaigning.

3. This Regulation is without prejudice to the rules laid down in the following:

- (a) Directive 2000/31/EC;
- (b) Directive 2002/58/EC and Regulation (EU) XXX [ePrivacy Regulation];
- (c) Directive 2005/29/EC;
- (d) Directive 2006/114/EC;
- (e) Directive 2006/123/EC;
- (f) Directive (EU) 2010/13;
- (g) Directive 2011/83/EU;
- (h) Regulation (EU) 2019/1150;
- (i) [Regulation (EU) 2021/xxx [the Digital Services Act]].

#### *Article 2*

#### **Definitions**

For the purpose of this Regulation, ~~the following definitions shall apply:~~

1. 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU;

2. 'political advertising' means the preparation, placement, promotion, publication or dissemination, by any means, of a message:
- (a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or
  - (b) which has the potential **and is intended** to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

**It shall not include political views expressed under the editorial responsibility of a service provider, in the programmes of audiovisual media, including linear or non-linear broadcasts, or published in printed media, unless the service provider has been remunerated by a third party for the political advertisement.**

3. 'political advertisement' means an instance of political advertising **published or disseminated by any means;**

**4.3a 'provider of political advertising services' means a natural or legal person engaged in the preparation, placement, promotion, publication or dissemination of political advertising;**

4. 'political actor' means any of the following:

- (a) a political party within the meaning of Article 2(1) Regulation (EU, Euratom) No 1141/2014 or an entity directly or indirectly related to ~~the sphere of activity of~~ such a political party;
- (b) a political alliance within the meaning of Article 2(2) of Regulation (EU, Euratom) No 1141/2014;
- (c) a European political party within the meaning of Article 2(3) Regulation (EU, Euratom) No 1141/2014;
- (d) a candidate **for or holder** of any elected office at ~~European Union~~, national, regional and local level, or for one of the leadership positions within a political party;

- (e) ~~an elected official within a public institution at European, national, regional or local level;~~
  - (f) a ~~unelected~~ member of a **Union institution, with the exception of the Court of Justice, the European Central Bank and the Court of Auditors, or of a government at European or of a Member State at** national, regional or local level;
  - (g) a political campaign organisation with or without legal personality, established to achieve a specific outcome in an election or referendum;
  - (h) any natural or legal person representing or acting on behalf of any of the persons or organisations in points (a) to (g), **and** promoting the political objectives of any of those.
5. 'political advertising service' means a service consisting of political advertising with the exception of an online intermediary service within the meaning of Article 2(f) of Regulation (EU) 2021/XXX [Digital Services Act] that is provided without consideration for the placement, **promotion**, publication or dissemination for the specific message;
  6. 'political advertising campaign' means the preparation, placement, promotion, publication or dissemination of a series of linked advertisements in the course of a contract for political advertising, on the basis of common preparation, sponsorship or funding;
  7. 'sponsor' means the natural or legal person on whose behalf a political advertisement is prepared, placed, **promoted**, published or disseminated;
  8. 'targeting ~~or amplification~~ techniques' means techniques that are used ~~either~~ to address a tailored political advertisement only to a specific person or group of persons ~~or to increase the circulation, reach or visibility of a political advertisement;~~
  - 8a. 'amplification techniques' means techniques that are used to increase the circulation, reach or visibility of a political advertisement;**

9. 'electoral period' means the period preceding or during or immediately after an election or referendum in a Member State and during which the campaign activities are subject to **Member States'** specific rules;
10. 'relevant electorate' means the body of individuals eligible to vote in the election or referendum being contested in the Member State in which a political advertisement circulates, which may be the entire electorate of a Member State;
11. 'political advertising publisher' means a natural or legal person that broadcasts, makes available through an interface or otherwise brings to the public domain political advertising through any medium;
12. 'controller' means a controller according to Article 4(7) of Regulation (EU) 2016/679 or, where applicable, to Article 4(8) of Regulation (EU) 2018/1725.

For the purposes of the first paragraph, point (2) messages from official sources regarding **exclusively related to** the organisation and modalities for participation in elections or referendums or for promoting participation in elections or referendums shall not constitute political advertising.

### *Article 3*

#### **Level of Harmonisation**

1. Member States shall not maintain or introduce, on grounds related to transparency **of political advertising**, provisions or measures diverging from those laid down in this Regulation.
2. The provisions of political advertising services shall not be prohibited nor restricted on grounds related to transparency when the requirements of this Regulation are complied with.

## CHAPTER II – TRANSPARENCY OBLIGATIONS FOR POLITICAL ADVERTISING SERVICES

### Article 4

#### **Transparency of political advertising services**

- 1.** Political advertising services shall be provided in a transparent manner in accordance with the obligations laid down in ~~Articles 5 to 11 and 14~~ **Chapter 2** of this Regulation.
- 2.** **Providers of political advertising services shall ensure that the contractual arrangements concluded for the provision of a political advertising service specify how the relevant provisions of this Regulation are complied with.**

### Article 5

#### **Identification of political advertising services**

1. Providers of advertising services shall request sponsors and providers of advertising services acting on behalf of sponsors to declare whether the advertising service they request the service provider to perform constitutes a political advertising service within the meaning of Article 2(5). Sponsors and providers of advertising services acting on behalf of sponsors shall make such a declaration.
2. Providers of political advertising services shall ensure that the contractual arrangements concluded for the provision of a political advertising service ~~specify how the relevant provisions of this Regulation are complied with.~~ **require the sponsor to provide the information necessary to comply with Article 6 paragraph 1. That information shall be transmitted in a timely, complete and accurate manner.**



3. In case of a declaration or information that is manifestly erroneous, providers of advertising services shall request the sponsors and the providers of advertising services acting on behalf of sponsors to correct their declaration.

Article 6

**Record-keeping and information transmission**

1. Providers of political advertising services shall retain information they collect in the provision of their services, on the following:
  - (a) the political advertisement or political advertising campaign to which the service or services are connected;
  - (b) the specific service or services that they provided in connection to the political advertising;
  - (c) the amounts they invoiced for the service or services provided, and the value of other benefits received in part or full exchange for the service or services provided, ~~and~~ **and their sources;**
  - (d) ~~where applicable, the identity of the sponsor~~ **of the political advertisement and, where applicable, the entity ultimately controlling the sponsor** and its ~~their~~ contact details; ~~and-~~
  - (e) where applicable, an indication of the elections or referendums with which the political advertisement is linked.**
2. The information referred to in paragraph 1 shall be in ~~writing~~ **written or** and may be in electronic form. Such information shall be retained for a period of five years from the date of the last preparation, placement, **promotion**, publication or dissemination, as the case may be.

3. ~~Providers of political advertising services shall ensure that the information referred to in paragraph 1 is communicated to the political advertising publisher which will disseminate the political advertisement to enable political advertising publishers to comply with their obligations under this Regulation. That 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.~~

#### Article 6a

##### Transmission of information to the political advertising publisher

1. Providers of political advertising services shall ensure that the information referred to in Article 6 paragraph 1 is communicated in a timely and accurate manner to the political advertising publisher which will disseminate the political advertisement to enable political advertising publishers to comply with their obligations under this Regulation. Providers of political advertising services shall make reasonable efforts to ensure that the information retained pursuant to Article 6 paragraph 1 is complete and accurate.
2. Providers of political advertising services shall transmit that information at the same time with the provision of the relevant service in accordance with best practice and industry standards, by means of a standardised automated process where technically possible.
3. When providers of political advertising services become aware that information which they have transmitted has been updated, they shall ensure that this updated information is communicated to the relevant political advertising publisher.

**Transparency requirements for each political advertisement**

1. **The political advertising publisher** ~~In the context of the provision of political advertising services, each political advertisement shall be made~~ **make** available, **for each political advertisement,** ~~with the following information in a clear, salient and unambiguous way:~~
  - (a) a statement to the effect that it is a political advertisement;
  - (b) the identity of the sponsor of the political advertisement and, **where applicable,** the entity ultimately controlling the sponsor;
  - (c) a transparency notice to enable the wider context of the political advertisement and its aims to be understood, or a clear indication of where it can be easily retrieved.

In this regard, political advertising publishers shall use efficient and prominent marking and labelling techniques that allow the political advertisement to be easily identified as such and the marking or labelling to remain in place in the event a political advertisement is further disseminated.
2. The transparency notice ~~shall be included in each political advertisement or be easily retrievable from it, and~~ shall include the following information:
  - (a) the identity **and the place of establishment** of the sponsor **and, where applicable, the entity ultimately controlling the sponsor** and **their** contact details;
  - (b) the period during which the political advertisement is intended to be published and disseminated **and, where applicable, the fact that the same advertisement has been disseminated in the past by the publisher of political advertising ;**

- (c) ~~based among others on information received in line with Article 6(3),~~ the information on the aggregated amounts spent or other benefits received **by the providers of political advertising services including those received by the publisher** in part or full exchange for the preparation, placement, promotion, publication and dissemination of the relevant advertisement, and of the political advertising campaign where relevant, and their sources;
- (d) where applicable, an indication of elections or referendums with which the advertisement is linked;
- (e) where applicable, links to online repositories of advertisements referred to in paragraph 6;
- (f) information on how to use the mechanisms provided for in Article 9(1);  
**(fa) where applicable, the information specified in Article 12(4).**
- ~~(g)~~ The information to be included in the transparency notice shall be provided using the specific data fields set out in Annex I.

**2a. The transparency notice shall be included in each political advertisement or be easily retrievable from it. The transparency notice shall be provided together with the political advertisement from its first publication and shall be kept up to date. Transparency notices shall be presented in a format which is easily accessible and, where technically possible, machine readable, clearly visible and user friendly, including by using plain language.**

3. Political advertising publishers shall make reasonable efforts to ensure that the information referred to in paragraph 1 and 2 is complete and **accurate**. **If the political advertising publisher becomes aware that information referred to in paragraphs 1 and 2 is incomplete or inaccurate, it should make reasonable efforts including, as relevant, by contacting the sponsor or the service providers concerned, to complete or correct the information.** ~~and Where they find this is not the case the information cannot be completed or corrected within a reasonable period, the publisher they shall not make available or shall discontinue the publication or dissemination of the political advertisement, they shall not make available and inform the service provider concerned and, where relevant, the sponsor.~~
4. ~~Transparency notices shall be kept up to date and presented in a format which is easily accessible and, where technically possible, machine readable, clearly visible and user friendly, including through the use of plain language. The information shall be published by the political advertising publisher with the political advertisement from its first publication until one year after its last publication.~~
5. Political advertising publishers shall retain their transparency notices together with any modifications for a period of five years after the ~~end of the period referred to in paragraph 4~~ **last publication**.
6. Political advertising publishers which are very large online platforms within the meaning of Article 25 of Regulation (EU) 2021/xxx [the DSA] shall ensure that the repositories that they make available, **in real time**, pursuant to Article 30 of that regulation [Digital Services Act] make available for each political advertisement in the repository **as well** the **updated** information referred to in paragraph 2.
7. Member States, including competent authorities, and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Article, taking into account the specific characteristics of the relevant service providers involved and the specific needs of micro, small and medium-sized enterprises, within the meaning of Article 3 of Directive 2013/34/EU.

8. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex I by adding, ~~or modifying or removing~~ elements from the list of information to be provided pursuant to paragraph 2 where, in the light of technological developments, **relevant scientific research, developments in supervision by competent authorities and relevant guidance issued by competent bodies**, such an amendment is necessary for the wider context of the political advertisement and its aims to be understood.

#### *Article 8*

##### **Periodic reporting on political advertising services**

1. Where they provide political advertising services, advertising publishers shall include information on the amounts or the value of other benefits received in part or full exchange for those services, including on the use of targeting and amplification techniques, aggregated by campaign, as part of their management report within the meaning of Article 19 of Directive 2013/34/EU in their annual financial statements.
2. Paragraph 1 shall not apply to undertakings qualifying under Article 3, **paragraphs 1 to (3)** of Directive 2013/34/EU.

#### *Article 9*

##### **Indicating possibly unlawful political advertisements**

- ~~1.3~~ Where they provide political advertising services, advertising publishers shall put in place mechanisms to enable **natural or legal persons** to notify them, free of charge, that a particular advertisement which they have published does not comply with this Regulation.

- 2.4 Information on how to notify political advertisements as referred to in paragraph 1 shall be user friendly and easy to access, including from the transparency notice. Political advertising publishers shall allow for the submission of the ~~information~~ **notification** referred to in paragraph 1 by electronic means.
3. **The political advertising publishers shall take reasonable steps to address in a timely, diligent and objective manner the notifications received pursuant to paragraph 1, by contacting the relevant service providers and, as relevant, the sponsor.**
- 4.5 The political advertising publisher shall inform ~~individuals~~ **the persons which notified the advertisement and the service providers concerned** of the follow up given to the notification as referred to in paragraph 1, **and provide information on the redress possibilities in respect of the advertisement to which the notice relates.** **In the last month preceeding an election or a referendum, political advertising publishers shall process any notice that they receive about advertisement linked to this election or referendum within 48 hours. Providers of political advertising services qualifying under Article 3 paragraphs 1 to 3 of Directive 2013/34/EU shall make reasonable efforts to process any notice that they receive about advertisement linked to this election or referendum without undue delay.**
- 5.6 Repetitive notifications under paragraph 1 regarding the same advertisement or advertising campaign may be responded to collectively, including by reference to an announcement on the website of the political advertising publisher concerned.

## Article 10

### Transmission of information to competent authorities

1. Competent national authorities shall have the power to request that a providers of political advertising services transmits the information **they are required to have pursuant** referred to Articles 6, 7 and 8. The transmitted information ~~must~~ **shall** be complete, accurate and trustworthy, and provided in a clear, coherent, consolidated and intelligible format. Where technically possible, the information shall be transmitted in a machine readable format.
  - (1a)** The request shall contain the following elements:
    - (a) a statement of reasons explaining the objective for which the information is requested and why the request is necessary and proportionate, unless the request pursues the objective of the prevention, **detection**, investigation, ~~detection~~ and prosecution of criminal offences and to the extent that the reasons for the request would jeopardise that objective;
    - (b) information on the redress available to the relevant service provider and to the sponsor of the political advertising service.
2. Upon receipt of a request pursuant to paragraph 1, providers of political advertising services shall, within two working days, acknowledge receipt of that request and inform the authority of the steps taken to comply with it. The relevant service provider shall provide the requested information within ten working days. **In the last month preceeding an election or a referendum, providers of political advertising services shall provide the requested information within 48 hours. Providers of political advertising services qualifying under Article 3 paragraphs 1 to 3 of Directive 2013/34/EU shall make reasonable efforts to provide the requested information without undue delay.**



3. Providers of political advertising services shall designate a contact point for the interaction with competent national authorities. Providers of political advertising services ~~which are SMEs within the meaning of~~ **qualifying under** Article 3 **paragraphs 1 to 3** of Directive 2013/34/EU may appoint an external natural person as contact point.

#### *Article 11*

##### **Transmission of information to other interested entities**

1. Providers of political advertising services shall take the appropriate measures to transmit the information **they are required to have pursuant** referred to in Articles 6 **and 7** to interested entities, upon request and without costs.  
~~Where the provider of political advertising services is a political advertising publisher, it shall also take the appropriate measures to transmit the information referred to in Article 7 to interested entities upon request and without costs.~~
2. Interested entities requesting the transmission of information pursuant to paragraph 1 shall be independent from commercial interests and shall fall in one or more of the following categories:
  - (a) vetted researchers in accordance with Article 31 of Regulation (EU) 2021/xxx [Digital Services Act];
  - (b) members of a civil society organisation whose statutory objectives are to protect and promote the public interest, authorised under national or Union law;
  - (c) political actors ~~as authorised under national law; or~~
  - (d) national or international electoral observers ~~accredited~~ **recognised** in a Member State; ~~or~~
  - (e) journalists.**

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

3. Following a request from an interested entity, the service provider shall make best efforts to provide the requested information or its reasoned response under paragraph 5, within one month.
4. When preparing the information to be provided pursuant to paragraph 1, the service provider may aggregate the relevant amounts or place them in a range, to the extent necessary to protect its commercial legitimate interests.
5. Where requests pursuant to paragraph 1 are manifestly unfounded, unclear or excessive, in particular because of their lack of clarity, the service provider may refuse to respond. In this case, the relevant service provider shall send a reasoned response **and information on the redress possibilities** to the interested entity making the request.
6. Where **the processing of the** requests under paragraph 1 ~~are repetitive and their processing~~ involves significant costs, the service provider may charge a reasonable and proportionate fee, which in any event shall not exceed the administrative costs of providing the information requested.
7. Service providers shall bear the burden of demonstrating that a request is manifestly unfounded, unclear or excessive, or that requests ~~are repetitive and~~ involve significant costs to process.

## **CHAPTER III – TARGETING AND AMPLIFICATION OF POLITICAL ADVERTISING**

### *Article 12*

#### **Specific requirements related to targeting and amplification**

1. Targeting or amplification techniques that involve the processing of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and Article 10(1) of Regulation (EU) 2018/1725 in the context of political advertising are prohibited.
2. [The prohibition laid down in the first sentence shall not apply to the situations referred to in Article 9(2)(a) and (d) of Regulation (EU) 2016/679 and Article 10(2)(a) and (d) of Regulation (EU) 2018/1725.]
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:
  - (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;
  - (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.

(c) — provide, together with the political 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.

4. Political advertising publishers making use of targeting or amplification techniques **involving the processing of personal data** shall include, in the transparency notice required under Article 7, the **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** specified in paragraph 3(e) and a link to the policy referred to in paragraph 3(a).

**(a) It shall include the following information:**

- (i) the specific groups of recipients targeted, including the parameters used to determine the recipients to whom the advertising is disseminated;**
- (ii) the categories and the source of personal data used for the targeting and amplification;**
- (iii) the targeting and amplification goals, mechanisms and logic including the inclusion and exclusion parameters;**
- (iv) the period of dissemination, the number of individuals to whom the advertisement is disseminated;**
- (v) a link to or a clear indication of where the policy referred to in paragraph 3(a) can be easily retrieved.**

**The information to be included in the transparency notice shall be provided using the specific data fields set out in Annex II.**

- (b) In case the controller is different from the advertising publisher, the controller shall transmit the internal policy **and ensure that the information referred to in this paragraph is communicated** ~~or a reference to it~~ 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.**
5. Political advertising publishers making use of targeting or amplification techniques **involving the processing of personal data** ~~referred to in paragraph 3~~ shall include in or together with the advertisement ~~and~~ **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.**
6. Information to be provided in accordance with ~~this provision~~ **paragraphs 3 to 5** 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.
- ~~7. Providers of advertising services shall, as necessary, transmit to the controller the information necessary to comply with paragraph 3.~~
8. The Commission is empowered to adopt delegated acts in accordance with Article 19 to amend Annex II by **adding or** 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.

### Article 13

#### **Transmission of information concerning targeting or amplification to other interested entities**

1. The ~~e~~Controllers referred to in Article 12 shall take appropriate measures to transmit, upon a request from an interested entity **and free of charge**, the information referred to in Article 12, in accordance with Article 11(1),.
2. Article 11(2) to (7) shall apply *mutatis mutandis*.

## **CHAPTER IV – SUPERVISION AND ENFORCEMENT**

### Article 14

#### **Legal representative**

1. Service providers that provide political advertising services in the Union but do not have an establishment in the Union shall designate, in writing, a natural or legal person as their legal representative in one of the Member States where the provider offers its services.
2. The legal representative shall be responsible for ensuring compliance with the represented service provider's obligations pursuant to this Regulation and shall be the addressee for all communications with the relevant service provider provided for in this Regulation. Any communication to that legal representative shall be deemed to be a communication to the represented service provider.

**Competent authorities and contact points**

1. The supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 or Article 52 of Regulation (EU) 2018/1725 shall be competent to monitor the application of Article 12 of this Regulation in their respective field of competence. Article 58 of Regulation (EU) 2016/679 and Article 58 of Regulation (EU) 2018/1725 shall apply *mutatis mutandis*. Chapter VII of Regulation (EU) 2016/679 shall apply for activities covered by Article 12 of this Regulation.
2. Member States shall designate competent authorities to monitor the compliance of providers of intermediary services within the meaning of Regulation (EU) 2021/xxx [DSA] with the obligations laid down in Articles 5 to 11 and 14 of this Regulation, where applicable. The competent authorities designated under Regulation (EU) 2021/xxx [Digital Services Act] may also be one of the competent authorities designated to monitor the compliance of online intermediaries with the obligations laid down in Articles 5 to 11 and 14 of this Regulation. The Digital Services Coordinator referred to in Article 38 of Regulation (EU) 2021/xxx in each Member State shall be responsible for ensuring coordination at national level in respect of providers of intermediary services as defined by Regulation (EU) 2021/xxx [Digital Services Act]. Article 45(1) to (4) and Article 46(1) of Regulation (EU) 2021/xxx [Digital Services Act] shall be applicable for matters related to the application of this Regulation as regards providers of intermediary services.
3. Each Member State shall designate one or more competent authorities to be responsible for the application and enforcement of the aspects of this Regulation not referred to in paragraphs 1 and 2. Each competent authority designated under this paragraph shall structurally enjoy full independence both from the sector and from any external intervention or political pressure. It shall in full independence effectively monitor and take the measures necessary and proportionate to ensure compliance with this Regulation.

4. Competent authorities referred to in paragraph 3, where exercising their supervisory tasks in relation to this Regulation, shall have the power to request to access data, documents or any necessary information from providers of political advertising services for the performance of their supervisory tasks.
5. Competent authorities referred to in paragraph 3, where exercising their enforcement powers in relation to this Regulation, shall have the power to:
  - (a) issue warnings addressed to the providers of political advertising services regarding their non-compliance with the obligations under this Regulation;
  - (b) 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;
  - (c) impose administrative fines and financial penalties.
6. Member States shall 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 pursuant to this Regulation, including by jointly identifying infringements, sharing findings and expertise, and liaising on the application and enforcement of relevant rules.
7. Each Member State shall designate one competent authority as a contact point at Union level for the purposes of this Regulation.



8. Where a provider of political advertising services is providing services in more than one Member State, or has its main establishment or a representative in a Member State but provides its main activities in another Member State, the competent authority of the Member State of the main establishment or other establishment or of the representative, and the competent authorities of those other Member States shall cooperate with and assist each other as necessary. Unless already regulated by Union law, that cooperation shall entail, at least, the following:
- (a) the competent authorities applying supervisory or enforcement measures in a Member State shall, via the contact point referred to in paragraph 7, inform and consult the competent authorities in the other Member State(s) concerned on the supervisory and enforcement measures taken and their follow-up;
  - (b) a competent authority may request, via the contact point referred to in paragraph 7, in a substantiated, justified and proportionate manner, another competent authority, where it is better placed, to take the supervisory or enforcement measures referred to in paragraphs 4 and 5; and
  - (c) a competent authority shall, upon receipt of a justified request from another competent authority, provide the other competent authority with assistance so that the supervision or enforcement measures referred to in paragraphs 4 and 5 can be implemented in an effective, efficient and consistent manner. The relevant competent authority so requested shall, via the contact points referred to in paragraph 7 and within a timeframe proportionate to the urgency of the request provide a response communicating the information requested, or informing that it does not consider that the conditions for requesting assistance under this Regulation have been met. Any information exchanged in the context of assistance requested and provided under this Article shall be used only in respect of the matter for which it was requested.
9. Contact points shall meet periodically at Union level in the framework of the European Cooperation Network on Elections to facilitate the swift and secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks pursuant to this Regulation.

*Article 16*  
**Sanctions**

1. In relation to Articles 5 to 11, 13 and 14 Member States shall lay down rules on sanctions including administrative fines and financial penalties applicable to providers of political advertising services under their jurisdiction for infringements of the present Regulation, which shall in each individual case be effective, proportionate and dissuasive.
2. Member States shall notify the Commission of those rules within twelve months of the entry into force of this Regulation and shall notify it, without delay, of any subsequent amendments affecting them.
3. When deciding on the type of sanctions and its level, due regard shall be given in each individual case, among others, to the following:
  - (a) the nature, gravity and duration of the infringement;
  - (b) the intentional or negligent character of the infringement;
  - (c) any action taken to mitigate any damage;
  - (d) any relevant previous infringements and any other aggravating or mitigating factor applicable to the circumstances of the case; and
  - (e) the degree of cooperation with the competent authority.
4. Infringements of Article 7 shall be considered to be particularly serious where they concern political advertising published or disseminated during an electoral period and directed to citizens in the Member State in which the relevant election is being organised.

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.
6. For infringements of the obligations laid down in Article 12, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose administrative fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.
7. For infringements of the obligations laid down in Article 12, the supervisory authority referred to in Article 52 of Regulation (EU) 2018/1725 may impose within its scope of competence administrative fines in line with Article 66 of Regulation (EU) 2018/1725 up to the amount referred to in Article 66 (3) of that Regulation.

#### *Article 17*

#### **Publication of electoral periods**

Member States shall publish the dates of their national electoral periods in an easily accessible place, with an appropriate reference to this Regulation.

## CHAPTER V –FINAL PROVISIONS

### *Article 18*

#### **Evaluation and review**

Within two years after each election to the European Parliament and for the first time by 31 December 2026 at the latest, the Commission shall submit a report on the evaluation and review of this Regulation. This report shall assess the need for amendment to this Regulation. The report shall be made public.

### *Article 19*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 7(8) and Article 12(8) shall be conferred on the Commission for a period of [until the application of this regulation is evaluated, two years after the next European Parliamentary elections].
3. The delegation of power referred to in Article 7(8) and Article 12(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify that act simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 7(8) or Article 12(8) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 20*

#### **Entry into force and application**

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 April 2023.
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

- We thank the presidency for today's exchange on Chapter III.
- In order to do justice to the extraordinary importance of the specific requirements related to targeting and amplification, we see the need for an extensive and detailed debate.
- In our view, the **compromise text is not yet sufficient and should be revised**, especially with regard to Art. 12.
- The **provisional agreement on the Digital Services Act (DSA)** regarding personalised advertising has to be considered as a **base for the level of protection**.
- According to Art. 24 DSA, providers of online platforms shall not present advertising to recipients of services based on profiling using special categories of sensitive data as referred to in Art. 9(1) GDPR. Even with consent personalised advertising using sensitive data is not permitted.
- The term "profiling" in the DSA refers to the definition in Art. 4(4) GDPR, and - as we understand it - includes the relevant "targeting and amplification techniques". Against this background, the result should be transferable to the political ads proposal.
- In our view, **if consent cannot justify processing sensitive data for commercial advertising** (as stipulated in the DSA), this shall **apply all the more in the case of political advertising**. The use of sensitive data for political advertising poses additional risks compared to the use of such data for commercial advertising: Risks for the democratic process, to free and fair elections and to the right to make informed decisions. This leaves **no room for the possibility of consent under Article 9(2)(a) GDPR provided for in Article 12(2) of the proposal**.

- The splitting of targeting and amplification techniques into two different definitions (Art. 2(8), Art. 2(8a)) has no added value so far. Therefore further explanation is needed to assess whether including “targeting” and “amplification” separately is preferable to using the general and already established term “profiling” according to Art. 4(4) GDPR.
- Furthermore, we **suggest to evaluate whether “delivery optimisation techniques”** are already contained within the scope of “profiling” according to Art. 4(4) GDPR or need to be included as well **in the scope** of this regulation.
  - These techniques are used by platforms to deliver political advertisements to individuals within the targeted audience of an ad by correlating personal data and data on the content of the advertisement.
  - The purpose of these automated advertising techniques is to economically optimise the delivery of the ads to individuals, by delivering each advertising to those individuals most likely to react in a specific way to the advertisement displayed to them. The use of these techniques often relies on the use of large amounts of inferred or observed data and are not obvious and/or transparent to the citizens who see the ads.
  - Given the inherent potential for misuse of personal data in the use of such “delivery optimisation techniques”, these techniques pose a **potential threat in the electoral process** and should therefore be included in the scope of “amplification techniques”.
- Given the way algorithms work – finding similarities and patterns in huge amounts of data –, it should be **considered to include in the scope of Art. 12 constellations** in which a political opinion – or other sensitive data – **can be predicted with a certain degree of accuracy from data available on a data subject** but where the data does not directly reveal political opinions or party memberships, provided that these constellations are not already covered by the scope of Art. 9 (1) GDPR. It is our understanding that the political agreement regarding the DSA includes a recital to Art. 24 DSA which states that “categories”

of data based on Art. 9(1) GDPR are included within the scope of Art. 24 DSA. We suggest evaluating further alignment with the DSA in this point.

- "Delivery optimisation techniques" (if not covered by the GDPR) should consequently be added in all places where "amplification techniques" are mentioned in the draft, for example in the definitions.
- Consequently, the prohibition of the use of "amplification and delivery optimisation" in political advertising should also be reflected in the other paragraphs of Article 12.
- We **welcome the revised transparency requirements in paragraphs 3, 4, 4a of Art. 12** as they provide more clarity. However, we have two comments.
  - We welcome the transfer of the previous Art. 12 (3)(c) to the new Art. 12 (4)(a). We would nevertheless like to suggest that the provisions of Art. 12 (4)(a) can be **updated by means of a delegated act** (after consultation of Member States experts).
  - In our view, it would be **useful to include case studies in the recitals** for the specific groups of recipients targeted (Art. 12 (4)(a)(i)) and for the categories and sources of personal data ((Art. 12 (4)(a)(i)).
- We **welcome the addition in Art. 13(1)** that the data has to be transmitted by the controller to the interested entities without any additional costs.



- In the opinion of Latvia, the regulation contained in the proposal for a Regulation should be aligned with the regulation contained in the DSA, taking into account that both legislative proposals regulate issues related to display of the customized advertisement to data subject. At the same time, the differences and legal consequences that may occur from customized political and commercial advertisement must be taken into account.

In particular, as a result of a customized commercial advertisement, the choices made by a person will mostly affect only this person by encouraging the purchase of a particular product or service. But the choices made by a customized political advert can have a much wider and more negative impact.

Encouraging the choice of a person in favor of a political party, if that person is not sufficiently informed as to why he or she is being called upon to make such a choice, may call into question the existence of free elections as such. This can affect the democratic process, and the consequences will be felt by society as a whole, not just the individual.

In view of the above, in order for the requirements to be the same, it is necessary to include in the proposal for a Regulation the conditions currently included in the DSA. In addition, it needs to be assessed whether the proposal for a Regulation should not include even stricter requirements than the DSA. In any case, the requirements for targeted political advertising should not be lower than those contained in the DSA

2. Currently the DSA prohibits profiling based on specific categories of personal data. But Article 12 (2) of the proposed Regulation, allows the use of specific categories of personal data if it is based on Article 9 (2) (a) and (d) of the GDPR. Latvia considers that the authorization to use specific categories of personal data should not depend on the legal basis applicable to such processing of personal data, in particular consent.

In particular, if the purpose of the processing of personal data is assessed and it is concluded that the processing of specific categories of personal data is not proportionate to achieve a particular purpose, it should apply to any processing, regardless of the legal basis used.

The fact that a person gives consent to the processing of personal data doesn't mean that the controller does not have to comply with the basic principles of personal data processing contained in Article 5 of the GDPR, especially in situations where the person may not be fully aware of any risks which may arise as a result of the processing of such personal data.

Consequently, Latvia considers that the proposal for a Regulation should provide for a ban on profiling on the basis of specific categories of personal data.

3. Latvia is concerned that the legal provisions contained in Chapter III of the proposed Regulation may not be entirely clear and unambiguous as regards the division of responsibilities between the various parties involved.

The obligations contained in Articles 12 and 13 of the proposed Regulation are extended to the controller. According to the GDPR, the controller is the person who determines the purposes and means of data processing.

Chapter III of the proposed regulation identify three players: the publisher, the advertising service provider and the political party. Which of these three players will be considered the controller would be determined on a case-by-case basis.

For example, if a political party has determined the purpose of political advertising, as well as the means to implement targeted advertising, then the political party would be considered to be the controller. But if the intention has been determined by the political party and the mean - targeted advertising - has been determined by the publisher, then the political party and the publisher would be considered as joint controllers.

It is doubtful that a political party will be able to determine and describe the logic of the method used, as it is likely to be made by the service provider, who may not be the controller but the processor.

In view of the above, a clear division of responsibilities between the parties involved should be made. We believe that the regulation in Article 24 of the DSA seems clearer and more unambiguous, as the specific obligations apply directly to the owners of online platforms.

We therefore call for a similar regulation to the DSA to be included in the proposal for a regulation.



Below you will find our suggestions for an addition to article 12 that I also mentioned in the GAG today:

Article 12, paragraph 2, part a:

- Adopt, ~~and~~ implement **and publish on a publicly available website** 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;

Article 12, paragraph 4, part a, sentence (v) :

- a link to **a website where to the policy** referred to in paragraph 3(a) can be easily retrieved.

We would like to thank the Presidency for changes introduced in Art. 12 as they improve the text. However, those changes are far not sufficient and Poland still cannot accept wording of that provision. In order to guarantee the effective protection of personal data, Poland suggests the introduction of the **complete ban** on using the **specific categories of personal data**, as defined in art. 9 of the GDPR for the **targeting of political advertising** purposes.